

Justice and Reciprocity

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1. Introduction

This paper aims to clarify the relationship between justice and reciprocity, and to argue that a particular kind of reciprocity has an appropriate role to play in a relational conception of distributive justice. It does so by examining the role of reciprocity in Rawls's "justice as fairness," and a series of associated debates. Even with a sense of justice, people's willingness to comply with just institutions is predicated on the belief that others will also comply, Rawls assumed. This demand for reciprocity may seem unduly to constrain our commitment to justice, in three main ways. First, it may seem to imply that we will share fairly in the benefits of cooperation only with those who contribute to the joint social product, leaving the severely disabled as objects of mere charity – this is the problem of *justice for non-contributors*. Second, if justice extends only as far as we can be assured reciprocity, then it does not extend to foreigners, at least in the absence of a global state capable of securing adequate levels of compliance with global redistributive schemes – this is the problem of *justice for outsiders*. Finally, if justice is limited by reciprocity, then it may seem wrongly to permit all manner of self-seeking behaviour within the scope of just institutions (e.g. refusing to put one's natural talents to work in socially useful ways, unless one gets a greater than equal share of the social product), because we cannot count on others complying with merely ethical rather legal duties of distributive justice – this is the problem of *infra-institutional justice*.

On one view, Rawls's reciprocity condition is simply a concession to feasibility, given the limitations of human nature. To the contrary, I will argue that there is an intrinsic connection between justice and reciprocity, properly understood, because justice is a relational value. Our duties of distributive justice are conditional on reasonable assurance that those able to reciprocate will do so. These duties are thus limited where institutions securing reciprocity do not exist, because the point of distributive justice is to constitute a relationship of mutual recognition as equals, not to eliminate arbitrary inequalities as such. This normative rather than merely empirical interpretation of the reciprocity condition permits us to articulate plausible Rawlsian positions on non-contributors, outsiders, and the ethics of market behaviour.

Section 2 explains the criticism that Rawls's theory of justice is unduly limited by the demand for reciprocity, and argues that the responses from Rawls's defenders have not been fully adequate. Section 3 explains why some duties of justice might be conditional on a reasonable expectation of compliance on the part of others, aiming to develop a relational understanding of reciprocity as an intrinsic part of justice rather than merely a limit of human nature. Sections 4 through 6 apply this relational conception of reciprocity to the debates on justice and disability, global justice, and economic incentives.

2. Mutual Advantage, Reciprocity, and Justice for Non-Contributors

Justice has sometimes been described as the result of an agreement between rational egoists roughly equal in power, each of whom is unable to dominate the others, and therefore settles for adherence to rules of justice on the condition that others will do likewise. Brian Barry called this view "justice as mutual advantage"¹; Allen Buchanan called it "justice as self-interested reci-

1. Brian Barry, *Justice as Impartiality*, vol. Oxford political theory (Oxford [England] New York: Clarendon Press

procuity."² Barry rejected this view in favour of "justice as impartiality" primarily because in the presence of large power imbalances domination is a feasible alternative to cooperation, and therefore the requirement of *mutual* benefit from cooperation licenses rules that are intuitively deeply unjust.³ Allan Gibbard criticized Barry for ignoring an intermediate possibility, which Gibbard attributed to Rawls. Between pure egoism and strict impartiality lies the possibility of pursuing one's conception of the good within the confines of a principled rather than a strategic commitment to treating well those who treat one well.⁴ Barry's main response was that even if reciprocity is valued in itself and defined in terms of a fair baseline, the theory is still based on returning like for like, and thus "allows for the exclusion of those who cannot provide benefits for others, such as the congenitally handicapped."⁵ Because they cannot be expected to make a net contribution to social cooperation, the disabled are allegedly not owed justice but merely charity, on the contractarian view. This conclusion is echoed by Allan Buchanan,⁶ G.A. Cohen,⁷ and more recently Martha Nussbaum.⁸ Furthermore, even if they do come under the scope of justice, the disabled will not be treated fairly by Rawls's principles, it is thought, because the metric of advantage for purpose of applying the difference principle is given by an index of primary social goods and attaches to representative members of social positions, while the disabled typically need greater resources to achieve comparable quality of life or levels of functioning.⁹

In response to such criticisms, Samuel Freeman points out that the motivation of the parties to the original position is not the motivation of the citizens using the original position to think about justice, and that even though Rawls originally spoke of justice as mutual advantage, he always understood this idea to mean mutual benefit relative to a fair baseline.¹⁰ Rawls maintained that justice is owed "to those who are capable of a sense of justice," as he put in 1963, not just to those capable of effective retaliation or those capable of benefiting others.¹¹ Nussbaum is also critical of the Kantian side of Rawls' "hybrid" theory, because making duties of justice depend on possession of the capacities for a conception of the good and a sense of justice seems

Oxford University Press, 1995), 31.

2. Alan Buchanan, "Justice as Reciprocity Versus Subject-Centered Justice," *Philosophy and Public Affairs* 19, no. 3 (1990), 228-30.

3. Barry, *Justice as Impartiality*, 41. See also Chapters 4-6 of Brian Barry, *Theories of Justice*, vol. (Berkeley: University of California Press, 1989).

4. Alan Gibbard, "Constructing Justice," *Philosophy and Public Affairs* 20, no. 3 (1991), 266.

5. Barry, *Justice as Impartiality*, 50.

6. Buchanan, "Justice as Reciprocity Versus Subject-Centered Justice," 231.

7. G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), 224.

8. Martha Craven Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), 123.

9. Amartya Sen, "Equality of What?," *Tanner Lectures on Human Values* (1980): 195-220; Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Clarendon Press, 1990), 78-79; Nussbaum, *Frontiers of Justice*, 109.

10. Samuel Freeman, "Book Review: Frontiers of Justice," *Texas Law Review* 85 (2006), 400-04.

11. John Rawls, *Collected Papers* (Cambridge, Mass.: Harvard University Press, 1999).

to exclude those with serious mental impairment from the purview of justice.¹² Yet in *Theory* Rawls said that possession of the two moral powers was sufficient but not necessary for being owed duties of justice.¹³ Freeman argues that contractarians can invoke Dworkin's hypothetical insurance scheme, which Freeman takes to be "entirely consistent with Rawls's view," at least if employed at the legislative stage, once basic principles of justice are in place.¹⁴

Jonathan Quong concedes that on a contractualist view duties to the infirm cannot be brought under the scope of the principles that govern relationships between "fully contributing members of society," but argues that the severely disabled can be accommodated at a later stage by appealing to the natural duty to aid.¹⁵ If there is a moral duty to aid those in distress, and in some situations fulfilling this duty requires the joint efforts of many persons, coercion can be justified to ensure that everyone fulfills their moral duty.¹⁶

While they have a great deal of merit, these responses do not get to the root of the objection. Although Rawls did think of justice in terms of fair reciprocity, he also thought that a reasonable expectation of reciprocity placed limits on the extent of our duties of justice. "[E]ven with a sense of justice men's compliance with a cooperative venture is predicated on the belief that others will do their part" (TJ, 336). "Each person's willingness to contribute is contingent upon the contribution of others" (TJ, 270). The assumption that our sense of justice is conditional on a reasonable assurance of reciprocity is not a minor or incidental aspect of his thought, but helps explain his focus on "ideal theory", i.e. the assumption of quasi-universal compliance with the rules of a "well-ordered society" (TJ, 8, 245). This aspect of Rawls's work is sometimes seen as utopian, overly philosophical, and too distant from the real world of partial compliance. Yet Rawls's focus on ideal theory was motivated by a realistic assumption about motivation. Even under the best conditions human beings will not generally be willing to comply with just rules if others are not likewise willing. Our theory of justice must therefore be such that most or enough people would be motivated to act upon it, if a just society were to be successfully established. The question is whether this assumption is *too* realistic, and whether true justice does not place greater demands on us than Rawls admitted. So long as Rawls's reciprocity condition is understood as restricting the application of basic principles of distributive justice to fully cooperating members of society, proposals to accommodate people with disabilities at a later stage of the theory via an enforceable duty of aid or a hypothetical insurance scheme will seem ad hoc, driven more by our intuitive conviction that the disabled have legitimate claims than by the logic of the theory itself.

Whether the demand for reciprocity excludes noncontributors from the scope of justice

12. Nussbaum, *Frontiers of Justice*, 29, 130.

13. Freeman, "Book Review: Frontiers of Justice," 415; citing John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 505-06.

14. Freeman, "Book Review: Frontiers of Justice," 417; citing R. M. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000), 331-40.

15. Jonathan Quong, "Contractualism, Reciprocity, and Egalitarian Justice," *Politics, Philosophy, Economics* 6, no. 1 (2007), 91.

16. Quong, "Contractualism, Reciprocity, and Egalitarian Justice," 95.

depends on exactly what we mean by reciprocity, however, and what role it plays in the theory. Should we assume that those unable to contribute or just those unwilling are not 'doing their part'? Which duties are conditional on this expectation of reciprocity? Why is any duty conditional on reciprocity, as distinct from being limited by a reasonable prerogative to pursue one's own interests?

3. Justice as a Relational Virtue

Rawls did not explicitly address these questions, but we can articulate his assumptions by examining his account of the natural duties. Natural duties share one important feature, which is that they hold between equal moral persons irrespective of their voluntary acts and institutional relationships (TJ, 114-5). The duty of justice, for example, requires complying with the rules of just institutions, and helping establish them where they do not exist. As a natural duty, the duty of justice is owed to all moral persons, which is to say to all those capable of forming a conception of their good and of having a sense of justice (TJ, 505); it is not limited to those who make a net contribution to social production. Outside of an institutional scheme, however, the duty of justice includes no duty to share wealth or resources fairly, but only the duty "to further just arrangements not yet established, at least when this can be done without too much cost to ourselves" (TJ, 115; see also 334). This absence of extra-institutional duties of distributive justice can seem surprising. The difference principle seems to condemn arbitrary inequalities, and the inequality due to the fact of being born in a poor rather than a rich country is morally arbitrary. Why don't I have a duty of justice to help eliminate this inequality, even where no institutions exist? So long as this duty is limited by a reasonable prerogative to pursue one's own interests, the additional constraint imposed by the reciprocity condition can seem unreasonable, or simply a concession to the limits of human nature.

One reason for thinking that we need not comply with rules of property when others are not doing so is that it is simply too demanding, as in the case of Hume's "society of ruffians."¹⁷ It might be that respecting rules of property by myself exposes me to ruin at the hands of others.¹⁸ If so, a reasonable prerogative for the pursuit of self-interest would trump my duty to comply with "rules of justice." However the fact that others are not complying with a particular duty is merely one of many contingent factors that may affect the burdensomeness of the duty. The real work, in this scenario, is being done by a criterion of demandingness, not reciprocity itself. There is another interpretation of Hume's society of ruffians, however, which suggests that in some cases one-sided compliance is morally futile, rather than too demanding. The purpose of rules of property and contract is to make everyone better off, by facilitating stable, peaceful interaction. My lonely compliance with such rules in no way promotes that end (assuming it doesn't elicit compliance from others, which in the case of a society of ruffians it does not). My compliance benefits others, but it costs me, yielding no net public benefit. The problem with this line of reasoning, as applied to duties of distributive justice, is that one-sided sharing will not

17. David Hume, *The Philosophical Works of David Hume*, vol. IV (Edinburgh: Adam Black and William Tait, 1826), 257-58.

18. Thomas Hobbes, *The English Works of Thomas Hobbes*, vol. III (London: John bohn, 1839), 124-25.

seem pointless to many egalitarians. Whether others are committed to sharing fairly or not, my doing so reduces arbitrary inequality, and so does not seem pointless. So long as my duty of distributive justice is not too onerous, whether others are complying with theirs should not be relevant, on this luck egalitarian account of justice.

Things look quite different, however, if we think of justice in relational terms. Instead of maintaining that arbitrary inequalities as such are unjust, suppose that what is unjust is to exploit one's good luck to claim a greater share of the products of our cooperative labour (where this inequality of shares does not benefit others). Our duty not to exploit others is grounded in the importance of recognizing and respecting each other as equals. There is a special value in a relationship based on my publicly acknowledging as an equal someone who also recognizes me as an equal. I find my recognition of you endorsed and confirmed by your recognition of me. If the point of my satisfying my duties of justice is to establish this kind of relationship, then the existence of a reciprocity condition makes sense. Although one-sided fair-sharing may reduce the level of morally arbitrary inequalities, it does not establish a relationship of mutual recognition and respect, because by definition such a relationship has to be two-sided. An initial act of generosity may elicit reciprocation, but one-sided sharing does not by itself constitute a relationship of civic friendship, even if it reduces the level of arbitrary inequality.

It may be objected that the goal of constituting a relationship of mutual respect is vitiated by the need for coercion to ensure general compliance; if someone else is sharing fairly only because they are forced to do so, we do not have a relationship of civic friendship, one might argue. This objection misunderstands the role of coercion in a well-ordered society. If we assume that we are all committed to fair sharing, we are not in a prisoner's dilemma but a stag hunt. Small groups may be able to coordinate on the preferred equilibrium of sharing fairly, by talking, agreeing on what counts as fair sharing, and by establishing such sharing incrementally, starting with smaller cooperative endeavours for which the defection of the other party would not be that costly. In a large society, however, it will be unclear who exactly is doing what with whom, and what exactly everyone thinks counts as fair sharing, and cooperation might break down due to this uncertainty. We need institutions to establish public standards of what counts as fair sharing, and we need the threat of coercion to assure ourselves about the conduct of others, even those who are in fact committed to fair sharing.¹⁹

It may also be objected that the argument is merely definitional. If recognition is important, is not some better than none? Some of our duties are not conditional on reciprocity, it is true, as for example the duties not to murder or torture. Even if torture were justified when the moral stakes are high enough, we would not have the right to torture captured torturers for small moral benefits (even though they would torture us were our positions reversed). It seems to me that the duty of aid is also not conditional on reciprocity; if I can save you from starving or drowning at little cost to myself I must do so even if you would not do the same for me. In these cases, it is better that one person comply with the duty than that none do, and so long as the costs of compliance are not too great, the duty is binding. However, in these cases the content of the duty is not comparative. Rather, there is some specific thing I must do or must not do, in virtue of your situation described in absolute terms: I must not kill you, I must not torture you, or I

19. C.f. Rawls, *A Theory of Justice*, 268-70, 336.

must save you. In each of these cases, there is something important at stake apart from our relationship: a human life, or intense fear and suffering. Arbitrary inequalities by themselves do not involve these kinds of concerns, since both parties may be well off. The concern with inequalities per se arises because of what they may say about our relationship. If we divide the benefits of social cooperation unequally in ways that don't raise the lower position, the inequality involves a failure to recognize others as equals engaged in a cooperative endeavour. Arbitrary inequalities are morally problematic only in so far as we create them or allow them to determine how we share the benefits of cooperation, because only in these cases do they involve a failure to recognize each other as equals. The existence of arbitrary inequalities as such need not involve any such lack of recognition.

Not all relational duties are conditional on reciprocity, it is true. I have assumed that the performance of duties of distributive justice is constitutive of a valuable relationship. It is possible, however, that an existing relationship can give rise to duties, whether or not both parties recognize and value the relationship. The duty of parents to care for children has this structure. Parents do not perform their duties so as to constitute the relationship; they have the duties because of the relationship, which exists no matter what those involved think. One could argue that duties of distributive justice should be understood on this second model, as resulting from a relationship that exists no matter what. Perhaps we are all members of the kingdom of ends, simply in virtue of being rational agents, and in virtue of this relationship owe each other stringent duties of distributive justice not conditional on reciprocity. Something like this must be true for our most basic moral duties. The question is whether our duties of distributive justice have the same structure. It is significant, in this respect, that our other duties that are not conditional on reciprocity are also not comparative. It is far more plausible to think that one must not murder or torture even without an expectation of reciprocity than it is to think that one must share fairly without expectation of reciprocity (always assuming that our egalitarian duty of distributive justice is distinguished from our sufficientarian duty of aid, as well as our duty to repair damage done).

A final objection would that it is question-begging to ground the reciprocity condition in the fact that justice is a relational value involving mutual recognition as equals, because everything will depend on the sense we give to the idea of equal recognition. Even if we understand equality in luck egalitarian fashion, however, it will involve a reciprocity condition, so long as we think of justice as a relational value. A relational luck egalitarian might insist that recognizing others as equals requires that social institutions compensate for variations in natural talents that affect people's abilities to convert resources into basic human functionings. Still, I will not have a duty to compensate you for your natural misfortune if you would be unwilling to compensate me, not if we think that the point of the performance of duties of distributive justice is to constitute a valuable relationship. If justice is defined in terms of producing particular distributions, the duties it imposes can be entirely unilateral, i.e. binding irrespective of compliance by others. If justice constitutes a relationship between persons, in contrast, then it will impose some conditions on both parties.

4. Justice and Disability

The idea that justice is a relational value suggests that reciprocity should also be under-

stood in relational terms, as a necessary condition for mutual recognition and respect.²⁰ In specifying the reciprocity condition, we therefore need to distinguish between those unwilling to reciprocate and those unable to do so. There is an important difference between someone unwilling and someone unable to contribute to social cooperation, since the former case but not the latter involves a failure to recognize others as equals. There is no misrecognition or disrespect in a severely disabled person's failure to make a net contribution to social production. On a relational account, the reciprocity condition limits our duties with respect to those unwilling to fulfill their duties, not those unable to do so, because reciprocity follows from the goal of securing a relationship of mutual respect. Our duties of justice are limited by the need for a reasonable assurance that others will reciprocate if they are able, not by the demand that everyone owed duties of justice in fact make a net contribution to social cooperation.

One of the advantages of this interpretation of reciprocity is that it doesn't make the claims of the disabled to a share of social resources depend entirely on the duty of aid. Quong's view seems to imply that but for the duty of aid, the severely disabled would not be entitled to any share, because he construes the reciprocity condition as requiring assurance of actual contribution. A relational interpretation of reciprocity does not have this consequence, because failures to reciprocate due to inability do not involve misrecognition. The view I am sketching here implies that the severely disabled have a claim on the benefits of cooperation like any other fully cooperating moral person, because inability to make a net contribution does not constitute a failure to 'do one's part'.

There remains the problem that Rawls's principles do not seem to give the disabled everything they deserve. The difference principle defines the worst off position in terms of social primary goods, ignoring the fact that a disabled person requires more resources in order to do the same things that an able-bodied person can do. However, if we define the worst position in terms of natural as well as social primary goods, the difference principle becomes too demanding. If inequalities between individuals are justified only if they benefit the worst off individual, vast amounts of resources would have to be devoted to ever smaller increases in the opportunity to flourish of the most disabled person.²¹

Will Kymlicka claims that Dworkin's hypothetical insurance scheme provides a plausible intermediate option between ignoring variation in natural primary goods and fully compensating for such variation.²² If justice really is the elimination of undeserved inequality, however, it is unclear why it would be wrong to devote all these resources to small increases in the position of the least-abled person. What is the principle underlying this intuition – why not compensate for natural disadvantages as much as possible? Kymlicka's answer invokes Dworkin's argument that maximal compensation would enslave the talented. The premiums necessary to pay for insurance against disability would be so high that a talented able-bodied person would have to work at full stretch in her most lucrative form of employment. The talents of such people would become

20. David Schmidtz emphasizes the non-instrumental significance of reciprocity, and its connection with mutual recognition and affirmation; David. Schmidtz, *Elements of Justice* (Cambridge ; New York: Cambridge University Press, 2006), 87-88.

21. Kymlicka, *Contemporary Political Philosophy*, 78.

22. Kymlicka, *Contemporary Political Philosophy*, 79.

"a liability constraining their options," giving those with greater talents "less freedom to choose their preferred leisure-consumption mix than those with lesser talents."²³ Kymlicka concludes that "equal concern for the handicapped and the talented requires something other than maximal redistribution to the handicapped, even though it will leave the handicapped envying the talented."²⁴

This argument against maximal compensation trades on the difference between local and global inequality. If one thinks that the uneven distribution of natural talents and abilities is in itself unjust and that therefore requires compensation, one must have some overall index or metric that will equate quantities of natural and social goods measured in different units. Suppose that the index is based on the contribution the good makes to the capacity to function in ways that are generally taken to be important to leading a good life. Maximal redistribution to the less able / talented would consist in distribution up to the point at which the less able / talented would have equal opportunity to lead a good life (or whatever level of equality is possible given material constraints). It may be that the talented will have less freedom to decide their work hours and occupation than the untalented, at this level of maximal compensation, but this inequality is by assumption fully offset by inequalities that favour the talented in other dimensions of the index, e.g. the intrinsic worth or enjoyment of their talents. If we redistributed to such an extent that the more talented envied the less talented overall, then we would have overcompensated. But if the disabled still envy the more abled, we will not have gone far enough, even if there is some particular dimension on which the more abled are worse off. The slavery of the talented argument does not therefore provide a convincing reason for limiting redistribution to the less abled / talented, if we are assuming that brute natural luck as such is unjust and requires compensation.

It still seems unreasonable, however, to think that as a matter of justice we must spend all of our social resources making ever smaller increases in the opportunity to flourish of the most disabled person. A principle that is as strongly egalitarian as the difference principle makes sense only for the division of benefits from cooperation. Must we then appeal to the duty of aid, and argue that it can be politically enforced, in order to do justice to the further claims of the disabled? I do not think so.

Our main line of argument should be that justice requires that society provide services and make accommodations to enable citizens with disabilities to participate in and contribute to social life, so that they can effectively function as citizens and relate to other citizens on a footing of equality.²⁵ These accommodations and services are required as a matter of justice because without the ability to participate in social life, people with disabilities will continually face situations of asymmetrical personal dependence. For the disabled to avoid being subject to domination, and for the able-bodied to avoid becoming parties to such domination, society will have to devote resources to securing the necessary conditions for an adequate measure of independence. The problem as far as justice is concerned is not primarily that disability can make it difficult to

23. Kymlicka, *Contemporary Political Philosophy*, 78; R. M. Dworkin, "What is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10, no. 4 (1981), 322.

24. Kymlicka, *Contemporary Political Philosophy*, 79.

25. Here, I believe that I am following Elizabeth Anderson, "What is the Point of Equality?," *Ethics* 109, no. 2 (1999), 334.

flourish, but that disability can make it difficult for moral persons to relate to one another on a footing of equality, as free and equal citizens.

Lastly, there is the question of whether making duties of justice conditional on the capability to have a sense of justice wrongly excludes animals and the severely mentally disabled from the scope of justice. Rawls said that possession of the two moral powers was merely sufficient for being owed duties of justice, not necessary, but his reasons for doing so were pragmatic rather than principled.²⁶ Nussbaum describes a number of cases of persons with severe mental disabilities "who do not conform to the rather idealized picture of moral rationality" assumed in Rawls's Kantian conception of the person, and so are "not regarded as capable of reciprocity of the requisite sort."²⁷ She points out that people who lack the capacity to form an explicit plan of life or recognize abstract principles of justice may nonetheless be capable of "complex forms of reciprocity."²⁸ Social contract theorists can accept such claims; we need not be too strict on what the threshold is for being said to possess the two moral powers. On the interpretation of justice as a relational virtue, however, one cannot owe duties of justice to those wholly incapable of entering into a relationships of mutual recognition and respect, except perhaps for those who will in the future develop or in the past had this capacity. I don't think there is any way around the conclusion that on this relational account, beings utterly incapable of a sense of justice will not be owed justice. Nor do I think that this is a flaw in the view. Duties of justice are not the only duties we have. Not causing pointless suffering is a duty of humanity, not of justice. The danger of broadening the category of duties of justice too much is that we will also water down these duties. While the relational account of justice may draw the circle of those owed justice too narrowly, in some people's eyes, it also supports demandingly egalitarian duties of justice, within the scope of those it covers - at least if a reasonable assurance of reciprocity is present. In contrast, Nussbaum explicitly recognizes that integrating disability into Rawls's theory might lead us to abandon the difference principle, in favour of an "ample social minimum."²⁹ It is not an accident, I think, that Nussbaum ends up supporting a principle of distributive justice that is less egalitarian than Rawls's.

5. Justice for Outsiders

Even if Rawlsian justice survives the objection based on non-contributors, it may be vulnerable to the objection based on justice for outsiders, again because of the reciprocity condition. Rawls famously did not follow his students in globalizing the egalitarian elements of justice as fairness. The members of a global society of peoples owe each other duties not to harm each other, and duties of aid for those in particularly bad conditions, but inequalities between nations are not as such a matter of concern, it seems. Why not? One answer is that there is no "global basic structure." If the primary subject of justice is the design of a society's basic institutional

26. "That moral capacity suffices to make one a subject of claims is the essential thing. We cannot go far wrong in supposing that the sufficient condition is always satisfied. Even if the capacity were necessary, it would be unwise in practice to withhold justice on this ground. The risk to just institutions would be too great" (TJ, 506).

27. Nussbaum, *Frontiers of Justice*, 135.

28. Nussbaum, *Frontiers of Justice*, 134.

29. Nussbaum, *Frontiers of Justice*, 115, 146.

structure, and there is no such structure globally, then it may seem to follow that we have no duties of distributive justice with respect to foreigners. Of course many international institutions do exist, but they are not basic, Samuel Freeman claims, in the sense of being generated and regulated by a political system.³⁰ Freeman's stress on the importance of political institutions leaves it unclear, however, why duties of distributive justice should not apply extra-institutionally, in the absence of a global basic structure. Why is our natural duty of justice only to contribute to the establishment of just institutions, and not to redistribute our wealth, up to whatever is considered a reasonable individual or national prerogative for self-interest? If we accept that all human beings share a fundamental moral equality, how can we justify applying the difference principle at home, while recognizing only duties of assistance with respect to those abroad?

Abizadeh notes that it is ambiguous what exactly a "basic structure" is and why it matters. On the "cooperation" theory, it is essential, for cooperation to be fair, that there be an enforced system of basic rules. According to this first interpretation, the basic structure argument does not restrict the scope of our duties of distributive justice. On the "pervasive impact" and "coercion" interpretations of the basic structure, the existence of a basic structure is a condition for the existence of duties of distributive justice, but the global economic system obviously has a pervasive impact, and national states do coerce outsiders, because borders and border police keep outsiders out. Thus, either the scope of duties of justice extends beyond the basic structure, on the cooperation theory, or the scope of justice is limited by the basic structure but this structure extends over the whole globe, on both the pervasive impact and coercion theories. I take it for granted that the cooperation interpretation is correct. From a Rawlsian point of view, justice does not presuppose the existence of a basic structure but requires the existence of such a structure in order to be fully realized, making our duties of justice global in scope.³¹ However, our only unconditional duty of distributive justice is to help establish just institutions. Our remaining duties of distributive justice in the strict sense (i.e. excluding duties of aid and reparation) are conditional on a reasonable assurance of reciprocity, which requires some institutional realization. The duty to help establish just institutions is not itself conditional on reciprocity – I have to try to create those institutions even if others are not trying – but it is limited in the extent of the demands it imposes on us. These limits are not simply "feasibility limits,"³² at least not if we imagine scaling back our conception of justice so that the successful realization of justice is feasible; it is a question of what justice truly demands, when sufficient institutional mechanisms are not in place.

Joseph Heath rightly points out that the key function of a political society enjoying final coercive authority over a territory is to provide "the fundamental guarantee of reciprocity" that will allow people "to enter into cooperative relationships with reasonable assurance that they will not be exploited by others."³³ He overstates the point, however, in calling the lack of duties of

30. Samuel Richard Freeman, *Justice and the Social Contract : Essays on Rawlsian Political Philosophy* (Oxford ; New York: Oxford University Press, 2007), 305-07.

31. Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice," *Philosophy and Public Affairs* 35, no. 4 (2008), 347.

32. Abizadeh, "Cooperation, Pervasive Impact, and Coercion," 347.

33. Joseph Heath, "Rawls on Global Distributive Justice: A Defence," in *Global Justice, Global Institutions*, ed. Daniel M. Weinstock, Canadian Journal of Philosophy, Supplementary Volume (Calgary: University of Calgary

distributive justice between states "the intuition at the core of Rawls's view,"³⁴ and in saying that "Rawls does not view inequality as problematic in the international context."³⁵ Any time we work and trade with other people, we should want our interactions to be governed by just institutions, so that we avoid exploiting people, as well as being exploited. The issue is not that international inequality is morally unproblematic, but that we cannot be asked to share fairly in the benefits of our social interaction without some assurance that others will share fairly with us. The point of our very demanding duties of distributive justice (i.e. of complying with the institutions that realize the difference principle) is to realize a relationship of mutual recognition and respect, not to eliminate arbitrary inequalities wherever they may be found. One-sided compliance with such duties is therefore pointless. The same is not true for our duties of aid, non-harm, and reparation, which are not conditional on reciprocity, but which are also not as demandingly egalitarian as the principles with which we can be expected to comply in an institutional setting.

Andrea Sangiovanni recognizes the importance of reciprocity to distributive justice but claims that it limits the scope of distributive justice to those residing in the same state. Equality is a demand of justice only among citizens because equality is a requirement of reciprocity, and the obligations associated with reciprocity are fundamentally relational.³⁶ Sangiovanni contrasts two interpretations of egalitarianism's opposition to allowing social and natural contingencies to influence the distribution of goods. The first interpretation holds that there is an enforceable natural duty to reduce or eliminate morally arbitrary inequalities, regardless of their source, or of the social or political relationships in which the parties stand. The second interpretation denies that there is any general duty to eliminate arbitrary inequalities, while maintaining that there is a duty to give fair return for what others have given us³⁷ Sangiovanni is right to distinguish egalitarianism that is grounded in reciprocity and hence conditional the existence of relationships from luck egalitarianism, which is independent of the relations in which people stand.³⁸ His interpretation of reciprocity focuses on returning benefits that have been received, however, neglecting the duty to help establish conditions in which it is possible to cooperate on fair terms. On the "cooperation" view, any form of interaction triggers the natural duty of justice, which is to help establish just institutions to regulate our interactions. In this sense, claims of justice do apply globally, rather than being limited by pre-existing institutions. Because of the reciprocity condition, however, we have no duty to redistribute wealth outside an institutional scheme (beyond whatever is required by our duties of aid and reparation).

It matters a great deal, here, whether we interpret the reciprocity condition as a *de facto* limit of human nature, or as a condition that follows from the nature of the good of distributive justice. If the reciprocity condition follows from the relational nature of justice, one rich country cannot use the non-compliance of other rich countries as an excuse for its own failure to share

Press, 2005), 201.

34. Heath, "Rawls on Global Distributive Justice: A Defence," 199.

35. Heath, "Rawls on Global Distributive Justice: A Defence," 195.

36. Andrea Sangiovanni, "Global Justice, Reciprocity, and the State," *Philosophy and Public Affairs* 35, no. 1 (2007), 3-4, 23.

37. Sangiovanni, "Global Justice, Reciprocity, and the State," 26-27.

38. Sangiovanni, "Global Justice, Reciprocity, and the State," 29.

fairly with poor countries. The only relevant issue is whether poorer countries could be counted upon to share fairly were the tables to turn. The key questions are what kind of institutions would be necessary to secure a reasonable expectation of reciprocity, and why at present we lack such institutions. How we answer these largely empirical questions will determine whether we take a Rawlsian law of peoples to set out principles of justice for the international order, or merely useful regulatory principles, given the unfortunate injustice of the world's wealthiest nations.

6. Justice Within Institutions

The final objection to the interpretation of justice as involving a reciprocity condition is that it permits all manner of selfish behaviour within the scope of just institutions, immunizing such behaviour from criticism on grounds of injustice. People whose compliance with justice is conditional on reciprocity are willing to support just institutions, but acknowledge no duties of justice within the scope of action provided by those institutions. Their economic choices within the rules of those institutions are guided entirely by their own projects and goals, without concern for distributive principles. The rationale for this rejection of infra-institutional duties of distributive justice hinges on the lack of assurance of reciprocity, where duties are not backed by coercive authority. Why should I not bargain hard for the best salary I can get, if I that is what everyone else is doing? Yes, in doing so I am taking advantage of my arbitrary good fortune in the genetic lottery, but I cannot be expected to forsake such exploitation unilaterally.

G. A. Cohen, among others, disagreed.³⁹ If people were truly committed to the difference principle, he argued, they would not demand extraordinary wages for ordinary work. Providing such incentives may be a good idea, but only because of the injustice of those who are unwilling to put their natural talents to work unless they get a larger share of the social product than others who are working equally hard. Of course it would be too demanding to claim that individuals ought always and everywhere act with the goal of maximizing the position of the least well off. This almost utilitarian demand for impartiality can be watered down, however, by allowing individuals a reasonable prerogative to pursue their own goals. I need not necessarily give up my career as an artist, just because I could do more for the worst off as a doctor. Beyond the limits of this prerogative, however, I should abjure the exploitation of arbitrary good fortune to claim a greater share of the products of our collective labour. I should do so as a matter of justice, Cohen argues, even though no laws or institutions constrain me to do so. Justice requires that I refrain from exploitation of natural advantage in my relationships with others, even if I have no assurance that they will do likewise with respect to me, because justice just is the absence of morally arbitrary inequalities, and I have a duty to do whatever will minimize such inequalities, up to the limits of my personal prerogative. If Cohen's objection is valid, we have another instance in which reciprocity seems to limit our willingness to do what justice intuitively requires, contrary to my claim that reciprocity is an intrinsic part of justice.

39. G. A. Cohen, *Incentives, Inequality, and Community*, vol. 13, Tanner Lectures on Human Values (Salt Lake City, Utah: University of Utah Press, 1992); G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, 2008)., Chapter 1

Even when watered down by a personal prerogative, Cohen's critique may seem too demanding. Why should I have any obligation to share fairly with you, if I cannot be confident that you are likewise committed to sharing fairly with me? Allowing me some scope to carry out my personal plans protected from the impersonal demands of the difference principle does not address this basic question. It is therefore worth examining a different version the incentives argument, from Seana Shiffrin, a version that makes more plausible the claim that some duties of distributive justice are binding infra-institutionally, i.e. unilaterally, without regard for the compliance of others.⁴⁰ Shiffrin dispenses with individual pursuit of the difference principle, but insists that individuals must accept the underlying justification of the difference principle, and therefore never act on reasons contrary to this justification. I am free to pursue my own projects in ways that fail to maximize the position of the least well off, within the scope of just institutions, but I must always recognize that natural talents are arbitrary from a moral perspective (with respect to the division of the joint social product). Recognition of this fact ought to affect how I bargain in the economic sphere even if it is not my personal responsibility to do whatever I can to make the least well off as well off as possible. Shiffrin illustrates with an example involving race. If I accept the justification of the difference principle, I cannot take advantage of a prospective employer's racism to bargain for a higher salary than my fellow workers, if I happen to be a member of the employer's favoured race. I need not as a matter of justice take the elimination of racism as my personal goal that will drive all of my decisions in life, but in making those decisions I may not take advantage of racism to further my own ends. Similarly, although I need not devote my life to raising the position of the least well off, I may not take my possession of scarce natural talents as a reason for claiming a higher wage. I may may permissibly take a higher paid job for other reasons, but I may not take the job because it pays more.

Shiffrin's version of the incentives argument is useful because it avoids the demandingness objection, while showing how duties of justice may still apply infra-institutionally. It also provides a strong case for the view that the a demand for a reasonable expectation of reciprocity limits our willingness to comply with justice, rather than being a constituent feature of justice. In the case of race, it is highly plausible to think that my duty not to leverage racism for material advantage is binding even if I have no assurance that others will refuse to exploit racism in a similar way, even perhaps if I have no assurance that those suffering racism would refuse to exploit racism in the opposing direction, were the tables turned. Insisting on assurances of reciprocity, in such cases, would seem to be unjust. Race is not analogous to talent, however, both in terms of the sources of the morally arbitrary advantage and the effects of my making use of this advantage. The extra bargaining power I, a white person, have in the case of the racist employer is the result of social preferences that are inherently unjust. The extra bargaining power a naturally talented person has also depends on the shape of social preferences, but these preferences may not in themselves be objectionable. There is nothing inherently unjust in wanting to listen to great music or watch excellent athletes. Furthermore, when I, a white person, take advantage of racism in the marketplace for my own gain, I participate in and help sustain a system of social norms, expectations, and assumptions that helps relegate non-whites to the status of second-class citizens, systematically disadvantaged across many areas of life. The same is not true when I let

40. Seana Valentine Shiffrin, "Incentives, Motives, and Talent," *Philosophy and Public Affairs* forthcoming).

my decisions about employment be influenced by market incentives rooted in relative scarcity – not, at least, in a society governed by the difference principle, where inequalities between social positions raise lower positions. It does not seem unreasonable, then, to hold that the duty not to exploit racism for personal gain is not conditional on an assurance of reciprocity, while maintaining that the duty not to exploit one's advantaged position in the distribution of scarce natural talents is conditional on reciprocity. That I happen to have scarce talents is not by itself a reason that justifies me getting a greater share of the social product. But I cannot be expected unilaterally to desist from responding to market incentives; the fair division of the social product must be achieved institutionally.