

# RELATIONAL CONCEPTIONS OF JUSTICE: RESPONSIBILITIES FOR HEALTH OUTCOMES\*

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**SÍNTESE** – Numa sociedade democrática, as regras sociais são impostas a cada um por todos. Como "recebedores" de tais regras, tendemos a pensar que elas deviam ser designadas para engendrar a melhor distribuição possível de bens e males ou qualidade de vida. Enquanto autores das regras, tendemos a pensar que os malefícios por nós impostos através de tais regras têm maior peso moral que os danos que nós meramente deixamos de evitar ou mitigar. Embora as atuais teorias (consequencialistas e rawlsianas) sejam dominadas pela primeira perspectiva, uma concepção adequada da justiça exige um balanceamento de ambas tendências. O tema da equidade na saúde é bem apropriado para mostrar como concepções da justiça puramente dirigidas aos recebedores estão fadadas ao fracasso e como esboçar uma alternativa mais promissora.

**PALAVRAS-CHAVE** – Justiça. Responsabilidade. Equidade.

**ABSTRACT** – In a democratic society, the social rules are imposed by all upon each. As "recipients" of the rules, we tend to think that they should be designed to engender the best attainable distribution of goods and ills or quality of life. As imposers of the rules, we tend to think that harms we inflict through the rules have greater moral weight than like harms we merely fail to prevent or to mitigate. While current (consequentialist and Rawlsian) theorizing is dominated by the first perspective, an adequate account of justice requires a balancing of both. The health equity theme is well suited for showing how purely recipient-oriented conceptions of justice fail and for outlining a more promising alternative.

**KEY WORDS** – Justice. Responsibility. Equity.

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## Introduction

My view on justice in regard to health is distinctive in two ways. First, I hold that the strength of our moral reason to prevent or mitigate particular medical conditions depends not only on what one might call *distributional* factors – such as: how badly off the people affected by these conditions are in absolute and relative terms, how costly prevention or treatment would be, and how much patients would benefit from given treatment. Rather, it depends also on *relational* factors – that is, on how we are related to the medical conditions they suffer. This point is widely accepted in regard to conduct: You have, for instance, stronger moral reason to make sure that people are not harmed through your negligence than that they are not harmed through causes outside your control (others' negligence or their own, say, or bad weather). And your moral reason to help an accident victim is stronger if you were materially involved in causing her accident. I assert an analogous point also in regard to any social institutions that agents are materially involved in upholding: In shaping an institutional order, we should be more concerned, morally, that it not substantially contribute to the production of medical conditions than that it prevent medical conditions caused by other factors. And we should design any institutional order so that it prioritizes the mitigation of medical conditions whose production it substantially contributes to. In institutional contexts as well, moral assessment must then consider not merely the distribution of health outcomes as such, but also whether and how social factors contribute to their production. The latter consideration is needed to distinguish different degrees of responsibility for medical conditions and for their prevention and mitigation. What is morally significant here, in institutional as well as interactional contexts, is something like the conventional distinction between positive and negative responsibility. However, the differentiations required are, even in interactional contexts, more complex than binary talk of positive and negative duties suggests; and they are, as we shall see, very much more complex in institutional contexts.

My second thesis builds on the first. It is generally believed that one's moral reason to help prevent and mitigate others' medical conditions are stronger when these others are compatriots than when they are foreigners.<sup>1</sup> I reject this belief in regard to medical conditions in whose production one is materially involved. So my second thesis denies the moral significance of compatriotism (belonging to the same state) with regard to the prevention and mitigation of medical conditions in whose production one is materially involved. Agents can be materially involved in the production of medical conditions through their ordinary conduct or through their role in upholding an institutional order; and my second thesis, too, applies then in both interactional and institutional contexts. In interactional contexts, it

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<sup>1</sup> Compatriotism is generally deployed not as a relational factor but as a factor limiting the scope of particular justice concerns. Theorists hold that one conception of justice is appropriate among compatriots and another among states or across state boundaries.

holds that the strength of your moral reason to act so as to avoid injuring others' health and to help mitigate any of their medical conditions you helped cause is not affected by whether these others are compatriots or foreigners. Thus, for example, your moral reasons to drive carefully and to help victims of any accident you have caused do not weaken when you are traveling abroad. Once again, I assert an analogous point for institutional contexts, where – pursuant to the first thesis – we ought to ensure that any institutional order we help impose avoids causing medical conditions and prioritizes the mitigation of any medical conditions it does cause. Here my second thesis holds that this responsibility is not sensitive to whether the medical conditions at stake are ones suffered by foreigners or by compatriots.

To get a sense of how strong these theses are, we can link them by transitivity: Foreigners' medical conditions in whose production we are materially involved have the same moral weight for us as compatriots' medical conditions in whose production we are materially involved (second thesis).<sup>2</sup> Compatriots' medical conditions in whose production we are materially involved have greater moral weight for us than compatriots' medical conditions in whose production we are not materially involved (first thesis). Therefore, foreigners' medical conditions in whose production we are materially involved have greater moral weight for us than compatriots' medical conditions in whose production we are not materially involved (combined thesis).

In interactional contexts, this combined thesis is likely to be neither dramatic nor very controversial. Suppose two children have been injured by speeding drivers and money is needed to pay for an expensive medical treatment that is necessary to restore their health and appearance completely. In one case, the child is a foreigner and you were the driver. In the other case, the child is a compatriot and someone else was the driver. My theses entail that in a situation like this you have (other things being equal) stronger moral reason to buy the expensive treatment for the foreign child.

In institutional contexts, by contrast, my combined thesis is likely to be quite dramatic and controversial. It might be stated as follows: Foreigners' medical conditions, if social institutions we are materially involved in upholding substantially contribute to their production, have greater moral weight for us than compatriots' medical conditions in whose production we are not materially involved. This combined thesis is radical if social institutions we are materially involved in upholding do substantially contribute to many medical conditions abroad. Is this the case?

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<sup>2</sup> This sentence and the next two must be read as including implicit "other things being equal" clauses. Thus, my point in this first sentence is not that every foreigner is on a par with every compatriot. I am not denying that we have stronger moral reason to avoid injuring a compatriot child than to avoid injuring a foreign serial rapist. I am merely asserting that the foreigner/compatriot distinction plays no role in explaining such a discrepancy, which should then, less misleadingly, be put as follows: We have stronger moral reason to avoid injuring a child than to avoid injuring a serial rapist, regardless of what the citizenship of either of them may be.

Many kinds of social institutions can substantially contribute to the production of medical conditions. Of these, economic institutions – the basic rules governing ownership, production, use, and exchange of natural resources, goods, and services – have the greatest impact on health. This impact is mediated, for the most part, through poverty. By avoidably engendering severe poverty, economic institutions substantially contribute to the production of many medical conditions. And those who are materially involved in upholding such economic institutions are then materially involved in the production of such medical conditions.

In our world, poverty is highly relevant to human health. In fact, poverty is far and away the most important factor in explaining existing health deficits. Because they are poor, 790 million persons lack adequate nutrition, one billion lack safe water, 2.4 billion lack basic sanitation, more than 880 million lack access to basic health services, and about one billion are without adequate shelter.<sup>3</sup> Because of poverty, “two out of five children in the developing world are stunted, one in three is underweight and one in ten is wasted.”<sup>4</sup> Some 1.2 billion persons, one fifth of the world’s population, live below the World Bank’s new international poverty line, which means that their income or expenditure is less than US\$1.28 PPP per day.<sup>5</sup> And fully one third of all human deaths are due to poverty-related causes.<sup>6</sup>

This massive poverty is not due to overall scarcity. The new international poverty line of \$1.28 PPP per day corresponds, at market exchange rates, to about \$0.32 daily or \$117 annually per person.<sup>7</sup> The collective income of the poorest fifth of humankind is then about \$100 billion, taking account of the fact that the annual income of the poor is, on average, 31 percent below the international poverty line

<sup>3</sup> The first three of these figures are from UNDP 2000: 30, the other two are from UNDP 1999: 22, and UNDP 1998: 49, respectively. Current world population is about 6 billion.

<sup>4</sup> UN Food and Agricultural Organization, at <http://www.fao.org/focus/e/sofi/child-e.htm>.

<sup>5</sup> A person counts as poor, under the new World Bank definition, when the purchasing power of her income per day is below the purchasing power that \$1.08 had in the US in 1993 (World Bank 2000: 17), which equals the purchasing power of \$1.28 in the US in the year 2000 (<http://stats.bls.gov/cpihome.htm>). The World Bank has revised its international poverty line this year. In previous years it was defined in terms of the purchasing power that \$1.00 had in the US in 1985 (World Bank 1999: 276), which equals the purchasing power of \$1.59 in the US in the year 2000 (<http://stats.bls.gov/cpihome.htm>). The previous report had said that the number of poor “rose from 1.2 billion in 1987 to 1.5 billion today and, if recent trends persist, will reach 1.9 billion by 2015” (World Bank 1999: 25). The latest report has brought the number of poor back down to an apparently more comfortable 1.2 billion. In response to my inquiry, the World Bank has written me that the revision is justified by the fact that the price of goods typically consumed by the poor – of basic foodstuffs especially – has risen more slowly than prices in general.

<sup>6</sup> WHO 2000, Table 3. Attending here to the global health picture, this paragraph has focused on the effects of absolute poverty (see generally Evans et al. 1994, Dreze and Sen 1995, WHO 2000, Ch. 2, and Gwatkin 2000). It is worth remarking, however, that relative poverty (local socio-economic inequality) also plays an important causal role in the production of medical conditions. For more details, see Black et al. 1990, Wilkinson 1996, as well as, in the present volume, Marmot and also Daniels, Kennedy, and Kawachi (esp. sec. 2).

<sup>7</sup> This is so, because in the poor countries only about 25 cents, on average, are said to be needed to buy local currency that has as much purchasing power as \$1 has in the US. Thus, the World Bank converts China’s GNP *per capita* of \$780 to \$3,291 PPP, India’s \$450 to \$2,149 PPP, Indonesia’s \$580 to \$2,439 PPP, Pakistan’s \$470 to \$1,757, Bangladesh’s \$370 to \$1,475 PPP, Vietnam’s \$370 to \$1,755 PPP, Nigeria’s \$310 to \$744 PPP, and so on (World Bank 2000: 274-75).

(Ravallion and Chen 1997: 376). The collective income of the high-income countries, containing 14.9 percent of world population, is given as \$22,921.3 billion (World Bank 2000: 275). Thus, however daunting the figure of 1.2 billion poor people may sound, global inequality is now so enormous that even doubling or tripling the incomes of all these poor people solely at the expense of the high-income countries would barely be felt in the latter.<sup>8</sup>

It cannot be denied that the distribution of income and wealth is heavily influenced by economic institutions, which regulate the distribution of a cooperatively generated social product. What can be said, and is said quite often, is that the economic institutions that substantially contribute to extreme poverty in the developing world are *local* economic institutions in whose imposition we, citizens of the developed countries, are not materially involved. Economists tirelessly celebrate the success stories of the Asian tigers or of Kerala so we can more easily believe that those who remain hungry have only their own institutions and hence themselves and their own compatriots to blame.<sup>9</sup> Even the philosopher Rawls feels called upon to endorse the view that poverty has local explanations: "The causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues. [...] Crucial also is the country's population policy" (1999b: 108).

It is quite true, of course, that local economic institutions, and local factors more generally, play a substantial role in the reproduction of extreme poverty in the developing world. But this fact does not show that social institutions we are materially involved in upholding play no substantial role. That the effects of flawed domestic institutions are as bad as they are is often due to global institutions – to the institution of the territorial state, for example, which allows affluent populations to prevent the poor from migrating to where their work could earn a decent living.<sup>10</sup> Global economic institutions reflect the highly uneven bargaining power of the participating countries<sup>11</sup> and thus tend to reinforce and to aggravate economic inequality.<sup>12</sup> Global

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<sup>8</sup> 33 states and Hongkong are counted as high-income countries (UNDP 2000: 284), containing 891 million people. In fact, it is said that the 225 richest individuals could comfortably solve the problem out of their income from safe investments: "The additional cost of achieving and maintaining universal access to basic education for all, basic health care for all, reproductive health care for all women, adequate food for all and safe water and sanitation for all is ... less than 4% of the combined wealth of the 225 richest people in the world" (UNDP 1998: 30).

<sup>9</sup> The Asian tigers – Hongkong, Singapore, South Korea, and Taiwan – are the favorite example of economists friendly to markets kept maximally free of taxes and regulations, while Kerala – a state in India with a traditionally socialist government – is favored by more left-leaning economists. Cf. Carens 1987.

<sup>11</sup> For example: "Rich countries cut their tariffs by less in the Uruguay Round than poor ones did. Since then, they have found new ways to close their markets, notably by imposing anti-dumping duties on imports they deem 'unfairly cheap'. Rich countries are particularly protectionist in many of the sectors where developing countries are best able to compete, such as agriculture, textiles, and clothing. As a result, according to a new study by Thomas Hertel, of Purdue University, and Will Martin, of the World Bank, rich countries' average tariffs on manufacturing imports from poor

institutions also have a profound impact on the indigenous institutional schemes of developing countries. By assigning those who can gain effective power in a developing country the authority to borrow in the name of the whole country and to confer legal ownership rights in the country's resources, our global institutional order greatly encourages the undemocratic acquisition and exercise of political power in especially the resource-rich developing countries.<sup>13</sup> The national institutional schemes of developed countries, too, can have a profound influence on the national institutional schemes of developing countries. An obvious example is that, until quite recently, most developed countries (though not, after 1977, the US) have allowed their firms to pay bribes to officials of developing countries, and even to deduct such bribes from their corporate taxes.<sup>14</sup> Such authorization and moral support for bribery have greatly contributed to the now deeply entrenched culture of corruption in many developing countries.

If the social institutions of the developed countries and the global institutional order these countries uphold contribute substantially to the reproduction of poverty, then it is hard to deny that we citizens of developed countries are therefore materially involved in it as well. It is true, of course, that these institutions are, in the first instance, shaped by our politicians. But we live in reasonably democratic states where we can influence the choice of politicians and political programs from among a wide range of alternatives, where we can participate in shaping political programs and debates, and where politicians and political parties must cater to the popular will if they are to be elected and reelected. If we really wanted our domestic and international institutions to be shaped so that they do not contribute to the reproduction of extreme poverty, politicians committed to the effort so to shape them would emerge and be successful. But the vast majority of citizens of the developed countries want national and global institutions to be shaped in the service of their own interests and thus support politicians willing to do so. At least the citizens in

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countries are four times higher than those on imports from other rich countries. This imposes a big burden on poor countries. The United Nations Conference on Trade and Development (UNCTAD) estimates that they could export \$700 billion more a year by 2005 if rich countries did more to open their markets. Poor countries are also hobbled by a lack of know-how. Many had little understanding of what they signed up to in the Uruguay Round. That ignorance is now costing them dear. Michael Finger of the World Bank and Philip Schuler of the University of Maryland estimate that implementing commitments to improve trade procedures and establish technical and intellectual-property standards can cost more than a year's development budget for the poorest countries. Moreover, in those areas where poor countries could benefit from world trade rules, they are often unable to do so. ... Of the WTO's 134 members, 29 do not even have missions at its headquarters in Geneva. Many more can barely afford to bring cases to the WTO..." (*The Economist*, September 25, 1999: 89).

<sup>12</sup> "The income gap between the fifth of the world's people living in the richest countries and the fifth in the poorest was 74 to 1 in 1997, up from 60 to 1 in 1990 and 30 to 1 in 1960" (UNDP 1999: 3).

<sup>13</sup> Cf. Lam and Wantchekon 1999, Wantchekon 1999, and Pogge 2000b.

<sup>14</sup> Only in 1997 did 32 developed states, under OECD auspices and under public pressure generated by a new NGO (Transparency International), sign a Convention on Combating Bribery of Foreign Officials in International Business Transactions, which requires them to criminalize the bribery of foreign officials. 26 of these states have ratified this Convention at last count. Among those still missing are the Netherlands, Italy, Portugal, Ireland, Luxemburg, and New Zealand (<http://www.oecd.org/daf/nocorruption/annex2.htm>).

this majority can then be said to be materially involved in the reproduction of poverty and the associated health deficits.<sup>15</sup> And they, at least, have then stronger moral reason to discontinue their support, and to help the foreign victims of current institutions, than to help fund most services<sup>16</sup> provided under ordinary health programs (such as Medicare) for the benefit of their compatriots – or so the view I have outlined would suggest.<sup>17</sup>

This summary of my larger view on health equity was meant to be introductory, not conclusive. Seeing what is at stake, I would expect even the most commonsensical of my remarks about the explanation of global poverty to be vigorously disputed; and I certainly do not believe that this brief outline can lay such controversies to rest. At most I would hope that it may inspire some readers to think further about these issues and may also provide some context for the more focused and intricate discussion to follow. This discussion will be devoted specifically to the explication and defense of my first thesis.

## Two Concepts of Justice

I begin with a look at the concept of justice, whose structure is basically the same, I think, as that of the concepts of equity and fairness. The concept of justice is a predicate, and so we might ask first what kinds of entities are capable of being just or unjust. To have a name for such entities, let me rephrase the question: What kinds of entities are possible *judicanda* under the headings of justice, fairness, equity?<sup>18</sup> In ordinary usage, the concept of justice is primarily applied to four

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<sup>15</sup> It might be said that, if these citizens are numerous (as they are in the larger developed countries), then none of them has real influence on the electoral success of politicians and political programs they choose together. But this position is absurd. The outcome of the vote depends on the decisions of the citizens eligible to vote and on no one else. If such citizens did not count as materially involved and thus could bring about this outcome and any harms it foreseeably entails without being responsible therefor, then Nazis and criminals can invoke the same privilege: If enough of them act together, they can commit crimes in which none of them is materially involved. For further analysis of this mistake, cf. Parfit 1984: ch. 3.

<sup>16</sup> Social institutions we are materially involved in upholding do substantially contribute to some medical conditions suffered by compatriots; and these medical conditions may then be on a par with foreigners' medical conditions in whose production we are materially involved. To gain economic advantages for a majority of citizens, for example, we often legally authorize activities that impose considerable risks on persons who can neither consent to, nor benefit from, these activities. Here we may have especially strong moral reason to prevent and mitigate any harms to such persons (e.g., harms to children from legally authorized pollution or motorized traffic).

<sup>17</sup> Superficially similar conclusions are sometimes defended on cost/benefit grounds, by reference to how thousands of children in the developing countries can be saved from their trivial diseases at the cost of terminal care for a single person in a developed country. Representative examples of such lines of argument are Singer 1972, Rachels 1979, Kagan 1989, and Unger 1996. My view, by contrast, turns on the different ways in which we may be related to the medical conditions of others and it may therefore tell us to favor foreigners even if costs and benefits are equal. Two notable pioneers of this line of thought are O'Neill 1975 and Nagel 1977. Both emphasize our active involvement in the production of poverty. See also Pogge 1989, 32-36 and 276-80, Pogge 1998a and Pogge 1998b.

<sup>18</sup> The word "judicandum" is Latin and means "that which is to be judged." I am using it in exactly this sense, to single out the things to which an evaluative predicate applies. I have hope for the reader's indulgence, because there is no good English word for this purpose. G.A. Cohen (1997) has

kinds of *judicanda*: to *subjects* such as persons and groups, to the *conduct* of such subjects (actions and omissions: decisions, policies, wars, accusations, and so on), to *social rules* (e.g., social institutions, laws, conventions, practices, economic arrangements, educational and health-care systems),<sup>19</sup> and to *other states of affairs* insofar as they are not already included under any of the first three rubrics (e.g., facts or combinations of facts, even the world at large, particularly including distributions). Occasionally, the concept of justice is also applied to the feelings and emotions of persons (as in “unjust anger”) and to natural phenomena (an avalanche, hurricane, lightening, or epidemic).

The concept of justice can function as a one-place predicate and grammatically does so function in most cases. But the concept can also function as a two-place predicate – A is just or unjust toward B – and this use is actually more fundamental.<sup>20</sup> For the concept of justice, like those of fairness and equity, essentially involves the idea of one or more parties at the receiving end. It is incoherent to hold that a certain *judicandum* is unjust, but unjust toward no one.<sup>21</sup> Justice thus always is justice *toward* certain *recipients* (as I will call them). And we can then say of subjects, conduct, or social rules that they are just toward some and unjust toward others, or we can assess their overall justice by balancing their treatment of their various recipients.

The idea of recipients, of those who have justice claims on a particular *judicandum*, immediately suggests the question what these recipients have and don't have, and what they ought to have or not to have – the question what their claims on the *judicandum* are. Let me use the expression “goods and ills” for such items.<sup>22</sup> Taking this question into account, we see that the concept of justice can also function as a *three*-place predicate – A is just toward B in regard to the distribution of C (to/among B) – and that this use is actually more fundamental still. For the concept of justice, like those of fairness and equity, essentially involves the

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used the word “site” to refer to types of such things. He distinguishes four sites in particular: basic structures (schemes social institutions), *ethi* (plural of “ethos”), conventions, and personal conduct.

<sup>19</sup> When we speak of just states, societies, or organizations, we typically think of them under the third rubric, referring to their internal mode of organization, their “basic structure” or institutional scheme. But we can also think of them under the first rubric, as organized collective subjects, and can then judge them on the basis of their policies and attitudes toward outsiders.

<sup>20</sup> It is more fundamental in the sense in which the two-place predicate use of the word “mother” is more fundamental than its one-place predicate use: One cannot understand what it is to be a mother without understanding what it is to be the mother of someone. Contrast the word “sad,” whose one-place predicate use can be understood without understanding its two-place predicate use in “A is sad about B.”

<sup>21</sup> I am not denying, of course, that there can be an unjust law that is never enacted and thus never does anyone an injustice. My point is rather that someone who calls this proposed law unjust, perhaps to prevent its enactment, is committed to showing that there are some recipients toward whom the law, if enacted, would be unjust. Similarly, I am not denying that a man can be unjust even though he has never been unjust toward anyone. He may merely be disposed to injustice – but this means that he is disposed to be unjust *toward others*.

<sup>22</sup> As the word “conduct” is meant to include the null-case of omissions, so the expression “goods and ills” is meant to include the null-case of someone receiving nothing (being denied a good or being spared an ill).

idea of something being done or happening to certain recipients. It is incoherent to hold that a certain *judicandum* is unjust to someone, B, without being able to point to any goods or ills that B either has-but-should-not-have or lacks-but-should-have.

The concept of justice as explicated thus far – fundamentally a three-place predicate, with frequent but derivative one-place and two-place predicate employments – dominates current discussions of justice. According to this concept, justice is a feature of certain entities (*judicanda*), which is dependent on what distribution of relevant goods and ills they produce among certain recipients. The comparative assessment of alternative health-care systems, for example, is based on the distribution of health outcomes each of these systems is expected to produce. One might call this the concept of *passive* justice, because it focuses moral attention on those by whom justice and injustice are experienced or suffered.

There is an important alternative to the concept of passive justice, an alternative concept that is fundamentally a *four*-place predicate. This concept adds an essential place for (what I call) the *agents* of justice, for those who have or share moral responsibility for the justice or injustice of the *judicandum*. Pursuant to this alternative concept, it is incoherent to hold that a *judicandum* is unjust without being able to point to any agent or agents, D, who is/are responsible for its injustice or for making it (more) just. In order to stress the contrast, I call this the concept of *active* justice, because it diverts some attention from those who suffer justice and injustice to those who produce them.<sup>23</sup> In what follows, I try to show that we should self-consciously employ the concept of active justice – “the active concept,” as I shall also, more economically, call it.

To show this, I will display the changes this shift would induce in our thinking about justice. I am not claiming that these changes, especially the more profound ones, are either forced by the new concept or made impossible by the old one. Which concept we employ matters mainly psychologically; but it still matters a lot. The concepts we use condition what we pay attention to, and this in turn greatly influences our theorizing.<sup>24</sup>

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<sup>23</sup> Meant to be provocative, the active/passive terminology may seem to be tendentious, even somewhat misleading, in that the new concept focuses attention on both: agents and recipients of justice. The rationale offered in the text – that the new concept is “more active” than the old one because some of the attention that the concept of passive justice focuses on recipients is diverted from them to the agents of justice – may seem lame. I have thought of using relational/distributional instead of active/passive, but this seems even less satisfactory.

<sup>24</sup> Given this importance of concepts, one might mark the shift to the active concept of justice by replacing the word “*judicandum*” with “*justificandum*,” derived from the Latin *facere* (to make, bring about) and *justum* (just). I realize that using it in this sense could be confusing in that justification – which in old English still signified the administration of justice – is today understood as a verbal activity characteristic of lawyerly types. I find it tempting to restore the word to its old meaning nonetheless. Doing so would protest the perennial tendency to substitute the appearance for the reality – in this case, sliding from justification, making things just, to justification, making things appear just. Moreover, no other word could capture quite so precisely the shift from the passive to the active concept.

Substantively, the shift in concepts matters in various ways, which can best be clarified by considering, first, its effects on how we might be inclined to structure conceptions or theories of justice (or subfields such as justice in regard to health). Using the active concept, such a theory would seek plausible answers to a plurality of interdependent questions in *four* dimensions, roughly as follows:

**A** Who or what is capable of being just, or who or what is to be made (more) just? This is the most fundamental question of *judicanda*.

**D1** Who can have (or share) moral responsibility for achieving and maintaining the justice of *judicanda*? This question concerns the possible *agents* of justice or equity.<sup>25</sup>

**D2** Which agents have moral responsibility for achieving or maintaining the justice of a particular *judicandum*? This question concerns the *scope of responsibility* with regard to particular *judicanda*.<sup>26</sup>

**D3** What moral responsibilities do particular agents have for achieving and maintaining the justice of a particular *judicandum*? This question concerns the *allocation of responsibility* with regard to particular *judicanda*.<sup>27</sup>

**B1** Who can have a claim to justice, can experience justice or injustice? This question concerns the possible *recipients* of justice or equity.<sup>28</sup>

**B2** Which recipients have justice claims on a particular *judicandum*? This question concerns the *domain of recipients* with regard to particular *judicanda*.<sup>29</sup>

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<sup>25</sup> One may think that this question is of interest mainly in the case of social rules, not in that of subjects and their conduct. But this is not so. The question is of great importance in the assessment of unorganized and organized collective subjects (mobs, corporations) and of their conduct (cf. Thompson 1980). And even in the case of individual subjects, the question is by no means trivial: We may have responsibilities in regard to the developing character and conduct of others (e.g., our children). And we may even have responsibilities in regard to the character and conduct of our own future self – for example, a responsibility to shape ourselves into persons who *notice* morally significant features of our environment and then *act deliberately* in response to them (see Bok 1996).

<sup>26</sup> This scope might, in the limit, include only a single agent – as when, for instance, a judge alone is responsible for the justice of her verdict. Even in this limiting case, the next question (**D3**) still arises: What is the judge required to do, and what is she not required to do, toward achieving a just verdict?

<sup>27</sup> It is interestingly addressed, for instance, in Murphy 2000.

<sup>28</sup> As is perhaps obvious, a recipient of justice can, even in the same context, be an agent of justice as well. Agents and recipients may overlap or even coincide – as when the members of a group share a collective responsibility for the justice of the rules they jointly impose upon each.

<sup>29</sup> This domain may include only a single recipient, as when one innocent man is convicted through an unjust verdict. In this limiting case, the question of metric (**C2**) may still arise (we may want to know, for example, how great an injustice this was, in comparison to other unjust verdicts that, say, involved excessive punishment or acquittal of a guilty person). But in this limiting case the question of aggregation across recipients (**C3**) evidently does not come into play.

It is worth distinguishing these single-recipient cases from ones whose domain includes a plurality of recipients whose situations are assessed in a non-comparative way. With regard to criminal-verdict producing procedures, for example, we may well believe that the verdict (conviction or acquittal) each defendant ought to receive is entirely independent of what verdicts are received by other defendants and also that how much the conviction of an innocent defendant or the acquittal of a guilty defendant detracts from the justice of such a procedure is entirely unaffected by what happens to other (innocent or guilty) defendants. (The conviction of an innocent person is not rendered morally more acceptable by the fact that other similarly innocent persons are also convicted.) Despite such non-comparative assessment, aggregation across recipients is still necessary. In judging the justice of criminal-verdict producing procedures, one must decide how to weight the two

**C1** What claims of justice do particular recipients have upon a particular *judicandum*? This question concerns the *allocation of claims* with regard to particular *judicanda*.

**C2** By what yardstick are we to assess the claims that particular recipients have upon a particular *judicandum* – whether they are being treated as (or better or worse than) justice demands? This question concerns the *metric* of justice or equity (including intra-recipient aggregation) with regard to particular *judicanda*.<sup>30</sup>

**C3** How are we to calculate an overall shortfall from justice when the domain includes several recipients being treated either better or worse than justice demands? This question concerns the *aggregation across recipients* of deviations from justice or equity.

This new way of structuring conceptions of justice makes it easier to appreciate further respects in which the shift from the passive to the active concept is likely to be consequential. One consequence is minor: Employing the passive concept, one may view it as unjust when avalanches, lightning, hurricanes, epidemics, or lions strike down some but not others (or sometimes as just, perhaps, when evil persons get hurt). If we employ the active concept, such entities – assuming their dispositions and behavior are not the responsibility of anyone – are not capable of being just or unjust,<sup>31</sup> and therefore drop out of the class of potential *judicanda*, as do states of affairs insofar as they are not under human control.

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kinds of errors they are liable to produce – e.g., one must decide on an “exchange rate” between miscarriages of justice that result in an innocent person being convicted of murder and miscarriages of justice that result in the acquittal of a person guilty of murder.

In the case of most *judicanda*, justice is partly or wholly comparative, such that whether recipients within its domain have more or less than justice requires depends, in part or entirely, on how much other recipients within its domain actually have. With procedures for meting out punishments or medical treatments, justice is partly comparative – non-comparative insofar as they are governed by the requirements that punishments should go only to guilty persons duly convicted and medical treatment only to persons in need thereof, and comparative insofar as whether particular punishments are of appropriate severity depends in part on how others are punished for similar crimes and whether treatment options made available to particular patients are of appropriate quality depends in part on what treatment options are available to others.

<sup>30</sup> This is a broader version of the “equality of what” question pioneered by Amartya Sen (1982, 1992). G.A. Cohen (1989) speaks of the “currency” of (egalitarian) justice. The question has generated and extensive literature, including Dworkin (1981a, 1981b, 1987), Rawls 1982, Arneson 1989, Elster and Roemer 1991, Nussbaum and Sen 1993, Roemer 1996. See also Galston 1980 and Griffin 1986. In most theories, the metric of justice is closely related to some notion of human flourishing or quality of life. It is important to bear in mind, however, that the moral quality of distributions of relevant goods and ills may be sensitive to the distribution of items other than these goods and ills. Thus a given distribution of goods and ills may be considered the morally better the closer a correlation there is between recipients’ quality of life (goods minus ills) and their quality of character (virtue). And the metric of justice may then include factors other than those whose distribution the relevant *judicandum* can affect.

<sup>31</sup> The devastating *effects* of a hurricane, or the fact that a disease outbreak turned into an epidemic, may still be traceable to an injustice in factors under human control, such as a flawed economic or health-care system under which safe buildings or vaccines are unaffordable to the poor. This illustrates once more the important point that the effects of one causal factor (e.g., a hurricane) can importantly depend on other causal factors (cf. text accompanied by note 10 above).

## Treating Recipients Justly versus Promoting a Just Distribution

A more important consequence is that the active concept would focus attention on who bears responsibility for a particular judicandum and would also allow new complexities in the moral relations between judicanda and recipients. To begin with the former point: While the passive concept encourages neglect of questions of responsibility or at best the vague suggestion that all agents have moral reason to promote the justice of all judicanda, the active concept invites differentiations and allows for various kinds of agent-relativity. Thus, some agents may have responsibilities with respect to the justice of a particular judicandum and others may not; unlike you, I may have no moral reason to seek to prevent or to remedy a minor injustice in your spouse's conduct toward your children. There may also be gradations, as when moral responsibility with regard to the justice of some judicandum varies from agent to agent within its scope; being privileged or influential may strengthen moral responsibilities while being burdened with many other responsibilities may weaken them. Furthermore, as this last thought suggests, there may be a competition among judicanda – one may have responsibilities with regard to achieving and maintaining the justice of several judicanda and may then have to decide how much of an effort one ought to make with regard to each. These issues concerning responsibilities and their prioritization are crucial for giving justice a determinate role in the real world. And they tend to be overlooked from the start, or grossly oversimplified, when the topic is approached in terms of the concept of passive justice.<sup>32</sup>

Let us proceed now to relations between judicanda and recipients. Here the choice of concept can make a major difference to how judicanda are assessed. Employing the concept of passive justice, one will focus on a judicandum's relative impact on its recipients – specifically on the difference it makes, relative to its feasible alternatives, to what these recipients are able to have or to be. Roughly speaking, a judicandum is considered just in proportion to its relative impact on the quality of the distribution of relevant goods and ills among its recipients: To be just is to promote a good distribution. The concept of passive justice leads then to *purely recipient-oriented* conceptions of justice. The active concept, by contrast, suggests a conception of justice as *relational*, as involving a relation between particular agents and recipients mediated through a judicandum: To be just is to give equitable treatment. By drawing attention to what we owe to each other,<sup>33</sup> to each agent's specific responsibilities for particular judicanda and thus toward their particular recipients, the active concept leads us away from the idea that a concern for the justice of a judicandum is simply a concern for its relative impact on the quality of the distribution of relevant goods and ills among its recipients. Rather than tie justice to an outcome, to a state that does or does not obtain – what would justice be like, what ought recipients to be able to have or to be? –

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<sup>32</sup> Witness Rawls's generic natural duty to promote just institutions (1999a: 99, 216, 293-94), which leaves all such more specific questions of responsibility out of account.

<sup>33</sup> An allusion to Scanlon 1999.

the active concept presents justice as something that is or is not done: by particular agents, through a *judicandum*, to particular recipients.

The significance of this shift can be illustrated in terms of two fundamentally different ways of understanding contemporary egalitarian liberalism. One variant sees the core of egalitarian liberalism in the idea that no citizen ought to be worse off on account of unchosen inequalities. This idea, duly specified, defines an ideal society in which no person is worse off than others except only as a consequence of free and informed choices this person had made. In such a society, social institutions, and perhaps all other humanly controllable factors as well, are then to be aimed at promoting such a solely choice-sensitive overall distribution of quality of life.<sup>34</sup> The other variant sees the core of egalitarian liberalism in the idea that a liberal society, or state, ought to treat all its citizens equally in terms of helps and hindrances. Such *equal* treatment need not be *equality-promoting* treatment. Pre-existing inequalities in, for example, genetic potentials and liabilities – however unchosen by their bearers – are not society's responsibility and not to be corrected or compensated at the expense of those favored by these inequalities.

The health equity theme provokes the most forceful clash of these two variants of egalitarian liberalism. One side seems committed to the indefinite expansion of the health-care system by devoting it to neutralizing (through medical research, treatment, alleviation, and compensation) all handicaps, disabilities, and other medical conditions from which persons may suffer through no fault of their own. The other side seems committed to the callous (if not cruel) view that we, as a society, need do no more for persons whose health is poor through no fault of ours than for persons in good health.<sup>35</sup>

Most contemporary theorists of justice take the purely recipient-oriented approach, though they do not explicitly consider and reject the relational alternative. Much of the current debate is focused on the question how we are to judge the justice of overall distributions or states of affairs in a comparative way.<sup>36</sup> This focus may well be a residue of the long dominant consequentialist idea that we should assess subjects, conduct, and social rules solely by their effects on how well the world goes. Much current theorizing about justice involves the closely related

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<sup>34</sup> The main champion of the argument that all such factors – social institutions and practices, conventions, ethi, and personal conduct – should be pressed in the service of promoting a just distribution so understood is G.A. Cohen (1989, 1992, 1997, 2000). For a detailed critique of this view, see Pogge 2000a.

<sup>35</sup> Advocates of the first view could also be accused of callousness in that the huge demands they make in behalf of persons whose health is poor through no fault of their own will, in the real world, shrink the domain of recipients, typically in line with national borders. The billions of dollars required for providing our compatriots with all the “services needed to maintain, restore, or compensate for normal species-typical functioning” (Daniels 1985: 79) would suffice to save countless millions in the poorer countries from socially induced medical conditions, such as malnutrition, measles, diarrhea, malaria, pneumonia, and other cheaply curable but all-too-often fatal diseases. On my view, as sketched above, citizens in affluent countries have stronger moral reason to prevent and mitigate the latter medical conditions suffered by foreigners than most of the former medical conditions suffered by compatriots.

<sup>36</sup> Cf. the literature listed in note 30 above.

thought that the justice of subjects, conduct, and/or social rules should be assessed by their effects on the quality of the overall distribution of goods and ills among the recipients of the relevant *judicandum*. In both cases, our interest in outcomes is indirect. How well the world goes is of little moral import in and of itself, but becomes quite important if we judge the moral quality of subjects, conduct, and/or social rules by their impact on how well the world goes. Similarly, the moral quality of overall distributions is of little import in and of itself, but becomes quite important if we judge the justice of subjects, conduct, and/or social rules by their impact on the moral quality of overall distributions of goods and ills (or quality of life).

But *should* we judge the justice of subjects, conduct, and/or social rules solely by their impact on the quality of such overall distributions? *Should* such distributions be our primary *judicanda*? With respect to subjects and their conduct, most would reject the recipient-oriented mode of assessment. Among the timeworn staples of ethics classes are gruesome organ redistribution stories designed to elicit the response that it is *not* true that subjects and conduct that aim at or produce the best overall distributions are always just. Abstractly considered, a situation in which everyone has at least one eye and one kidney is surely morally better than (an otherwise similar) one in which some, through no fault of their own, have no functioning eye or kidney while many others have two. Redistributive subjects and conduct aiming at such an abstractly better distribution are nevertheless, however, considered gravely unjust.

With respect to subjects and their conduct, cases of this sort may be used to draw the conclusion that we ought to distinguish between *treating recipients justly* and *promoting a good distribution among recipients* and, more generally, between how subjects *treat* and how they *affect* their recipients. The moral significance of this distinction can be illustrated, for example, with matched doing/allowing scenarios such as the following: In Scenario One, John has two functioning kidneys and Susan has none. A doctor is to decide whether to give one of John's kidneys to Susan. In Scenario Two, John has one functioning kidney and Susan has none. A functioning kidney becomes available from a donor, and the doctor is to decide whether to give this kidney to John or to Susan. (Other things are presumed to be equal in these two scenarios and, in particular, John and Susan both urgently want all the kidneys they can get.) Now, in terms of their distributional effects, the two doctor's decisions are on a par: In each scenario, the doctor is to decide whether the final distribution of kidneys between John and Susan will be 2:0 or 1:1; and a decision in favor of Susan is then in both scenarios equally promoting of a good distribution. In terms of how the doctor would be treating John and Susan, however, the scenarios differ dramatically. A decision in favor of Susan treats John unjustly in Scenario One but not in Scenario Two; and a decision in favor of John treats Susan unjustly in Scenario Two but not in Scenario One. Or so our intuitive judgments would suggest.

With respect to social rules, a similar distinction would seem to be called for, and for similar reasons. Just social rules for the allocation of donated kidneys favor

those who, through no fault of their own, have no functioning kidney over those who have one; and such rules thereby promote a better distribution of kidneys over recipients. Just social rules do not, however, mandate the forced redistribution of kidneys from those who have two to those who have none, even though doing so would likewise promote a better distribution of kidneys over recipients. Similarly, social rules producing a better distribution of kidneys are not for this reason more just if they do so by engendering severe poverty that compels some people to sell one of their kidneys in order to obtain basic necessities for themselves and their families. So the fact that medical conditions are intrinsically identical does not show that they are morally on a par. The moral weight of renal failures that an institutional scheme avoidably gives rise to may depend, for example, on how patients came to be dependent on a single kidney. Was the other one forcibly taken from them through a legally authorized medical procedure (forced redistribution)? Were they obliged to sell it to obtain food? Or did it atrophy on account of a genetic defect? How important the avoidance, prevention, and mitigation of renal failures is for the justice of an institutional scheme depends greatly on which of these scenarios they would exemplify.<sup>37</sup> Once again, treating recipients justly does not boil down to promoting the best distribution among them – what matters is how social rules *treat*, not how they *affect*, the set of recipients.

This simple thought has been remarkably neglected in contemporary work on social justice. It is not surprising, of course, that it plays no role in consequentialist theorizing. Consequentialists, after all, hold that social rules (as well as subjects and their conduct) should be judged by their effects on the overall outcome, irrespective of how they produce these effects. Consequentialists hold, that is, that the justice of social rules is determined exclusively by the quality of the overall distribution (of goods and ills, or quality of life) produced by these rules. What is remarkable, however, is that supposedly deontological approaches, such as that developed by Rawls and his followers, likewise make the justice of social rules depend exclusively on the overall distribution these rules produce. To make clear what is at stake here, consider the ambiguous claim that the justice of a social order depends on how it affects the overall distribution of goods and ills among its recipients. Rawls agrees with one understanding of this claim: The moral assessment of a social order should be based on what overall distribution of goods and ills it, in comparison to its feasible alternatives, would produce among its recipients – and on nothing else, he would add. This much is built into the centerpiece of his theory, his proposal that we should judge any social order from the standpoint of prospective participants each of whom cares only about the quality of life he or she can expect under each of the feasible alternatives.<sup>38</sup> Through his addition

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<sup>37</sup> This point has profound implications for the topic of health-care rationing, discussed by Brock and Kamm in the present volume. We should, for instance, design the institutional scheme of our society to give priority to the mitigation of medical conditions whose production it substantially contributes to. The discussion and defense of this implication would be worth another essay.

<sup>38</sup> “The persons in the original position try to acknowledge principles which advance their systems of ends as far as possible. They do this by attempting to win for themselves the highest index of pri-

to the first understanding of the claim, Rawls rejects the other possible understanding of it: He leaves aside as morally irrelevant *in what way* a social order affects the distribution of goods and ills. By judging social orders in this purely recipient-oriented way, Rawls ensures from the start that they are judged exclusively by their “output” in terms of what overall distribution of quality of life they produce among their participants – without regard to how they may bring it about that particular social goods or ills end up with particular persons.

### **A Problem for Purely Recipient-Oriented Conceptions of Social Justice**

To clarify further the recipient-oriented bias I believe to be common among consequentialist and supposedly deontological discussions of the justice of social rules, let me venture a little farther into Rawls’s theory and, in particular, its way of handling natural inequalities among recipients. Rawls’s project is to propose and defend a public *criterion of justice*, that is, a public criterion for judging feasible institutional structures in moral terms. His central thesis is that we should morally endorse that criterion of justice which parties in the *original position* would endorse prudentially. He imagines these parties to deliberate in behalf of prospective participants – but behind a *veil of ignorance*, so that they know nothing specific about the particular persons they are supposed to represent. The parties are made to assume, however, that every prospective participant has three interests, which Rawls sees as closely connected to their role as citizens in a democratic society (and hence as not being partisan to any particular religious, philosophical, or ethical world-view or way of life). Rawls calls these the *three higher-order interests*, suggesting both that they are interests in the content and fulfillment of other interests (like second-order desires are desires about desires) and also that they are deep, stable, and normally decisive. The first two higher-order interests are interests in developing and exercising *two moral powers* (Rawls 1996: 74), namely “a capacity for a sense of justice and a capacity for a conception of the good. A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of cooperation. Given the nature of the political conception as specifying a public basis of justification, a sense of justice also expresses a willingness, if not the desire, to act in relation to others on terms that they also can publicly endorse.... The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue a conception of one’s rational advantage or good”

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mary social goods, since this enables them to promote their conception of the good most effectively whatever it turns out to be. The parties ... strive for as high an absolute score as possible” (Rawls 1999a: 125).

By “social order” I mean here – appropriate to Rawls’s theory – a public criterion of justice together with the important and pervasive social institutions (“basic structure”) it would favor under particular historical, cultural, and technological conditions. As conditions change, a criterion of justice may require institutional reforms in the basic structure. Such reforms, so long as they are guided by the same criterion of justice, do not count as modifying the social order (as the term is here understood).

(Rawls 1996: 19). The third higher-order interest is “to protect and advance some determinate (but unspecified) conceptions of the good over a complete life” (ibid.: 74), that is, the interest to be successful in the pursuit of one’s major projects and ambitions, whatever these may be. Moreover, Rawls holds that the parties would deliberate pursuant to the *maximin rule*: that they would evaluate each proposed public criterion of justice by reference to the worst life prospects a person might face in societies in which it is the governing public criterion of justice. The parties would endorse that criterion which would secure the best worst outcome (maximum minimum) – specifically: that criterion which would secure the highest floor for the lifetime fulfillment of prospective participants’ higher-order interests.

This structuring of the decision problem clearly brings out that Rawls shares the consequentialists’ presumption that the justice of alternative ways of organizing a society is to be judged exclusively by the overall distribution of goods and ills that each such social order would produce. He departs from typical consequentialists – utilitarians – in regard to metric (higher-order interest fulfillment, rather than pleasure-minus-pain or desire satisfaction) and in regard to aggregation across recipients (*maximin*, rather than sum-ranking or averaging).<sup>39</sup> But he shares with them the purely recipient-oriented mode of theorizing about justice.

How is this shared presumption problematic? Let me illustrate by bringing Rawls’s contractualist machinery to bear on the question – highly relevant to our health equity theme – whether and how social institutions should be responsive to natural inequalities. It is evident that the extent to which a person’s higher-order interests (especially the third) are fulfilled depends not merely on her share of social goods but also on her natural endowments. Someone genetically predisposed toward good health, cheerfulness, intelligence, and good looks is better able to advance her conception of the good than someone who is genetically predisposed toward sickness, melancholy, low intelligence, and ugliness. How, if at all, would the parties in the original position take account of this fact? Let us grant that genetic manipulations are currently unfeasible and leave them aside. Even so, the parties can still raise the floor of higher-order interest fulfillment by selecting a public criterion and social order under which the naturally disfavored are favored in the distribution of social goods and ills. By effecting a negative correlation between the social and natural distributions, social institutions can raise the floor by ensuring that no one is both naturally and socially disfavored.

Let me illustrate this point in a very simple numerical model. Suppose that the value of persons’ natural endowments and social position each vary from 0 (very poor) to 10 (very ample) and that a person’s expected higher-order interest fulfillment (EHOIF) is the sum of the two values minus 1/25 of their product:

$$\text{EHOIF} = N + S - NS/25$$

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<sup>39</sup> These are the two features Rawls himself adduces as the ones that render his theory distinctive and deontological (Rawls 1999a: 26-27 and 220).

Given this formula, expected higher-order interest fulfillment among persons could vary between 0 ( $N=0$ ;  $S=0$ ) and 16 ( $N=10$ ;  $S=10$ ). But it may nonetheless be possible to arrange social institutions so that *all* persons fall within the top half of this range ( $EHOIF \geq 8$ ). To accomplish this feat, social institutions must produce higher  $S$ -values – through special subsidies, tax credits and deductions, preferences in admission and hiring, and so on – for those whose  $N$ -values are low, in such a way that, for each person,

$$S \geq (200 - 25N) / (25 - N)^{40}$$

This model illustrates how the concentration of social resources on the naturally disfavored can be used to raise the floor of higher-order interest fulfillment.<sup>41</sup> Raising this floor as high as possible is the one and only goal of the parties in Rawls's original position.

Rawls claims nonetheless that his parties would adopt a criterion of justice that does not prefer basic structures that favor the naturally disfavored along the lines I have sketched. Instead, Rawls's criterion of justice assesses each social order exclusively on the basis of the distribution of *social* primary goods it produces: "a hypothetical initial arrangement in which all the social primary goods are equally distributed ... provides a benchmark for judging improvements" (Rawls 1999a: 54-55). Information about the distribution of natural primary goods, such as "health and vigor, intelligence and imagination" (*ibid.*: 54), is left aside entirely. Thus, while Rawls's contractualist machinery, in line with the concept of passive justice, reflects a purely recipient-oriented conception of justice, the public criterion he "derives" therefrom does not. In fact, this public criterion seems to be vaguely inspired by a relational conception of justice associated with the active concept – as when Rawls comments on its disregard for natural primary goods: "The natural distribution is neither just nor unjust" (*ibid.*: 87). This comment may express the idea that citizens creating and upholding an institutional order bear responsibility for any very low social positions it may produce, but not for any very poor natural endowments, which can be viewed as so-to-speak preexisting.

How might we react to Rawls's apparent inconsistency? First, we might defend him by arguing that natural inequalities are largely irrelevant to a person's ability to fulfill her higher-order interests. This line strikes me as wholly unpromis-

<sup>40</sup> This requires, for example, that those with  $N=0$  must have at least  $S=8$  ( $200/25$ ), those with  $N=1$  must have at least  $S=7.292$  ( $175/24$ ), those with  $N=2$  must have at least  $S=6.522$  ( $150/23$ ), those with  $N=3$  must have at least  $S=5.682$  ( $125/22$ ), those with  $N=4$  must have at least  $S=4.762$  ( $100/21$ ), those with  $N=5$  must have at least  $S=3.750$  ( $75/20$ ), those with  $N=6$  must have at least  $S=2.632$  ( $50/19$ ), and those with  $N=7$  must have at least  $S=1.389$  ( $25/18$ ).

<sup>41</sup> The same model likewise illustrates, incidentally, how a concentration of social resources on the naturally disfavored may also tend to raise *average* higher-order interest fulfillment as well: The lower a person's  $N$ -value is, the more a given increase in her  $S$ -value (from 4 to 5, say) will add to her expected higher-order interest fulfillment. This is, of course, a consequence of the mathematical formula I have stipulated. This stipulation does, however, strike me as generally plausible: Social goods, such as money and the social bases of self-respect, really do tend to have greater marginal importance for the naturally disfavored.

ing. Genetically based mental deficits – such as lower intelligence and ability to concentrate – can surely undermine a person’s capacity to understand, to apply, and to act from a public conception of justice as well as her capacity to form, to revise, and rationally to pursue a conception of the good. Even more clearly, such deficits, and melancholy and ugliness as well, also have a profound effect on a person’s success in advancing whatever particular conception of the good she may have chosen to pursue.

Second, one might reject Rawls’s exclusive emphasis on the distribution of *social* goods and ills as simply a mistake to be corrected. In this vein Amartya Sen has argued that, since natural differences among persons evidently affect the quality of life they can expect, these natural differences should be taken into account – for example, by replacing Rawls’s social-primary-goods metric with a capabilities metric.<sup>42</sup> To this critique, Rawls has responded that, for purposes of a first approximation, he had been meaning to leave severe natural handicaps and disabilities aside and that the remaining natural disadvantages – Sen had mentioned differential caloric and textile needs, conditioned by differences in metabolic rate and body size, respectively – generally do not render persons unable to be fully cooperating citizens (Rawls 1996: 182-86). It is hard to see the relevance of this second point, but perhaps Rawls is suggesting that, apart from severe handicaps and disabilities, natural differences are relatively minor so that their accommodation within a public criterion of justice is not worth the cost in terms of increased complexity and divisiveness. But this response strikes me as implausible: Many quite ordinary natural handicaps – such as ugliness or a tendency toward melancholy and depression – are anything but minor (in terms of expected higher-order interest fulfillment). And even if severe natural handicaps of mind and body can be ignored in a first approximation, they cannot be left aside in the final version of the theory which is to serve as a public standard by reference to which a society’s citizens shape and reform their common social institutions.

### **The Semiconsequentialist Alternative**

Third, one might resolve the tension in Rawls’s work in favor of his proposed criterion of justice and thus at the expense of his purely recipient-oriented machinery for deriving this criterion. One might say that the purpose of a social order is not to promote a good overall distribution of goods and ills or quality of life, but to *do justice to*, or to *treat justly* all those whose shared life is regulated by this order. Just treatment of participants requires a just allocation of the benefits and burdens of social cooperation, not promotion of the best attainable distribution of all (social and natural) goods and ills that may be relevant to persons’ higher-order interest fulfillment or quality of life. Natural inequalities precede, so to speak, social institutions, as persons already have their natural endowments and handicaps when they enter

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<sup>42</sup> Sen (1980, 1992) criticizes Rawls’s theory from outside, but, as we have seen, his critique can also be supported by appeal to Rawls’s own original position.

society. And just social institutions should not then make the naturally favored subsidize the naturally disfavored any more than a just parent or administrator or civil judge should seek to allocate benefits and burdens under her control so as to even out natural inequalities. Pushed all the way, this sort of reasoning would lead to the conclusion that there is nothing unjust about a society that has a just economic system, satisfying Rawls's second principle perhaps, but then leaves the allocation of medical care (as well as of the means of mitigating melancholy, homeliness, low native intelligence, and their effects) entirely to the market.

This kind of self-consciously semiconsequentialist conception of social justice – which does not make the distribution of quality of life the primary *judicandum* and according to which social rules, rather than promote a good overall distribution among their participants, ought to treat them justly along the lines I have sketched – is missing from current discussions of social justice.<sup>43</sup> The semiconsequentialist approach articulates an important intermediate attitude toward natural handicaps and disabilities. It rejects, on the one hand, the quest for the social order that would generate the best overall distribution of quality of life by using social benefits to *compensate* for natural handicaps and disabilities. It also rejects, on the other hand, conceptions of social justice like those advocated by Nozick and Gauthier, who celebrate or at least condone social institutions under which natural handicaps and disabilities would, via lesser bargaining power, be *compounded* by severe social burdens and disadvantages. A semiconsequentialist approach aims for the best overall distribution of *social* benefits and burdens only, without taking account of information about the preexisting distribution of natural endowments. Neither compensating nor compounding natural inequalities, Rawls's two principles constitute a semiconsequentialist criterion of justice in this sense. But rather than self-consciously justify its semiconsequentialist character, Rawls marshals in its defense a contractualist machinery that, as we have seen, inescapably favors a social order that would use social benefits to compensate for natural handicaps and disabilities.

The idea of a semiconsequentialist conception of justice is important for exposing the prevailing bias toward purely recipient-oriented conceptions of social justice, important in making room for the thought that a social order that treats its participants justly need not be the one that promotes the best attainable overall distribution among its participants. While importantly correct on this point, the idea is nevertheless too crude in two respects. First, the distinction between natural and social components of human quality of life cannot be drawn clearly enough, and is not significant enough, to bear the great moral weight here placed upon it. Natural and

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<sup>43</sup> The adjective "semiconsequentialist" is introduced in Pogge 1989: 47 et passim. A semiconsequentialist conception of social justice is there defined as one that asserts (A) that any (social) benefits and burdens a social order brings about are always more important than any (natural) goods and ills it merely lets happen (so that the latter can figure at most as a tie-breaker in assessing the justice of social orders) and (B) that any (social) benefits and burdens a social order brings about are of equal importance for assessing the justice of this order (benefits and burdens a social order establishes thus never have more weight than equivalent benefits and burdens it foreseeably engenders). There is a detailed discussion in Chapter 4 of the implications of a semiconsequentialist conception of social justice for the design of a just health-care system.

social factors interpenetrate in their effects, so that given social benefits and burdens may have vastly differential impacts on persons who differ in natural endowments (as when the absence of proper sidewalks with curbs is catastrophic for the blind and only a nuisance for the sighted). And natural factors are by no means independent of social factors which, for instance, influence mating patterns and thereby the instantiated genotypes of the next generation – not to speak of mutations and birth defects due to pollution and other socially produced environmental factors. It is then incorrect, or at least overly simplistic, to view serious handicaps and disabilities as burdens that persons bring along with them when they enter society.

Secondly, semiconsequentialism is still too close to purely recipient-oriented conceptions of social justice by accepting the notion that at least the benefits and burdens social orders allocate to persons should be assessed by the impact they tend to have upon persons' overall quality of life. This again is too simple. For, quite apart from their impact on quality of life, it makes a considerable moral difference whether such benefits and burdens are, for example, *mandated* by a social order (e.g., prescribed by law) or merely come about pursuant to such an order through the decisions interacting persons make under its rules.<sup>44</sup>

If these two complications are to be taken into account, then the most plausible general structure for a conception of social justice would involve weighting the impact that social institutions have on relevant quality of life according to how they have this impact. Let me illustrate this structure by distinguishing, in a preliminary way, six basic ways in which a social order may have an impact on the medical conditions persons suffer under it. In my illustration, I will use six different scenarios in which some particular medical condition suffered by certain innocent persons can be traced to the fact that they, due to the arrangement of social institutions, avoidably lack some vital nutrients V (the vitamins contained in fresh fruit, perhaps). The six scenarios are arranged in order of their moral weight, according to my intuitive, pre-reflective judgment.<sup>45</sup> In scenario 1, the deficit is *officially mandated*, paradigmatically by the law: legal restrictions bar certain persons from buying foodstuffs containing V. In scenario 2, the deficit results from *legally authorized* conduct of private subjects: sellers of foodstuffs containing V lawfully refuse to sell to certain persons. In scenario 3, social institutions *foreseeably and avoidably engender* (but do

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<sup>44</sup> This problem is discussed at length in Pogge 1995, esp. Section V. The main thought there is that, if we view all social benefits and burdens as on a par, then justice would permit, even require, that we authorize our officials deliberately to produce social burdens where doing so reduces social burdens overall. Such authorizations would be especially problematic in the domain of the criminal law: Should there be rough interrogations of suspects, lower standards of evidence, strict-liability criminal statutes, the death penalty for drunk drivers? Yes, would be the answer, if and to the extent that such measures reduce risks and dangers for the representative citizen overall. The criminal-justice system is to be designed so as to minimize the sum of two burdens: the expected burden from harms inflicted by criminals plus the expected burden from harms inflicted by the authorities.

<sup>45</sup> Other things must be presumed to be equal here. Medical conditions become less weighty, morally, as we go through the list. But less weighty medical conditions may nevertheless outweigh weightier ones if the former are more severe or more numerous than the latter. In this way, an advantage in reducing scenario-4 type deficits may outweigh a much smaller disadvantage in engendering scenario-3 type deficits, for example.

not specifically require or authorize) the deficit through the conduct they stimulate: certain persons, suffering severe poverty within an ill-conceived economic order, cannot afford to buy foodstuffs containing V. In scenario 4, the deficit arises from private conduct that is *legally prohibited but barely deterred*: sellers of foodstuffs containing V illegally refuse to sell to certain persons, but enforcement is lax and penalties are mild. In scenario 5, the deficit arises from social institutions *avoidably leaving unmitigated the effects of a natural defect*: certain persons are unable to metabolize V due to a treatable genetic defect, but they avoidably lack access to the treatment that would correct their handicap. In scenario 6, finally, the deficit arises from social institutions *avoidably leaving unmitigated the effects of a self-caused deficit*: certain persons are unable to metabolize V due to a treatable self-caused disease – brought on, perhaps, by their maintaining a long-term smoking habit in full knowledge of the medical dangers associated therewith – and avoidably lack access to the treatment that would correct their ailment.

This differentiation of six ways in which social institutions may be related to the goods and ills persons encounter is preliminary in that it fails to isolate the morally significant factors that account for the descending moral weight of the relevant medical conditions. Since trying to do this here would take up too much space, let me merely venture the hypothesis that what matters is not merely the *causal* role of social institutions, how they figure in a complete causal explanation of the deficit in question, but also (what one might call) the implicit *attitude* of social institutions to the deficit in question.<sup>46</sup> To illustrate: A high incidence of medical conditions caused by domestic violence may show a society's legal order to be unjust if it could be substantially reduced if police, prosecutors and judges were appropriately trained and instructed to enforce existing criminal statutes vigorously and to impose serious punishments (scenario 4). But the same abuse of the same women would indicate a much greater injustice, if it were not illegal at all – if spouses were legally free to beat each other or, worse, if men were legally authorized to beat the women in their households (scenario 2).

My preliminary classification is meant to suggest a scalar understanding of negative and positive responsibility: The lower a rank institutionally avoidable medical conditions occupy on the proposed ordering, the more positive, and hence the less weighty, is the responsibility of those who cooperate in the coercive imposition of a social order giving rise to these conditions.<sup>47</sup>

My preliminary classification is surely still too simple. In some cases one will have to take account of other, perhaps underlying causes; and one may also need to recognize interdependencies among causal influences and fluid transitions between

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<sup>46</sup> This implicit attitude of social institutions is independent of the attitudes or intentions of the persons shaping and upholding these institutions: Only the former makes a difference to how just the institutions are – the latter only make a difference to how blameworthy persons are for their role in imposing them.

<sup>47</sup> To illustrate: Whether it is unjust for social institutions not to entitle indigent persons to treatment for a certain lung disease – and, if so, how unjust this is – may be greatly affected by whether this disease is contracted through legally authorized pollution by others (scenario 2) or self-caused through smoking in full awareness of its risks (scenario 6).

the classes.<sup>48</sup> I must bypass these complications here, merely emphasizing once more the decisive point missed by the usual theories of justice: To be morally plausible, a criterion of social justice must take account of – and its application thus requires information about – the particular relation between social institutions and human quality of life, which may determine whether some institutionally avoidable deficit is an injustice at all and, if so, how great an injustice it is. Such a criterion must take account, that is, not merely of the comparative impact a social order has on the distribution of quality of life, but also of *how* it exerts this influence. If this is right, then it is no more true of social rules than of subjects and conduct that they are just if and insofar as they promote a good overall distribution. Appraising overall distributions of goods and ills (or of quality of life) may be an engaging academic and theological pastime, but it fails to give plausible moral guidance where guidance is needed: for the assessment and reform of social rules as well as of subjects and their conduct.

## In conclusion

Bearing in mind that the material introduced in the preceding four paragraphs requires further reflection and deliberation, let me close with the following suggestions. Social institutions can be said to contribute substantially to medical conditions if and only if they contribute to their genesis through scenarios 1-3. Supposing that at least the more privileged adult citizens of affluent and reasonably democratic countries are materially involved in upholding not only the economic order of their own society but also the global economic order, we can say two things about such citizens: Pursuant to my second thesis, they would have equally strong moral reason to prevent and mitigate compatriots' medical conditions due to avoidable poverty engendered by domestic economic institutions and to prevent and mitigate foreigners' medical conditions due to avoidable poverty engendered by global economic institutions. And, pursuant to my combined thesis, they would have stronger moral reason to prevent and mitigate foreigners' medical conditions due to avoidable poverty engendered by global economic institutions than to prevent and mitigate compatriots' medical conditions that are not due to mandated, authorized, or engendered deficits.

In the United States, some 40 million mostly poor citizens avoidably lack adequate medical insurance. Due to their lack of coverage, many of these people, at any given time, suffer medical conditions that could be cured or mitigated by treatment not in fact accessible to them. This situation is often criticized as manifesting an injustice in the country's social order. Now imagine that the poverty of the 40 million were so severe that it not only renders them unable to gain access to the medical care they need (scenarios 5 and 6), but also exposes them to various medical conditions due specifically to poverty-related causes (scenario 3). This additional feature,

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<sup>48</sup> The case of smoking, for instance, may exemplify a fluid transition between scenarios 2 and 6 insofar as private agents (cigarette companies) are legally permitted to try to render persons addicted to nicotine.

which plays a substantial role for some fraction of the 40 million, considerably aggravates the injustice. And this additional feature is central to the plight of the world's poorest populations. These people generally lack access to adequate care for the medical conditions they suffer, of course. But the main effect of an extra \$50 or \$100 of annual income for them would not be more medical care, but much less need for such care. If they were not so severely impoverished, they would not suffer in the first place most of the medical conditions that, as things are, they also cannot obtain adequate treatment for.

I have tried to lend some initial plausibility to the view that such poverty-induced medical conditions among the global poor are, for us, morally on a par with poverty-induced medical conditions among the domestic poor and also of greater moral weight than not socially induced medical conditions among poor compatriots unable to afford adequate treatment. In the first two cases, but not in the third, we are materially involved in upholding social institutions that avoidably contribute substantially to the production of medical conditions and of the countless premature deaths resulting from them.

## Bibliography

- Ameson, Richard (1989) 'Equality and Equality of Opportunity for Welfare', *Philosophical Studies*, 56: 77-93.
- Black, Douglas Sir, J. N. Morris, Cyril Smith, Peter Townsend (1990) 'The Black Report', in Peter Townsend, Peter and Nick Davidson (eds.) *Inequalities in Health*. London: Penguin
- Bok, Hilary (1996) 'Acting Without Choosing', *NOÛS* 30: 174-96.
- Carens, Joseph (1987) 'Aliens and Citizens: The Case for Open Borders', *Review of Politics*, 49: 251-273.
- Cohen, G.A. (1989) 'On the Currency of Egalitarian Justice', *Ethics*, 99: 906-44.
- Cohen, G.A. (1992) 'Incentives, Inequality, and Community', in Grethe Peterson (ed.) *The Tanner Lectures on Human Values XIII*. Salt Lake City: University of Utah Press.
- Cohen, G.A. (1997) 'Where the Action Is: On the Site of Distributive Justice', in *Philosophy and Public Affairs*, 26: 3-30.
- Cohen, G.A. (2000) *If You're an Egalitarian, How Come You're so Rich?*. Cambridge, MA: Harvard University Press.
- Daniels, Norman (1985) *Just Health Care*. Cambridge: Cambridge University Press.
- Dreze, Jean, and Amartya Sen (1995) *India: Economic Development and Social Opportunity*. Delhi: Oxford University Press.
- Dworkin, Ronald (1981a) 'What is Equality? Part 1: Equality of Welfare', *Philosophy and Public Affairs*, 10: 185-246.
- Dworkin, Ronald (1981b) 'What is Equality? Part 2: Equality of Resources', *Philosophy and Public Affairs*, 10: 283-345.
- Dworkin, Ronald (1987) 'What is Equality? Part 3: The Place of Liberty', *Iowa Law Review*, 73: 1-54.
- Dworkin, Ronald (2000) *Sovereign Virtue*. Cambridge, MA: Harvard University Press.
- Elster, Jon, and Roemer, John (1991) (eds.) *Interpersonal Comparisons of Well-Being*. Cambridge: Cambridge University Press.
- Evans, Robert G., Morris L. Barer, Theodore R. Marmor (eds.) (1994) *Why Are Some People Healthy and Others Not? The Determinants of Health of Populations*. New York: Aldine de Gruyter.
- Galston, William (1980) *Justice and the Human Good*. Chicago: University of Chicago Press.
- Gauthier, David (1986) *Morals by Agreement*. Oxford: Clarendon Press.
- Griffin, James (1986) *Well-Being*. Oxford: Clarendon Press.
- Gwatkin, D. R. (2000) 'Health Inequalities and the Health of the Poor: What Do We Know? What Can We Do?', *Bulletin of the World Health Organization*, 78: 3-15. Also available at <http://www.who.int/bulletin/tableofcontents/2000/vol.78no.1.html>
- Kagan, Shelly (1989) *The Limits of Morality*. Oxford: Oxford University Press.

- Lam, Ricky, and Wantchekon, Leonard (1999) 'Dictatorships as a Political Dutch Disease', Working Paper, Yale University.
- Murphy, Liam (2000) *Moral Demands in Non-Ideal Theory*. Oxford: Oxford University Press.
- Nussbaum, Martha, and Sen, Amartya (1993) (eds.) *The Quality of Life*. Oxford: Oxford University Press.
- O'Neill [Neill], Onora (1975) 'Lifeboat Earth', *Philosophy and Public Affairs*, 4: 273-92.
- Nagel, Thomas (1977) 'Poverty and Food: Why Charity Is Not Enough', in Peter Brown and Henry Shue (eds.), *Food Policy: The Responsibility of the United States in the Life and Death Choices*. New York: The Free Press.
- Nozick, Robert (1974) *Anarchy, State, and Utopia*. New York: Basic Books.
- Parfit, Derek (1984) *Reasons and Persons*. Oxford: Oxford University Press.
- Pogge, Thomas W. (1989) *Realizing Rawls*. Ithaca: Cornell University Press.
- Pogge, Thomas W. (1995) 'Three Problems with Contractarian-Consequentialist Ways of Assessing Social Institutions', *Social Philosophy and Policy*, 12: 241-66.
- Pogge, Thomas W. (1998a) 'The Bounds of Nationalism', in Jocelyne Couture, Kai Nielsen, and Michel Seymour (eds.), *Rethinking Nationalism, Canadian Journal of Philosophy Supplementary Volume 22*. Calgary: University of Calgary Press, 463-504.
- Pogge, Thomas W. (1998b) 'A Global Resources Dividend' in David A. Crocker and Toby Linden (eds.), *Ethics of Consumption: The Good Life, Justice, and Global Stewardship*. Lanham, MD: Rowman & Littlefield.
- Pogge, Thomas W. (2000a) 'On the Site of Distributive Justice: Reflections on Cohen and Murphy', *Philosophy and Public Affairs* 29: 137-69.
- Pogge, Thomas W. (2000b) 'Priorities of Global Justice', forthcoming in *Metaphilosophy*.
- Rachels, James (1979) 'Killing and Starving to Death,' in *Philosophy*, 54: 159-71.
- Ravallion, Martin, and Shaohua Chen (1997) 'What Can New Survey Data Tell Us about Recent Changes in Distribution and Poverty?' in *The World Bank Economic Review*, 11: 357-82 ([www.worldbank.org/html/prddr/prdhome/peg/wps01/poverty.pdf](http://www.worldbank.org/html/prddr/prdhome/peg/wps01/poverty.pdf)).
- Rawls, John (1982) 'Social Unity and Primary Goods', in Amartya Sen and Bernard Williams (eds.), *Utilitarianism and Beyond*. Cambridge: Cambridge University Press.
- Rawls, John (1996) *Political Liberalism*. New York: Columbia University Press [1993].
- Rawls, John (1999a) *A Theory of Justice*. Cambridge, MA: Harvard University Press [1971].
- Rawls, John (1999b) *The Law of Peoples*. Cambridge MA: Harvard University Press.
- Roemer, John (1996) *Theories of Distributive Justice*. Cambridge MA: Harvard University Press.
- Scanlon, Thomas M. (1999) *What We Owe To Each Other*. Cambridge, MA: Harvard University Press.
- Sen, Amartya (1981) *Poverty and Famines*. Oxford: Oxford University Press.
- Sen, Amartya (1982) 'Equality of What?', *Choice, Welfare and Measurement*. Cambridge: Cambridge University Press.
- Sen, Amartya (1992) *Inequality Reexamined*. Cambridge MA: Harvard University Press.
- Singer, Peter (1972) 'Famine, Affluence and Morality', *Philosophy and Public Affairs*, 1: 229-43.
- Thompson, Dennis (1980): 'Moral Responsibility of Public Officials: The Problem of Many Hands', *American Political Science Review*, 74: 905-16.
- UNDP (1998) *Human Development Report 1998*. New York: Oxford University Press.
- UNDP (1999) *Human Development Report 1999*. New York: Oxford University Press.
- UNDP (2000) *Human Development Report 2000*. New York: Oxford University Press.
- Unger, Peter (1996) *Living High and Letting Die: Our Illusion of Innocence*. Oxford: Oxford University Press.
- Wantchekon, Leonard (1999) 'Why do Resource Dependent Countries Have Authoritarian Governments?', Working Paper, Yale University ([www.yale.edu/leitner/pdf/1999-11.pdf](http://www.yale.edu/leitner/pdf/1999-11.pdf)).
- Wilkinson, Richard (1996) *Unhealthy Societies: The Afflictions of Inequality*. London and New York: Routledge.
- World Bank (1999) *World Development Report 1999/2000*. New York: Oxford University Press. Also available at <http://www.worldbank.org/wdr/2000/fullreport.html>.
- World Bank (2000) *World Development Report 2000/2001*. New York: Oxford University Press. Also available at <http://www.worldbank.org/poverty/wdrpoverty/report/index.htm>.
- WHO (2000) *The World Health Report 2000. Health Systems: Improving Performance*. Geneva: WHO Publications. Also available at <http://www.who.int/whr/2000>.