

# Two Concepts of Justice—and of its scope

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I argue that there are two concepts of distributive justice in play in debates on whether principles of distributive justice apply to the global sphere. Critics of the idea that the scope of distributive justice is restricted *assume*, without argument, a particular conception of justice in which justice-based evaluations apply to basic-structural institutional actions only *instrumentally*, whilst applying intrinsically to distributive outcomes for people. I call these outcomes-focused views. I show that at least one view in the literature on global justice, the *agency argument*, appeals to a distinct concept of social distributive justice where the descriptors ‘justice’ and ‘injustice’, intrinsically apply to the actions of certain types of institutional agents, and only derivatively to the description of states of affairs such as distributive outcomes. This alternative view is treatment-focused and deontological. It focuses on special goods that are only available as a matter of how one is treated by political institutions: relational-goods. It is also sensitive to considerations of fairness in practical reason in ways that outcomes-focused views are not. I show why, on this agency-focused approach, the scope of principles of distributive justice is restricted to how people who are subject to special institutional authority are treated. My main aim in this paper is to demonstrate that on a competitor approach to justice the anti-scope restriction arguments fail, and that the competitor approach is not obviously incoherent. Thus criticising scope restriction by assuming an outcomes-focused approach to distributive justice begs the question against agency-focused arguments. This shows the real dispute is at a more fundamental level.

**Keywords:** concept of justice; scope of distributive justice; global justice; fairness; relational justice; teleology; deontology; equal respect; equal concern

## Introduction

Should the concept of distributive justice focus on people’s conditions or on how specific agents treat those people? The “agency argument” challenges the idea that principles of social distributive justice apply to the relative conditions of people across borders as well as within them. This is because, it claims, no relevant agent of distributive justice exists with global cross-border reach to which principles of distributive social justice could reasonably apply.<sup>1</sup> A premise of this argument is that social distributive justice is concerned with the behaviour of certain kinds of institutional agents—authoritative institutions

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with powers to assign socially recognised rights and duties to members of a political community. I will refer to these as ‘public’ or ‘basic-structural’ institutions from now on. For example, the family has a private component—the choices, decisions, and attachments that characterise family relations—but also a public component in the socially recognised rights and duties used by communal institutions to shape familial relationships. One response in the literature to arguments for restricting the scope of justice accepts that distributive justice might require inherently political or institutional responses to certain distributive problems. Yet, the response stresses that the problems themselves exist even where the institutions capable of solving them do not. In fact the problems call for such justice-realising institutions to be brought about. So, the response concludes, descriptors such as “just distribution” and “unjust distribution” apply to people’s conditions regardless of current institutions and institutional borders. Arguments, such as the agency argument that restrict the scope of justice by reference to the need for a basic structure simply confuse the institutional remedy for the problem that calls for that remedy.

In this paper I argue that this response is question-begging because it is premised on a conception of justice that is itself in contention in the debate. It takes certain distributive *outcomes* to be the basis of characterisations of justice and injustice. Institutional actions, on this view, derive their justice or injustice from whether they secure or aim at securing these outcomes or whether they fail to do so. Institutional actions can remedy unjust circumstances but the circumstances are not unjust by reference to the injustice of the actions. It is this conception of justice that underpins the response that the concept of distributive justice can apply, in the sense of describing certain circumstances as unjust, even in the absence of institutions that could change those circumstances (Abizadeh 2007 p. 333 ff.; Ronzoni 2009 p. 241; Barry & Valentini 2009 p. 498). But the strongest version of the agency argument employs a wholly different model of justice, one that is agency- or treatment-focused. It characterises distributive justice and injustice non-derivatively, as qualities of institutional actions: qualities of how a particular kind of institutional agent *treats* those over whom it exercises special rights-generating and duty-imposing powers. If this latter concept of justice is coherent and explains why its application should be restricted in scope to basic structures, then responses that presuppose a different concept of justice beg the question against it. In part **I** below I show how the outcomes-focused concept is at work in prominent objections against scope restriction. I set out the alternative concept of justice as a coherent alternative in **II**, before considering the respective merits of these concepts in **III**, where I also argue that relying on the outcomes-focused concept in this debate is question begging.

## I

Call the applicability of descriptions such as just and unjust *justice aptness* from now on. Prominent arguments against restricting the scope of the concept of distributive justice to basic-structural institutions assume three key premises about justice aptness. I will refer to views that imply these premises as outcomes-focused approaches. These take the descriptor “distributive injustice” to apply to certain circumstances because of the conditions, the outcomes, for

people in those circumstances. The justice and injustice of institutional actions derive from what they do or aim to do in relation to those conditions.

Derivativeness Premise (DP): justice as a concept only derivatively applies to the actions and/or decisions of an institutional agency

Instrumental Premise (IP): institutional agencies, such as the basic structure of a society, are only instrumental to (even if necessary for) implementing justice

The literature on global justice does not explicitly state DP. There are however explicit statements of IP, and given that instrumentalism is a way that the justice of certain actions can be derived from the justice of a distributive scheme—of a set of outcomes—then IP implies DP.

For example, Abizadeh is clear that basic-structural institutions are “*instrumental*” to the achievement of justice (Abizadeh 2007, p. 324, pp. 333-340). Which is consistent with their being “*constitutive*” of a just set up in the sense of being necessary in establishing a just distribution (p. 329 n. 22 and p. 330). But given the institutions are not necessary for describing a set up as unjust, they are merely feasibility conditions for justice rather than conditions for when these concepts apply (Abizadeh 2007, p. 324). All of which only makes sense if what is justice apt in a non-derivative way is a set of distributive conditions or positions in which people find themselves, the “distribution of benefits and burdens” (ibid., 333-34). Institutions may be necessary to remedy the absence of such conditions for people; they matter for implementing better conditions, but justice aptness is understood fundamentally in terms of those conditions. Caney is more explicit: “Would we not want first to determine who belongs to a scheme of distributive justice [in Caney’s view all persons]...and then [determine]...which political actors can *implement* this scheme” (Caney 2008, 496, my emphasis). Which means the justice of what is implemented (the scheme) is distinct and prior to institutional implementation. He then goes on to elaborate on this “*instrumental*” role for political institutions (op cit. pp. 510 ff.).<sup>2</sup>

The relevant conditions to which justice applies non-derivatively can be understood in terms of absolute outcomes for each individual person such as whether they have access to key conditions needed to enjoy wellbeing or satisfy basic needs (Buchanan 1990, pp. 233; 2004, pp. 89 & 134). They can also focus on whether or not a pattern of outcomes exists for a group such as equal opportunities to access resources, priority access to goods for disadvantaged people, or the continuous improvement in the condition of the least advantaged (for explicit adoption of patterned outcomes as the non-derivative subject matter of justice see: Temkin 1993, p. 19; Murphy 2000 p. 7-8; also Parfit 2002). Crucially, justice non-derivatively describes the relevant desirable outcome as a goal to be implemented, and injustice describes a range of undesirable conditions that do not contain this outcome. Call this the outcomes premise:

OP: justice non-derivatively describes a pattern of distribution across persons and injustice describes the extent to which this is absent in any given circumstance.

Accepting this framework clearly works against the agency argument. That argument questions whether the concept of egalitarian distributive social justice coherently applies across institutionally separate political communities in the absence of a shared institutional agent of distribution. This is because the addressee of principles of social distributive justice must be able to assign socially recognised rights and duties over a group of people in a fair way. Such an agent is not present globally, so a concept corresponding to right and wrong *actions* for this agent cannot be applicable globally. However, appealing to an outcomes-focused concept of justice, we could concede the empirical premise that there is no such agent globally whilst holding that this fact is itself part of the injustice. Undesirable *conditions* exist that are unfair and institutions are conceivable that could address these conditions through redistribution; that those institutions are not there to fix the problem is part of the unfairness. This holds even if no agent is to blame for imposing or maintaining the current conditions.

Some forms of agency can matter non-derivatively on this view, if they are incorporated into the relevant outcomes. Some views do this by making the actions and choices of people in the scheme part of the distribution and its justice or injustice. For example, on some accounts holding people responsible for their choices is part of a just pattern of distribution. An extreme form of “luck egalitarianism” might require that people suffer disadvantages that are due to their own choices. Nevertheless, it is the *outcomes*—partly defined in terms of this kind of agency—that are non-derivatively just or unjust on this view.

However, agency also matters in implementing just schemes. An agent can be responsible for acting to redistribute people’s holdings so as to assert the relevant distributive pattern. This can be direct, as where public institutions have the capacity to impose a distributive pattern. It can also be indirect, as where people should support, help reform, or establish institutions best placed to do the implementing. Paying fair taxes, for example, is an indirect responsibility of justice in this sense. The content of responsibilities of justice is defined in terms of the outcomes agents should aim to advance together with some account their abilities as implementing agents (Buchanan 1990 p. 231). These *allocative* responsibilities are just because of their relationship to the outcomes they aim to achieve. They must reasonably aim at bringing about the relevant distributive pattern, directly or indirectly, depending on the agent’s capacities.

So, consider Miriam Ronzoni’s argument against institutional scope restriction. She holds that it is indeed possible to describe global “*background injustice*”, even in the absence of global basic-structural institutions. This notion of injustice is supposedly an extension of Rawls’ view that a basic structure sets conditions of background fairness between people by setting social conditions as the backdrop of all interpersonal transactions (Rawls 1993 pp. 265 ff.).<sup>3</sup> Ronzoni

extrapolates that if background fairness for people entering into transactions can only exist in the presence of basic-structural institutions that preserve it then without these institutions there must exist *background unfairness* or injustice (Ronzoni 2009 pp. 245 ff.). Background fairness on Rawls' view involves institutions adjusting for the effects that even the most *innocent* transactions have on people's relative positions in a scheme of distribution (Rawls 1993 p. 267). Innocence here means that by themselves the transactions do not directly wrong anyone, nor are they complicit with actions that do. Disparities between people's life chances will arise through the accumulated but unintended effects of individual actions without anyone being individually at fault. Public institutions that could adjust background terms to correct for this yet permit it can hardly be said to show equal concern for the lives of those they govern. However, for Ronzoni the absence of institutions contributes to the unfair circumstances and so it is part of the unfairness people suffer (op cit., p. 236). Background fairness in the Rawlsian account from which this terminology is taken does not apply to individual actions, so by implication the actions of individuals involved in transactions are not unfair or unjust. "Background injustice" must instead describe undesirable conditions—outcomes—and are sometimes due to the absence of an agency that might correct for those conditions.

There are other examples of this kind of instrumentalist reasoning separating the notion of justice (or injustice) from specific institutional behaviour (Follesdal 2011 p. 48; Gilibert 2011 pp. 585 & 591). Theorists appeal to general responsibilities for all of us to "promote global egalitarian *goals*" [my emphasis] (Barry & Valentini, 2009, pp. 497, 498) and assert that globally "*we* should aim at equalizing life prospects" (Gilibert 2011 p. 585) or that "*we*" have imperfect duties of justice to work towards some better global outcome (Ronzoni 2009 p. 240 and n. 31). The clear implication is that justice and injustice at core define patterns of distribution. "*We*" can make indirect contributions that are just in a derivative, instrumental sense toward achieving these outcomes, and special institutions can act to directly implement a distributive pattern, but the justice of these actions is still instrumental, deriving from the justice of the outcomes.

On these views, indirect instrumental responsibilities can also be used to fill the agency gap between a world without an agent capable of direct implementation and one in which such an agent is present. The responsibilities lie with people (the "*we*") to work to bring about the relevant just distribution-implementing institutions (Buchanan, 2004, pp. 86-87). If people fail to work to establish such institutions, they might be said to behave unjustly by their omissions but not in the direct sense of either putting into place an unjust order or in the sense of failing to directly implement a just distribution where they can. The responsibility to work towards establishing background institutions capable of implementing background justice is inevitably an imperfect duty on this view (Ronzoni, 2009, pp. 240-41 n. 31; Gilibert 2012 p. 17).

However, this (teleological) understanding of justice is not the only available view.<sup>4</sup> On a plausible alternative, the concepts of distributive justice and injustice *non-derivatively* apply to the actions of institutional agents rather than outcomes.

In the absence of those agents and so of actions that can be just or unjust, these concepts do not apply. If that conception of justice favours scope-restricting arguments then objections premised on an outcomes-focused approach beg an important question against those arguments. I now set out this alternative conception of justice.

## II

This turns on the notion of treatment: whether institutions treat people rightly or wrongly. If distributive injustice means an agent acting (or failing to act) in a way that mistreats people over whom it has special distributive powers, then in the absence of such mistreatment there is no distributive injustice. Even if there is a distribution that is *in some sense* undesirable, that is not sufficient for social distributive injustice and the mere existence, were that possible without agency, of a correspondingly desirable distributive pattern is not sufficient for distributive justice (Cf. Anderson 2013 p. 10).

With special powers come special responsibilities and basic structural institutions have a special power. This is the exercise of political authority in assigning socially recognised *rights* and *duties* over specific groups of persons (Rawls 1971 pp. 6 & 7, 1993 pp. 108-9, 262 ff., and 264-5; Freeman 2006 & 2013 p. 206; Meckled-Garcia 2008 pp. 252 & 256-8;). Where institutions have legitimate authority in a political community (I will come to what legitimacy means below), they assign people rights by processes and decisions that are authoritative for that community. This is done through legislation, judicial and quasi-judicial decision-making, and political directives, including directives by bodies with delegated powers. Rights and duties thus assigned to people, where they are legitimately assigned, require that all members of society recognise them and where relevant incorporate them into their practical reasoning. For example, for Jay to enjoy legal property rights over certain resources will require that others recognise Jay's claims over those resources and observe specific duties to respect those claims. They will bear burdens in the form of direct costs should they wish to acquire property that is owned by Jay and the opportunity costs of respecting her exclusivity rights over the property. They must take those rights into account in forming their own life plans. In this way institutions set terms of engagement for people's interactions where some are required to take on burdens that collectively generate benefits for others.

In arranging social rights and duties these institutions distribute special kinds of goods and costs. They establish special cooperative relationships and so the goods they assign are inherently cooperative: they would not result from others' burdens were it not for this form of cooperation. For example, that Jay enjoys benefits from a particular configuration of property rights is due to being placed in a cooperative relationship with people like Kay who carry the burdens necessary for upholding those rights. This means some people carry special burdens *for the sake of* others enjoying special social benefits in the form of rights. Call these types normative arrangements of burdens-for-the-sake-of-benefits *relational* goods. Such goods are not available unless institutions establish one or other arrangement of rights and duties. Distributing relational goods then, is not like allocating commodities or possessions to people, such as

resources that satisfy needs; it is the arranging of cooperative relationships. This kind of distribution is inherently cooperative rather than “*allocative*” (Rawls 2001 p. 50).

Because arrangements of relational goods have two sides to them comprising both the benefit enjoyed and the burdens shouldered, one cannot evaluate their distribution without evaluating the kind of cooperation they establish (given the alternative cooperative arrangements available). In determining what is a fair distribution of property rights, for example, one cannot simply consider the benefits these rights imply for the holder; one must consider whether it is fair to impose the corresponding burdens *for the sake* of the benefits in this particular arrangement. One must decide which arrangements show equal concern to all. In an order with public institutions there must be one or other arrangement of rights and duties—there is no institutional order without an arrangement of relational goods. So institutions act fairly by choosing a fair arrangement out of the possible arrangements. The relevant question here, then, is which cooperative arrangement it is fair to impose out of those that are possible. It is not, as it is in an outcomes-focused approach, what distribution is desirable regardless of cooperation.

Consider the proposal that we evaluate these arrangements simply in terms of how goods and costs are distributed, as a distributive pattern of opportunities, resources, conditions of wellbeing, or capability sets—what we might call a *bare distribution*. The problem with applying this standard to relational goods is that it misses the cooperative element of the relationships established between those subject to such an arrangement. It does not explain why Kay in particular should bear the burdens she does *for the sake* of Jay. That she contributes and what she contributes to the scheme would only be relevant from the perspective of a bare distribution if it affects the distributive pattern. On that approach, Kay has no special status as a co-operator.

From the point of view of institutions showing equal concern to those on whom they impose cooperative arrangements she does have special claims. Those institutions must show her equal concern *as a co-operator*, rather than as a resource to be managed in achieving a distributive pattern. That means, for example, she should not be expected to adopt a conception of her personal good that makes it a life priority for her to pursue a certain social distributive pattern. That would be to treat her life choices and commitments as instrumental towards distributive patterning. Institutions can instead adopt arrangements of rights and duties that simultaneously allow her to pursue her chosen life priorities where doing so contributes to other co-operators being able to do the same. They can make her pursuit and obtaining of socially available resources to advance her goals conditional on this benefitting others, and she can pursue those priorities to the extent that it does so. There is no requirement here that she adopts or pursues any particular priority and to any particular extent, other than what is necessary to cooperate with the social rights and duties that establish these conditions. This means individuals do not contribute by quota but by being permitted to pursue their own ends in a way that pays social dividends. Individual co-operators act fairly in so far as they cooperate with fair

institutional arrangements or support fair arrangements being selected by institutions. An outcomes-focused approach, on the other hand, would require that individuals contribute whatever institutions need in implementing a pattern of distribution. If this meant individuals altering their personal life goals, giving up pursuing life aims for the sake of contributing to the distributive pattern, from an outcomes perspective there is nothing to rule this out. Thus the two perspectives on evaluating institutional arrangements have different upshots.

I should underline that on this view fairness is not about receiving reciprocation according to one's contribution to a cooperative surplus (Cf. Buchanan 1990 p. 230; Lister 2013 p. 93). Rather it is each person being treated with equal concern in the arrangement of social rights and duties by basic structural institutions representing the political community as a whole. Reciprocating with such a structure means essentially accepting one's socially assigned duties and so upholding fairness.<sup>5</sup> That is why even net non-contributors reciprocate, in so far as they uphold fair social right and duty arrangements. So, reciprocity here does not merely mean submitting to social rules where we have benefitted from others similarly submitting. That would be compatible with quite meagre benefits for some co-operators (Lister 2013 pp. 83-84). That is a particular problem for views that model justice on direct interpersonal reciprocity.<sup>6</sup> Fairness here governs institutional decisions and how they configure social cooperation; it requires that those institutions treat people over whom they can establish such arrangements fairly by configuring the arrangements in a way that shows them equal concern. Participants cannot individually decide the terms of this cooperation or agree it on a case-by-case basis, yet it constrains the extent to which they can pursue their chosen life aims. Cooperative institutions, however, can choose between different cooperative arrangements, and so are responsible for acting with equal concern for the lives of those they place in these cooperative relations.

This same question of fairness in the arrangement of relational goods does not exist between people directly. In the absence of such arrangements Jay and Kay might never interact. Even if they could interact, they cannot arrange opportunities for each other in the form of recognised rights linked with burdens that make such rights possible. People involved in direct interactions might rely on understood conventions about property or about agreements, for example, but they cannot decide the terms of these conventions *ex nihil* with each transaction. This is because any decision or agreement two people make about property does not have authority for how all others should understand the nature and limits of property rights, and so the benefits and burdens they imply. Transacting parties cannot, then, set background conditions against which everyone transacts or select between alternative cooperative arrangements of relational goods. Which means individuals cannot, in their position of co-operators pursuing their own life goals, show equal concern for each other's lives; they cannot directly treat each other fairly or unfairly in terms of an arrangement of relational goods. This contrasts with the cooperative relationship between members of a political community, which is "mediated" by institutions capable of distributing relational goods. The focus of distributive justice is institutions deciding between such arrangements, rather than



individuals' direct treatment of each other. Individual actions connect with the value of equal concern only in so far as they support institutional agents in acting fairly.

The above is compatible with there being ways people can interact that are right or wrong regardless of the presence of mediating institutions. Unjustifiably harming others is a moral wrong, as is failing to rescue them under specific circumstances, even in the absence of mediating institutions.<sup>7</sup> But these are not cases of social cooperation involving relational goods. Whether someone makes a fair *cooperative* contribution is not relevant to whether I should rescue her from dire straits if I can do so at a reasonable burden. There is no morally distinctive role in such matters for a special agent that arranges cooperative enterprises, and the way institutions arrange rights and duties for cooperation is not a special object of this kind of justice. The relevant values here are not distinctively cooperative (Meckled-Garcia 2013 pp. 77 ff.).

The treatment-focused view is also compatible with there being a separate standard of *transactional fairness*. That is the sense of "fair dealing" that rules out dishonesty, deceit, subterfuge, manipulation, duress, and other forms of disrespect for persons when engaging in voluntary transactions. It is a standard that applies directly between transacting agents and so does not apply especially to the mediating actions of institutions. In fair dealing agents pursue ends each has prior to a fair transaction and the question is how each should pursue her ends in a way that respects the other. Fair social cooperative institutions, on the other hand, should not have an end that is distinct from showing equal concern for people who are pursuing their ends in the context of social cooperation. The fairness of fair dealing, then, is distinct from social distributive fairness (Rawls 1971 p. 7; Barry 1982 p. 227).

In sum, then, on the treatment-focused view social distributive justice or fairness is a special form of evaluation in which only the actions of a certain kind of agent are justice-apt. It is the special powers of that agent in deciding between alternative cooperative arrangements of rights and duties that calls for this distinctive form of evaluation. The power to establish such arrangements is inherently cooperative, and so the moral importance of those arrangements is not adequately understood as the desirability of a bare distribution. In the absence of the relevant institutional agency an evaluation of social cooperative fairness, on this approach, has nothing to which it might apply. So the notions of "background injustice" or social unfairness (Ronzoni *ibid*; Abizadeh 2007 p. 333) do not apply in such circumstances. This is also relevant to the scope of distributive justice in that cooperative fairness is fairness to those for whom cooperation is arranged in the form of social rights and duties by institutions that legitimately exercise this power over them. So, the claim that we can identify "background injustice" in the very absence of basic-structural institutions must be based on a different concept of justice to this one.

I have so far only sketched this concept of social distributive justice to show it is at least a coherent alternative. Before comparing its cogency to the outcomes-focused approach I should address the possible objection that even if the

alternative concept of justice is the right one, I am nevertheless wrong about its scope because duties of distributive justice might still exist in the absence of cooperation-arranging institutions. This is in the indirect sense that people have duties to create these institutions.

The response only works if people already have a duty based in instrumental reasons to establish relational goods. The justification for that would have to be that the existence of relational goods is better than not having relational goods, or even that having a fair distribution of relational goods is better than having no relational goods. But that is an outcomes-focused form of reasoning. On the notion of societal fairness I have just sketched, the fairness question is not whether an arrangement of relational goods exists but rather whether institutions capable of choosing between alternative cooperative arrangements impose fair or unfair cooperation. One cannot use the fairness of cooperation to compare a prospective cooperative arrangement with the absence of any cooperative arrangement. At least one cannot do that unless one reduces fairness and unfairness to a set of outcomes rather than types of institutionally arranged cooperation. Recall that relational goods are relations established between people by institutions: benefits for individuals, through assigning them socially recognised rights, linked to burdens for others that make those rights possible. So, the existence of a relational good is not a moral good unless institutions act fairly in imposing a burden-for-the sake-of-benefit relationship on those they legitimately govern. The absence of a relational good is only a moral bad if these institutions act unfairly towards those they govern by failing to impose that burden-benefit relationship on them. Consequently, any proposal to create cooperative institutions that do not yet exist cannot be based in considerations of this kind of fairness or unfairness; in such cases there just is no agent to act fairly or unfairly in this way. If, alternatively, the proposed basis for shared institutions is to bring about a certain pattern of distribution, an outcome, then this objection simply presupposes the outcomes-focused approach. Such an approach cannot be introduced as an assumption in an argument for modifying or rejecting the coherence of an otherwise coherent competitor view.

Under certain circumstances other moral reasons for establishing collective institutions can of course apply. The need to resolve dangerous disputes, secure peace, or opportunities to engage in reasonable rescue might furnish reasons for shared institutions. But these are not reasons based in social fairness or unfairness. People's conditions in those circumstances are not just or unjust in the distribution of relational goods as no agent in those circumstances is in a position to arrange such goods fairly *or unfairly* for all by assigning social cooperative rights and duties. Furthermore, for some of these reasons to consociate under collective institutions the responsibilities they generate will be imperfect; they allow agents a significant degree of judgement as to how to incorporate and prioritise these goals, given their other legitimate goals, and do not therefore ground a duty to consociate.

Consider the general duty to assist others in need. Unlike the specific duty of rescue, this is a general end that individuals need to use their judgement to operationalise. They must balance it against other ends and judge how to

prioritise it given all their legitimate personal commitments, attachments, relationships, and projects. Political communities too, can and should incorporate the end of assisting others in dire straits, but must balance that against the legitimate goal of arranging fair cooperative relations for those whose social rights and duties they legitimately configure. Under certain conditions assistance can take the form of entering into institutional association with others, either by creating new shared institutions or by extending membership of an existing institutional order to them. But whether they should do this is not a question of cooperative fairness but of imperfect duties of assistance and the judgement they entail.

One might object that the very existence of borders imposes duties on everyone outside a political community. But this is a somewhat different sense of duties. The duties imposed are not premised on the authority to establish on-going cooperative arrangements between those on one side of a border and those on the other—states cannot levy taxes or arrange property relations for those outside their borders. What the correct terms should be for imposing border duties is a moral question and the answer may be quite demanding (at least more demanding than currently accepted) for states. However that is a different question from the fair way for public institutions to use their authority to arrange social cooperation fairly. On an outcomes-focused approach, of course, there is no distinction in principle between the morality of borders and distributive justice.

### **What is agency?**

So far I have only sought to distinguish a treatment-focused approach to distributive justice from one that focuses on outcomes. Before considering their respective merits, I will address two important worries. The first concerns the notion of institutional agency to which I have referred throughout and the second the notion of legitimacy. On the first, one might see a problem in the treatment view appealing to an untenable conception of agency. The agency of institutions is at best metaphorical, given that institutions are made up of individuals whose choices and actions produce the institutional “actions and decisions” that are the focus of evaluation on this approach. If agency reduces to the former individual behaviour, then the concept of distributive justice does not apply to the actions of a special mediating agent; it simply applies to the actions of individuals.

The notion of institutional agency I employ is the mundane sense in which we say that a government mistreats its citizens, or that a state can be repressive. That is the sense in which collective bodies, with their special processes and command structures, make collective decisions affecting people’s rights and duties. So, for example tax burdens are socially recognised duties for citizens and legally protected access to school places are socially recognised rights. In each case we are aware of the kind of decisions giving rise to these and the mechanisms for adjudicating and enforcing them, such as the courts. The political and judicial institutions of a society are empowered to make these decisions, and the people who make up the institutions are empowered to do so only in their official capacities, within limits set by their mandates. Legislatures

and Judges decide on the rights and duties that are socially recognised, not individuals in those positions acting in a personal capacity. Of course, to have such powers in any acceptable sense means having legitimate authority and I come to that, below. But having them means deciding for the political community. Arrangements of relational goods are thus how a political community decides they way its members should cooperate—it is a relationship of treatment of individuals by their fellow co-operators acting collectively. If institutions can be accountable for these kinds of decisions, then they can be said to treat people in a better or worse way in the relevant sense.

### **Legitimacy**

One objection against restricting the scope of justice to basic-structural institutions on the basis of social cooperation is only fair cooperation can be genuine cooperation (Abizadeh 2007 p 330 ff.).<sup>8</sup> The agency argument and the treatment account of justice on which it is based, presuppose genuine, which is to say legitimate, social cooperation. I have so far bracketed the question of legitimacy, but this objection requires that I address it.

The conception of justice I have set out only presupposes fairness if we make the legitimacy of cooperative institutions—their authority to arrange the terms of social cooperation—depend on their fairness. Yet, it is a plausible view that public institutions can have the authority to assign socially recognised rights and duties to their members in ways that fall short of full distributive fairness. Institutions might acquire legitimacy to act by protecting fundamental human rights, the rule of law, upholding political participation mechanisms for citizens, and some guarantee that institutions will rectify productive relations or a lack of resources that impedes citizen participation in these arrangements yet be wrong on the content of distributive fairness.<sup>9</sup> This position is not unknown in the literature. Rawls holds it at least for international legitimacy, which is to say acceptance into the community of states in good standing (Rawls 1971, 5-7, 1992 pp. 65-66, 1993 pp. 262 ff.). Dworkin too put forward such a view (Dworkin 2011 pp. 335 ff.), and others have articulated standards of legitimacy that do not require full distributive justice (Cohen 2006 pp. 226 ff., 2004 p. 213; Beitz 2009 p. 183).

Where political communities trying to arrive at a fair arrangement get it wrong, it seems plausible to say that they can get it wrong in a reasonable way. Showing equal respect for citizens as members and participators in cooperative arrangements would seem a reasonable basis for legitimate social authority that is distinct from the basis of social fairness.<sup>10</sup> Legitimacy here represents the distinct value of a political community trying to collectively get it right about fairness in arranging its cooperative relationships. Without political authority prefiguring their arrival at the right answer, a community cannot even begin to work collectively towards discovering that answer. The reasonable limits on trying to do so are limits on what counts as a genuine collective aim. The conditions listed above are at least prima facie evidence that the political community does not reject these institutions given that guaranteed basic rights would allow movements towards change. Institutions that fail these tests and yet try to impose arrangements are not unjust because they are unfair – they have

no business even trying to arrange social cooperation at all. If this view is plausible, then legitimacy is a necessary condition for distributive justice rather than the other way round.

### III

If the above account of the role of distributive justice is coherent, two questions remain. Firstly, does adopting it necessarily rule out the outcomes-focused or instrumental approach for institutions? Secondly, is there even a preliminary argument for preferring it to an outcomes-focused approach? I answer both these question below.

Firstly, even if institutions can be evaluated in terms of their cooperative qualities, why should we not also evaluate them on the basis of outcomes? Above I argued that the cooperative component of these institutions is not adequately evaluated in terms of outcomes, but the question here is whether outcomes might be an additional form of evaluation. For this to underpin an account of global distributive justice, the relevant outcomes at which institutions must aim would have to be global. But the problem here is the value underpinning fairness in exercising the power to establish social cooperative arrangements. That is the value of agents showing equal concern for those over whom they configure social-cooperative arrangements. Using institutions for a different purpose means turning cooperation to serve a different imperative than equal concern for people as co-operators, which means moving away from equal concern for people as social co-operators.

So consider a proposal to arrange social rights and duties in a political community with the aim of contributing towards producing a certain distributive pattern globally, say a global minimum wellbeing level. States could do this by imposing duties on everyone to adopt and prioritise personal life aims that will contribute optimally to improving global wellbeing levels and by taxing everyone until they are at the minimum wellbeing level whilst globally redistributing the tax revenue. From the perspective of societal cooperation, such institutional acts treat co-operators unfairly. The institutions do not show equal concern for people subject to their authority as co-operators tied together by cooperative relationships. Instead they impose burdens on them that serve a different goal. Imposing these burdens treats them as instruments in achieving that goal by requiring they adopt certain life choices and refusing them the option of pursuing resources towards advancing their own life choices in a way that is fair on their cooperating fellow citizens. For example, cooperative arrangements by public institutions aimed improving the condition of the worst off cooperating members beyond minimum wellbeing will clash with measures to improve global wellbeing levels by re-allocating resources. Cooperative fairness, on the other hand, would allow individuals to choose their own priorities and pursue them in ways that are beneficial to co-operating citizens that cannot pursue their own with the same success. This notion of fairness, then, is incompatible with adopting an outcomes-focused conception of justice as an institutional principle.

The same problem arises if one tries to convert or systematise the imperfect duties of assistance of each co-operator into a more efficient way of achieving a specific global goal. To be consistent with fair treatment in cooperation the imperfect duties would have to apply to the time, resources, and effort left to us after the demands of fair cooperation had been imposed. But this only connects practically with a definite outcome if we interpret imperfect duties as implying a specific quota of contribution to global outcomes. That “quota” interpretation of imperfect duties clashes with practical fairness. In tying contribution to a specific goal it would require that individuals adopt this as a priority, in adopting and prioritising life projects say, rather than allowing people to pursue their chosen life goals in a way that is consistent with social cooperation. The imperative to work towards a quota of contribution is not inherently sensitive to people being able to pursue their chosen life goals given there is nothing in the global goal that restricts its demands to where people might be said to be free to prioritise their pursuit of personal goals. A more plausible interpretation of both individual and collective imperfect duties is as duties to adopt an end or value, such as assisting others, and to exercise judgement as to how that is best balanced with personal ends and priorities and with the imperatives of cooperative fairness respectively. A society can legitimately decide to assign some resources to assist other societies if this does not detract fundamentally from fairness. It can even decide to make contributions that imply a temporary deviation working towards fairer cooperation, under special circumstances, because all things considered it judges that to be right. What it cannot do is adopt a general maxim to deviate from fairness, which is what an outcomes-directed imperative seems to require (though what it actually requires is unclear, see below).

So, given that outcomes-focused and treatment-focused accounts are not compatible imperatives for basic structural institutions is there any reason to prefer either as a master principle? One advantage of the treatment-focused view lies in that it provides a clear account of *fair* practical reasons. Any account of justice will require some account of which burdens should reasonably and justifiably correspond to the production of which benefits. In a treatment-focused account the value of institutions showing equal concern in arranging cooperation can explain principles that adjudicate both burdens and benefits in relation to each other. Outcomes-focused views, on the other hand, begin from the value of outcomes and must then provide an additional account of what should be done to implement them and by whom.

Such an approach will evaluate choices, relationships, and pursuits on whether these serve the production of the relevant distributive pattern. But the sacrifice of personal choices and the pursuit of personal goals that is given up to contribute towards this end is a troubling question for any such view. Obviously, burden is limited by possibility or ‘ought implies can’. But beyond that, to give justice *some* content in practical reason, the view must set out and justify a level of sacrifice people must make towards producing the global pattern. Even within the constraint of ought implies can, for any genuine and lasting distributive pattern, achieving the goal will require people abandon non-productive personal life goals and adopt productive ones. I take that to be sufficient to render that upshot in practical reason implausible. What the view would need, then, is an

account of when it is reasonable to expect a person to sacrifice any of her life commitments, attachments, plans, and priorities, *for the sake of* bettering the conditions of others. Without that, the view is not about what actions are owed to anyone rather than the desirability of some states of affairs considered in distinction from what should be done to bring them about. We have, as I have set out, some sense of the practical reasons that apply to cooperative institutions. We also have a sense of required action in easy rescue situations. However, neither of those standards supplies a plausible general principle for what is a reasonable sacrifice towards establishing a global pattern of distribution.

Imperfect duties to incorporate the end of assisting others in our goals do not face this fair practical reasons problem because incorporation means exercising judgement as to how to balance this end with our key life commitments. However, there are a myriad of ways we can assist others in need, from helping an elderly person in distress in our neighbourhood, to volunteering on a suicide helpline, to representing colleagues in trade union disputes, as well as contributing towards whatever project we judge to potentially make a difference to development. Unless there is an argument for reducing that notion of an imperfect duty to assist others to a single goal and giving this priority over others, it is unclear that imperfect duties suitably connect with actually achieving any global distributive pattern.

So, for outcomes views to be plausible they need an account of fairness in practical reasons. For every personal commitment or attachment, friendship or project, that one might have to give up in order to work for the global end we would need some kind of principle that tells us if the sacrifice is morally justified for the contributor and why. Which is to say we need an account of practical reasons incorporating both a justification of the burdens supplied and the benefits achieved simultaneously. Characteristics of patterns of distribution as a goal may explain what might be desirable about it as an outcome in abstraction from the burdens needed to bring them about but that does not tell us what counts as a reasonable route to achieving these goals. The cooperative and relational conception of fairness, by contrast, can explain fair burdens as fair treatment: where public institutions arrange social rights and duties in a way that shows equal concern to people as co-operators pursuing distinct life priorities by allowing them to pursue those priorities in a way that contributes to the social cooperative endeavour. Given that outcomes-focused views lack a plausible account of how fairness in practical reasons connects with achieving distributive outcomes, their only alternative seems to be a notion of practical reason that does not take seriously people's pursuit of distinct life goals. Without a plausible account of fairness in practical reason it is difficult to say how a view is genuinely a moral view of justice as opposed to, say, an account of something that is valuable in the abstraction from its costs.

One might attempt to get round this problem by proposing that people have duties to create institutions that in turn will treat people justly by coordinating action to achieve the desired outcomes. One might think there are imperfect duties towards this end, such as the obligation to "perfect" one's imperfect duties (e.g., Tan 2004 p. 52 among others; see discussion at Meckled-Garcia 2013 pp. 81

ff.). Some theorists have tried to connect an outcomes-focused approach with Rawls' idea of *natural duties* of justice (Ronzoni op cit. p. 240 n. 31; Gilibert 2012 pp. 139-40). These include the duty to work to establish just arrangements where they do not yet exist. I will not here address the question of whether Rawls' view applies outside the context of institutional relations and an institutional agent that arranges them, though I think there are good reasons to see Rawls' view of natural duties of *justice*, as opposed to the other natural duties, as institutionally confined, given he always refers to this in relation to just *arrangements* rather than just institutions or societies (Cf. James 2005 pp.92-93).

However, as I noted above, imperfect duties plausibly involve many and varied ways in which we can assist others and contribute to adopted ends. That very variety together with the legitimacy of pursuing our own aims and attachments means that we must exercise judgement as to how to balance these goals in our lives, and so as to how much to contribute to different ends. There is no right amount for all to contribute, only different reasonable amounts for each given a genuine commitment to each of those ends. This severs any necessary connection in practical reason between what one aims to do in line with duty and any specific set of global outcomes. People could potentially reasonably 'do something' to assist those in need without that resulting in any systematic global change, at least not in any near future. If justice is supposed to be about outcomes for specific people such as those alive now, as opposed to some abstract ideal for distribution without a timeframe or account of practical reasons to get us there, then this view is not an adequate account of justice. Not only that, the matter is complicated by how people should balance aims at global reform with legitimate social cooperation with others (assuming the view does not reject the fairness-legitimacy distinction). In the absence of clear answers in practical reason to what constitutes people's fair quota of action that will genuinely effect global change, the idea that acting one way or another constitutes an injustice seems to lose its edge.

The above does not rule out global duties for states. For example duties to adopt standards of global fairness in the sense of fair play, respecting human rights in the sense of rejecting policy formulations that fail to show equal respect (as opposed to equal concern) to people, or collaborations that improve efficiency in assisting societies in dire straits. It also does not rule out seeking agreements and collaborations that collectively secure public goods like protecting the environment. Similarly, states have obligations to rescue people fleeing persecution and duties to better organise migration policies. One can even accept the Kantian idea that in certain circumstances of friction between individuals or communities, there are good reasons to consociate under shared institutions that resolve disputes. But none of these necessarily connect with the idea of justice as aiming at a global distributive pattern. Nor do they focus on institutions capable of equal concern in the sense I have described it: a capacity of institutions that can legitimately configure cooperative arrangements of rights and duties between individual persons. Given the nature of international institutions, which does not involve legitimately imposing rights and duties on individuals, other moral standards apply to the specific moral problems facing



those institutions, standards compatible with adopting a treatment-focused conception of distributive justice and its scope.

## Conclusion

I have argued that there are two distinct accounts of distributive justice in play in the debate about the scope of justice. I have also argued that the treatment-focused conception of justice underpins at least some scope-restricting views and is as plausible as the outcomes-focused view assumed by critics of scope restriction. To put this in the vocabulary of moral value theory, the critics challenge non-teleological views of distributive justice on the basis of a teleological assumption. As the very concept of justice is a contentious point in the debate, appealing to a partisan conception in objecting to one's opponents is question begging.

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## Notes

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<sup>1</sup> Viz. the claim that without a justified agent a principle is incomplete in the way that “a sentence without a grammatical subject is incomplete” (Meckled-Garcia 2013 p. 111; Barry & Valentini 2009 p. 496; Meckled-Garcia, 2008).

<sup>2</sup> “Consider a world with two separate systems of interaction that have no contact but are aware of each other and suppose that one of them is prosperous whereas the other extremely impoverished. Compare, now, two individuals [one from each system] who are identical in their abilities and needs. The member of the prosperous system receives more. But it is difficult to see why—concentrating on any possible and reasonable criteria for entitlement—this is fair.” (Caney 2005, p. 111). Fairness (justice) here focuses on the state of affairs (outcome) of differential prosperity. Institutional actions that attempt to rectify such differentials would derive their justice or injustice from the justice/injustice of the distributive states of affairs they sought to bring about.

<sup>3</sup> Rawls never even mentions the possibility of non-basic structural background injustice, and in discussing the erosion of background fairness he clearly refers to this only in the context of “social circumstances” that “may be fair at an earlier time” for “citizens’ relationships” (Rawls 1993 p. 266).

<sup>4</sup> I call it teleological because the view makes attributions of justice and injustice turn on the value and disvalue of outcomes, respectively, and actions are just or unjust in relation to these aims (*teloi*). I do not go as far as describing the view as “consequentialist” (viz. Anderson 2013 p. 2) because consequentialism implies a specific decision procedure for generating practical reasons and I am not sure the outcomes-focused approaches I have described have a clear account of corresponding practical reasons.

<sup>5</sup> Note that here I accept a distinction between right to rule (legitimacy) and individuals’ duties to contribute grounded in reciprocity with the political community.

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<sup>6</sup> Compare this to views that model distributive justice on direct interpersonal reciprocity (Sangiovanni 2007 p. 26), assured interpersonal reciprocity (Lister 2013 p. 87 ff.), or direct interpersonal cooperation (Quong 2011 p. 81).

<sup>7</sup> Which specific circumstances trigger rescue duties is also a matter of contention. Authors holding outcomes views tend to see the triggers as people being in serious need plus our ability to help and then add disclaimers that the costs of rescue should not be excessive (Buchanan 2004, n. 11 p. 248). They do not distinguish the basis for rescue from that for distributive justice. Less outcomes-focused theorists see the triggers for rescue as involving distinctive features, such as “proximity” to, or “confrontation” with the plight of specific individuals (viz. Miller, 2010 pp. 23 ff.; Kamm, 2007 p. 379; Dworkin 2011, pp. 277 ff.), which would distinguish rescue from distributive justice.

<sup>8</sup> Abizadeh claims that for Rawls the idea of social cooperation “includes the idea of fair terms of cooperation” (Abizadeh 2007 p. 329). However, if “includes” is supposed to mean “presupposes,” I have been unable to find any equivalent reference in *A Theory of Justice*, which is the text to which Abizadeh refers.

<sup>9</sup> Legitimacy does not necessarily require a fully democratic order on these views (Meckled-Garcia 2014).

<sup>10</sup> Note that this view can answer the objection that all those affected by a political decision should participate democratically in making it for the decision to be legitimate (Abizadeh 2010 p. 121). This view of legitimacy concerns the right to configure ongoing cooperation rather than merely affecting others, so long as equal respect is shown to all, which means basic rights are respected.

### **Note on the Contributor**

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