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Academic Supervisors:
Assoc. Prof. of International Relations
Maxim V. Kharkevich
Assoc. Prof. of Comparative Public Law
Benedetta Barbisan
Full Prof. of Moral Philosophy
Benedetta Giovanola

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ФЕДЕРАЛЬНОЕ ГОСУДАРСТВЕННОЕ АВТОНОМНОЕ ОБРАЗОВАТЕЛЬНОЕ УЧРЕЖДЕНИЕ ВЫСШЕГО ОБРАЗОВАНИЯ «МОСКОВСКИЙ ГОСУДАРСТВЕННЫЙ ИНСТИТУТ МЕЖДУНАРОДНЫХ ОТНОШЕНИЙ (УНИВЕРСИТЕТ) МИНИСТЕРСТВА ИНОСТРАННЫХ ДЕЛ РОССИЙСКОЙ ФЕДЕРАЦИИ»

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кандидата политических наук

Научные руководители:

Кандидат политических наук, доцент
Харкевич Максим Владимирович

Доцент сравнительного публичного права
Бенедетта Барбизан

Доцент моральной философии
Бенедетта Джованола

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To all those peoples and persons that
throughout the world strive for more

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Introduction

This *introduction* outlines the research question of the dissertation, the degree of the development of the problem, the theoretical and methodological basis of the work and the goals and objectives this research seeks to reach. The main question guiding the research is explained by underlining its relevance in the debate about universal fundamental rights and the agents of global justice. The introduction aims also at specifying the object, the subject, the chronological framework, the practical relevance and the findings of the research, along with those related topics and debates which are left out of the investigation and the underpinning reasons which justify this choice. Thus, the analysis of the state-of-art on the topic is carried out focusing on the main historical works on the development of the concept of universal fundamental rights and the current scientific literature on global justice. Moreover, the theoretical and methodological basis of this research is outlined, underlining how an interdisciplinary methodology which combines normative and positive approaches, as well as an ethical-critical approach with a political-legal approach, is apt to provide a well-structured investigation of the research topic.

This research seeks to further develop the debate on global justice and universal fundamental rights in the spheres of public ethics, political theory and political science. Indeed, the concept of justice is not only central in moral, political and social philosophy but is also becoming crucial for world politics and international relations. As the expert of international affairs Troitskiy argues, «the rhetoric of justice, which seems to be driving much of the domestic political scene in economically advanced and developing countries alike, will increasingly spill over and impact international politics» (Troitskiy, 2021, p. 93). Even though this statement is more a realist judgement on the role and use of the concept of justice in the global domain, regardless of its normative frontier, it nevertheless demonstrates that justice debate affects international relations and is not only a matter of philosophical speculation. Thus, the practical relevance of the dissertation relies on the fast development of the interdependence and interconnection of the world along with the rise of global unprecedented challenges

which require apt answers and, above all, the elaboration of new paradigms, which this research seeks to investigate.

There is a wide agreement that one of the most relevant of these challenges is the growth of global inequalities. Indeed, inequalities at the local level are relatively small compared to inequalities at the global level – a piece of evidence which, while not surprising, does not seem to catch the attention it would deserve at the levels of empirical research and normative and political theories. As a matter of fact, this focal issue is one of the main causes of other global endemic and pervasive problems such as sharply different standards of living, massive migrations, global discrimination in opportunities, and environmental degradation which, in turn, may lead to further deterioration of global inequalities. If it is true that the growth of inequalities in civil liberties and socio-economic opportunities potentially underlines a lack of protection of fundamental rights at the global level, it is not clear the extent to which this must be understood as such – a failure in the comprehensive theoretical understanding of *the extent to which* the entitlement of universal fundamental rights to each human being justifies their enforcement at the global level.

Indeed, the majority of authors dealing with global justice and fundamental rights put considerable effort into defending one specific aspect of justice, a distinctive category of rights and duties, only one level of the scope of justice, and one definite agent of global justice. As a matter of fact, on the one hand, statism focuses on the political aspect of liberal socio-economic justice, the liberal rights of peoples and the associative duties of their fellow countrymen, the domestic scope of justice and the nation-states as the main agent of global justice and as the principal unit of concern at the global level. On the other hand, cosmopolitanism emphasizes the moral aspect of liberal socio-economic justice, the socio-economic rights of individuals and the general duties we owe to other human beings regardless of their affiliation, the global scope of justice, the global and international institutions as the primary agents of global justice and the individual as the main moral unit of reference at the global level. However, statism and cosmopolitanism seem to miss a key focal point, which is supposed to be the very essence of the concept of justice, that justice is a matter of a *fair mean* and

ought to be pursued *to some extent* according to an intermediate amount, as Aristotle (350 BCE/1999, p. 81) brilliantly pointed out.

Thus, **the core question** that guides this research is to what extent universal fundamental rights ought to be fulfilled at the global level and which are the agents entitled to pursue global justice. To provide a picture of the current development of the problem, this dissertation analyzes the state-of-art on the topic focusing on the main historical theories on the development of the concept of universal fundamental rights and the current scientific literature on the fulfillment of these rights at the global level and the agents of global justice. The literature review aims at pointing out the scientific need to investigate the above-mentioned topics. Firstly, the dissertation tackles the problem of how the concept of universal rights was historically developed in the modern-era political thought, analyzing the works of the authors de Vitoria, Hobbes, Locke, Grotius and Kant and probing to what extent their conceptions of universal rights are biased by their society of origin and particular interests at stake (leading them to a parochial conception of universal rights). Secondly, the limitations of the main theories of global justice, i.e. statism and cosmopolitanism, are discussed chiefly taking into account, respectively, the works of Miller, Nagel, Blake and of Pogge, Beitz and Moellendorf. In this regard, the dissertation seeks to establish a middle road between these two theories, based on the Aristotelian's conception of justice and the critical theory of social and political justice, the discursive moral and political constructivism and the really basic right to reciprocal and general justification of Forst, which seeks to reconcile the moral and political aspects of justice and to take into account both the current fast development of the interconnection and the interdependence of the world, the feasibility of the implementation of fundamental rights and the imposition of the corresponding duties at the global level. Accordingly, the related issues with which this work deals are the intertwined relation between the categories of civil and political rights and socio-economic rights, the extent to which universal fundamental rights ought to be upheld at different levels of justice and the moral and political justification of the corresponding duties they entail. Thirdly, the issue of the agents which currently affect the fulfillment of universal fundamental rights is examined with a focus on the

distribution of power, understood as the most important good of justice, at the global level, the category of the avant-garde political agency (relying on the work of Lea Ypi) and the role of the Permanent Peoples' Tribunal and Constitutional Courts as potential agents of global justice which can foster the protection of universal fundamental rights at the global level. Finally, the dissertation discusses the phenomenon of the *cross-judicial fertilization* dealing with the problem of the common understanding of the legal ways according to which universal fundamental rights must be ensured.

Therefore, the main problem this dissertation deals with is the extent to which universal fundamental rights are (and should be) implemented at the global level and how different global agents affect the secure access to their basic object. To provide a comprehensive explanation of this problem, the **following tasks** are set and solved:

• identify the historical development of the notion of universal fundamental rights (and the contingent factors affecting those peculiar conceptualizations of this concept), the theories of global justice dealing with the fair distribution of moral benefit (rights) and moral burdens (duties) at the global level and the role of the agents which actually and potentially affect this distribution.

• determine the ratio between the under-fulfillment of specific categories of rights and the theoretical lack of recognition of their universality.

• evaluate the role of the agents affecting the distribution of power at the global level, and, accordingly, the distribution of rights and duties, and the potential of rising agents in the global arena, such as the civil society, the Permanent Peoples' Tribunal and the Constitutional Courts, which strive for a major protection of fundamental rights and for apt common solutions to unprecedented global challenges, such as climate change.

• justify the need for a deeper investigation of the relation between different categories of rights, that is civil and political rights and socio-economic rights whose overall implementation can be carried out in contrast to one another as well as in synergy.

• define the role of the agents and the instruments that are potentially available to ensure a greater fulfillment of fundamental rights at the local and global levels.

• formulate practical recommendations to develop the potential of agents of global justice, such as the Permanent Peoples' Tribunal and the Constitutional Courts, to ensure a more just distribution of rights and duties at different levels according to a *fair mean* of different universal fundamental rights and the moral and political justifiability of their corresponding duties.

The dissertation makes use of an interdisciplinary **methodology**, which combines an historical approach by probing the roots of the concept of universal rights (chapter I), an ethical-critical approach, with elements of the Critical School, by critically assessing the normative and positive argumentations of the leading theories of global justice and seeking to develop a proposal to go beyond their limitations (chapter II and chapter III), a political-legal approach by examining the prerogatives of the Permanent Peoples' Tribunal and Constitutional Courts as potential agents of global justice (chapter IV). The interdisciplinary methodology is apt for the analysis of the object of the research since the topics discussed in the dissertation belong to different fields of knowledge however lacking an adequate cross-cutting examination. The interdisciplinary approach also supposes the involvement of both normative and descriptive methodologies. Accordingly, the dissertation takes into account both strictly theoretical studies – at the levels of public ethics and political theory – and empirical research. For example, regarding the agents of global justice the dissertation conducts an analysis which looks at them in their dual role as actual and potential agents affecting and fostering the implementation of fundamental rights and the enforcement of the corresponding duties at different levels of governance. Moreover, in the attempt to develop an original proposal that goes beyond the limitations of the main theories of global justice analyzed through the above-mentioned critical approach, the dissertation makes use of methodologies from both moral and political philosophy as well as political science and international relations. For example, to pursue the above-mentioned attempt, this research borrows elements of the Constructivism methodology and the Critical School, conceiving a *fair mean* of universal fundamental rights and a *balanced approach* toward global justice constructed on Forst's right to justification and Aristotle's understanding of distributive justice and probing the practical application of this innovative approach

in a few case studies regarding the balance between different fundamental rights. Consequently, in order to investigate the practical implication of the argumentations sketched out in the ethical-critical part, the dissertation discusses the process of balancing fundamental rights in the institutional response to the covid-19 pandemic with regard to the right to life vis-à-vis liberty-rights and few *quasi*-legal attempts to enforce fundamental rights at the global level. Moreover, in regard to the legal and political agents entitled to foster global justice, two specific case studies are taken into account, that is the Permanent Peoples' Tribunal and the *cross-judicial fertilization* among Constitutional Courts. In addition to the latter case study approach, another specific method adopted by the dissertation is the Semantic-Pragmatic Approach to concept analysis which is used to examine the scope of fundamental rights in regard to the analysis of the particularistic bias of the modern-era conception of their universalism and the description of the social and political contexts, shaped by relation of cooperation as well as conflict, which make claims of (global) justice meaningfully applicable and in which, accordingly, they must be framed. Moreover, an empirical approach is adopted in order to provide a sketch of the current global level of freedom and socio-economic inequalities.

The **objects** of the research are the universal fundamental rights and the global justice. These objects will be investigated through the analysis of the genesis and historical development of the concept of universal rights, the relation between different categories of rights and the justification of their corresponding duties and the actual and potential role of agents of global justice in affecting the distribution of rights and duties.

The **subject** of the research is the extent to which fundamental rights must be fulfilled at the global level and the agents entitled to foster global justice which are examined through the comparison of the main theories of global justice, i.e. statism and cosmopolitanism. The agents of global justice such as states, global institutions, private organizations, and civil society, are analyzed according to the above-mentioned theories and focusing on the roles of the avant-garde political agencies and the phenomena of the Permanent Peoples' tribunal and the *cross-judicial fertilization* among Constitutional Courts.

The dissertation research embraces the **period** from the fifteenth to the nineteenth century with regard to the analysis of the development of the concept of universal rights while the chronological framework of the other parts of the work refers mainly to the contemporary era. Indeed, in the recent period, from a more theoretical point of view, the debate on global justice is spreading and, from a more empirical point of view, the global challenges of the growing inequalities in the enjoyment of fundamental rights and the rising of different agents of justice at the global level are gaining momentum.

The **practical significance** of this work relies on the need of new normative and descriptive models and paradigms, which this dissertation seeks to investigate, to deal with the increase of global interaction among different agents and, accordingly, of the interconnection and interdependence of the world. Those are the reasons why, different, and to some extent new, agents are rising at the global level and their current and potential role in affecting the distribution of rights and duties is worth to be examined.

The core findings of the research can be broadly summarized by the following points:

• The modern-era understanding of the concept of universal rights is biased by their society of origin and particular interests at stake along with the context of reference.

• The two current main theories of global justice, namely statism and cosmopolitanism, endorse an imbalanced approach in the estimation of the extent to which fundamental rights ought to be implemented and show a lack of understanding of the agents entitled to enforce fundamental rights at global level.

• Universal fundamental rights must be understood in relation to one another and their overall fulfillment must be carried out to some extent according to a core fair mean. The empirical case of the institutional response to the pandemic confirms this result.

• The innovative balanced approach toward global justice is able to reconcile the political and moral sides of the coin of global justice and takes together the entitlement of universal fundamental rights and duties to each human being with the ties and commitment rising from the particular relations human beings owe one another.

• Permanent Peoples' Tribunal and Constitutional Courts represent two valid examples to foster global justice keeping up with the ever-increasing ground for global justice, shaped by relations of cooperation and conflicts as well as global challenges.

It is also relevant to underline three points on the scope of this dissertation. Firstly, this work is not so ambitious to elaborate a full-fledged theory of universal rights and global justice, rather it seeks to add some elements to overcome the limitations of the main theories on this topic and to develop an adequate answer to questions which are partially left unsolved in the literature. Secondly, in order to focus on the scope of global justice and the realization of universal fundamental rights at the global level the dissertation does not intend neither to delve into the specific foundation of (competing) universal rights and principles of justice, which has long been debated by liberals, libertarians, egalitarians, and communitarians, nor to discuss the features of the political and socio-economic reforms to fight against unjust inequalities for the sake of the enjoyment of fundamental rights. Thirdly, the dissertation does not delve into the wide debate[1] on what is the specific basic good – broadly and abstractly conceived, according to Pogge (2008, p. 43) – which ought to be taken into account as the currency of justice, such as Rawls' social primary goods[2], power for Forst, Dworkin's resources, capabilities for Sen and Nussbaum, Arneson's welfare, Nozick's liberty-rights, and accordingly to be equally distributed. Endorsing an approach which considers power and fundamental rights as the main components of the currency of justice, the dissertation keeps the focus on the assessment of the extent to which the global context can be recognized as a context of justice and, thus, the global distribution of fundamental rights and duties must be assessed as unjust.

The dissertation **structure** aims to allow a comprehensive and exhaustive investigation of the topic from different fields of knowledge, starting from the

[1] The debate has been systematized and fostered by Amartya Sen (1980; see also Cohen, 1990, 1989; Norman, 1990).

[2] «All social values — liberty and opportunity, income and wealth, and the social bases of self-respect — are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage. Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation. As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights, liberties, and opportunities, and income and wealth […]. These are the social primary goods» (Rawls, p. 53).

examination of its theoretical-historical basis, developing it through the ethical-critical analysis of its main points and, at the end, moving to its political-legal aspects. Accordingly, the structure of the dissertation is organized as follows:

Chapter I investigates the historical roots and philosophical development of the concept of universal rights in the modern era through the examination of its conceptualization by the authors de Vitoria, Grotius, Hobbes, Locke, and Kant with a peculiar focus on their fundamental contributions on the gradual widening of the scope of universal rights. Another objective of this chapter is to explain to what extent their conceptions of universal rights are biased by their society of origin and particular interests at stake (in this case, those of the Europeans). That is the reason why the supposed contribution of this first chapter is to understand how the current conceptualization of rights carry the legacy of these asymmetric features and, accordingly, to take this fact into account in order to make fundamental rights truly universal without necessarily being detachable from particular philosophical traditions and regional ethical views.

Chapter II provides an empirical sketch of the current level of global inequality and, above all, critically assesses the two main theories of global justice, statism and cosmopolitanism, according to which fundamental rights, and their corresponding duties, ought to be differently upheld, and enforced, at different levels. This chapter seeks to underline that both theories endorse an imbalanced approach in assessing the extent to which fundamental rights ought to be fulfilled at the global level since statism underestimates the global context as a growing context of justice and the relevance of socio-economic inequalities and the fundamental rights of human beings as such while cosmopolitanism underassesses the special duties which we owe toward our fellow countrymen and civil liberties and political rights, along with the liberal rights of peoples.

Chapter III aims at going beyond the limitations of statism and cosmopolitanism defending the equal relevance of both fundamental civil and political rights and socio-economic rights, and their corresponding duties, at the global level and the need for the assessment of their implementation according to the measure of their moral and political

justification. To pursue this objective, this chapter argues for the conceptualization of a *balanced approach* toward justice and a *fair mean* among these two categories of rights which can be morally and politically constructed on the very basic right to reciprocal and general justification. Accordingly, the focus is posed on the interconnection as well as conflicts between these two categories of rights, and their corresponding duties, establishing a *measure* according to which their justification can be assessed, and their implementation and enforcement be ensured. This chapter seeks also to prove that this conceptualization of universal fundamental rights, which takes into account Aristotle's conception of justice and Forst's critical theory of political and social justice, can provide a sketch of how a fair implementation and enforcement of peoples' and persons' rights and duties ought to be conceived at the global level.

Chapter IV aims at analyzing the constellation of agents which affect the global distribution of rights and duties and those which are entitled to foster global justice and to implement fundamental rights at the global level. The role of these agents is assessed trying to bridge descriptive and normative methodologies examining, on the one hand, how they affect the actual distribution of rights and duties and, accordingly, of power, at different levels and, on the other hand, investigating what their potential is in ensuring a greater fulfillment of universal fundamental rights. Accordingly, the chapter delves into the so-called avant-garde political agencies, with particular focus on the Permanent Peoples' Tribunal and the Constitutional Courts, as examples of phenomena which can be the catalysts for the development of global justice. The role of the Constitutional Courts is discussed through the analysis of the *cross-judicial fertilization* as an international practice which can improve the legal adjudication of rights both at national and global levels. To this aim, this final part of the chapter examines the principles, which are the object of *cross-judicial fertilization*, according to which the adjudication of different rights is carried out. Indeed, the legal adjudication of rights is considered fundamental, although not the only means, to the realization of universal fundamental rights. Furthermore, this final part discusses the application of the principle of proportionality by the Italian Constitutional Court and the *cross-judicial fertilization* as

an embryonal phenomenon which can foster common institutional practices at the global level.

The *conclusion* summarizes the main results of the research, outlining the most salient points of each chapter and highlighting their contribution to fill the gap in the current scientific literature. Accordingly, the conclusion explains how the results of the study can be useful to sketch out the practical implications of the research and potential recommendations for agents and experts working in this field. To conclude with, further directions of research which the results of this study may have unlocked are sketched out.

Chapter I. The historical development of the concept of universal rights

Providing a universally shared definition of the concept of universal rights is considerably arduous since peoples and persons[3] spread throughout the world show remarkable differences in their conceptualization and perception of this term. Undoubtedly, they believe in and maintain different philosophical, religious, political doctrines with distinct roots and origins. In addition, when the concept of 'right' does not belong to their tradition, it has been introduced by other peoples and persons over time, in many cases in an unpeaceful manner (with all the related implications). However, in 1948 most nations agreed on a common document, the Universal Declaration of Human Rights[4], reaffirming their common faith on the fundamental human rights which are listed in it. The UDHR can be considered as the proof of the worldwide spread of the language of fundamental rights in people's philosophical, political and juridical spheres and, according to various preeminent scholars such as Norberto Bobbio and Thomas Pogge, as a starting point to build a consensus on the principles and rules which should rule global individuals' interaction and the means to fulfill fundamental rights at the global level.

The principle of equal rights recognized to each human being is enshrined in the Preamble of the UDHR which establishes that the «recognition of the inherent dignity

[3] In this dissertation persons are understood as individuals while peoples are meant as nation-states *qua* collective agents. For a clarification of the distinction between these two terms and the main features of peoples see Rawls, 1999, p. 23.
[4] Hereinafter referred to as UDHR.

and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world» (UN General Assembly, 1948, preamble). Thus, each human being is identified as a rights-holder and the articles of the UDHR outline fundamental rights which are indistinctly recognized to every human being. Moreover, the nations and peoples are committed, as a moral and, for some experts, *quasi*-legal, duty, to uphold the rights listed in the UDHR. Indeed, the General Assembly proclaims the UDHR as a

> common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction (UN General Assembly 1948, preamble)

Thus, according to the UDHR, fundamental rights are entitlements which belong to each human being as such. In this vein, the conception of human rights gets close to the definition of right as «individual right» that is as a «subjective position of advantage of which the holder is one whose interest receives direct protection from the legal rule, by imposing an obligation to respect this interest to other parties» (Baccelli, 2009, p. 86). Still, the concept of universal right seems to preserve a sense which goes beyond the mere entitlements recognized to an individual as a citizen of a particular nation.

James Nickel provides a definition which may be able to catch the essence of the concept of fundamental human rights conceiving them as:

> basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. Calling these guarantees "rights" suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country (Nickel, 1987, pp. 561, 562)

In this succinct description of the concept of human rights as moral concerns, Nickel clearly outlines the preeminent role which human rights, *qua* fundamental rights, play for each human being. Moreover, the universality, compulsoriness and independence of fundamental human rights are underlined in relation to the effective opportunity for each human being to invoke them. Besides, he also indirectly raises the problem of the ambivalence of fundamental rights as moral rights and as legal rights, underpinning a formal priority of the first category on the second[5].

This chapter starts with an analysis of the origin of the concept of fundamental and inalienable rights, through the examination of the concepts of natural law and natural rights which can be conceived as earlier notions fundamental rights have evolved from. It proceeds with the investigation of the conceptualization of the rights by an author which has been among the first ones to identify a third sphere of the right, that of the 'right of men as such', beyond those of the domestic law and of international law. The last paragraph delves into the worldwide different contemporary conceptualizations of the notion of fundamental rights and the features of their universalism investigating whether the concept of fundamental rights can overcome the challenge of the universal shareability taking into account their parochial misrepresentations and contradictory misuses occurred in many cases over time (Kennedy, 2012, 2001; Zolo, 2006a, 2006b; Gambino, 2001), such as the ideological use of human rights in order to justify unilateral military interventions as just war. However, these misuses do not have to obscure the fact that universal fundamental rights can potentially be means for each human being to claim an entitlement of which they are formally holders but whose secure access to its objects is not effectively ensured.

1.1 The roots of universal rights[6]

Perhaps, the birth of fundamental human rights cannot be dated before the proclamation of the UDHR which seemed to establish fundamental and inalienable rights as a common standard of achievement for all peoples, nations and persons and

[5] This relevant difference will be deeply examined further ahead discussing Ronald Dworkin's and Thomas Pogge's reasoning on it.

[6] Part of this paragraph has been published as a scientific article in the Journal *PNRPU Sociology and Economics Bulletin*.

affirmed the faith of peoples of the UN in fundamental human rights. Moreover, other scholars, such as Samuel Moyn, conceive the proclamation of the UDHR as «less the annunciation of a new age than a funeral wreath laid on the grave of wartime hopes» (Moyn, 2012, p. 3) and support the idea that human rights became a spread powerful set of ideals and a proper cause of justice for people only in the 1970s when «human rights would begin to be invoked across the developed world and by many more ordinary people than ever before» (Moyn, 2012, p. 4) and with the rise of the international human rights movement[7]. Thus, according to Moyn, human rights were actually born when they acquired a significant political role being effectively adopted as an ideal to strive for by people from all over the world. Moreover, Moyn is also skeptical toward the possibility to understand human rights as the development of prior theories and, so, the interpretation of human rights as a result of an evolutionary process started in the seventeenth and eighteenth centuries with the first doctrines of natural rights and covenants of the rights of men. The main remarkable difference pointed out by Moyn is the fact that natural rights were elaborated in order to justify the construction of state sovereignty, while contemporary human rights have been conceptualized in order to be claimed even against state sovereignty.

However, beyond the endemic differences of the case due to the evolution of the concept of universal rights, it is possible to find elements in common between the contemporary conception of fundamental rights and previous notions of universal rights *qua* natural rights. The following paragraphs retrace the main steps of the development of the universalistic character of the notion of right briefly examining the fundamental contributions on this matter of Francisco de Vitoria, Hugo Grotius, Thomas Hobbes, John Locke through the discussion of the most salient points of their theories and their interpretation of the notions of natural law and natural rights.

1.1.a De Vitoria's primordial universalism of natural rights

De Vitoria is considered as one of the first theorists of natural rights as universal individual rights, explicitly – even though only theoretically and to some extent

[7] For critical views on the contribution of the international human rights movement to foster the global protection of human rights see Kennedy 2001, 2012.

rhetorically – granted to each inhabitant of the Earth[8]. This paragraph takes into account his two most relevant works, or *relectiones*, that is the *Relectio de Indis* (1532) and the *Relectio de Jure belli Hispanorum in barbaros* (1532)[9] in which he discusses his doctrine of the just war, with a peculiar attention to the conditions according to which it is possible to recourse to and make war, above all in the light of the Discovery (and the Conquer) of the New World and the interaction of Europeans with such different societies and peoples, that is the Aztecs, Maya, Inca, which all together are referred to as Amerindians (or Indian Barbarians, in de Vitoria's words).

For the investigation of the topic of this dissertation, it is relevant to focus on de Vitoria's ground-breaking approach toward the rights of persons and peoples. Indeed, de Vitoria makes a list of universal rights, such as the right to sociability and communication (*ius communicationis*), the right to move and travel (*ius peregrinandi et degendi*), the right to trade with other peoples (*ius commercii*), the right to move to other countries and to acquire citizenship (*ius migrandi*), the right to property of unused things (*ius occupationis*), the right to preach and declare the gospel (*ius praedicandi et annunciandi Evangelium*), the right-duty to correct the Indians (*correctio fraterna*) – which, however, cannot be carried out via coercion – the right-duty to protect converts from their lords, and the right to defend the own rights with the war (de Vitoria, 1538/1964, pp. 151-160). In any case, even at first glance, it is clear how the content of these fundamental rights, entitled to each man as such, is shaped according to the features and interests of a specific man and society, the European one. Regardless of this relevant bias, it is worth underlining de Vitoria's attempt to envision not only a list of universal rights but also an idea of international law valid for all persons and peoples. Indeed, de Vitoria points out that «the law of peoples […] is natural law or is derived from natural law» (*ex iure gentium, quod vel est ius naturale vel derivatur ex iure natural*) and «what natural reason has established among all nations is called the *ius gentium*» (de Vitoria, 1538/1964, pp. 151-160). Thus, the derivation of the law of

[8] There is a wide agreement on the idea that the scientific contribution of the theologian, philosopher and jurist de Vitoria, along with the other fellows of the School of Salamanca, mainly regarded the development of legal and political doctrines rather than the gnoseological and metaphysical thought (Giacon, 1950, Vol. III, p. 5).

[9] This dissertation refers to a volume, edited by Ernest Nys and translated by John P. Bate, which contains the translations of both essays.

peoples from the natural law marks the naturalistic foundation of a universal law and of universal rights, which should theoretically be recognized to all persons and peoples, but which are, in fact, drawn mainly on the Spanish concerns of that era. Therefore, the universalistic character of the law and fundamental rights relies on the *natural reason* which is potentially intrinsic in each person and people, and which determines the *ius gentium* since what natural reason establishes among all the peoples is called *ius gentium* and many things seem to proceed from the *ius gentium* which, largely deriving from the natural law, has the power to establish rights and duties among them (Tierney, 1997). In addition, de Vitoria acknowledges the Indian Barbarians endowed with the rational faculties of man – and all men, according to de Vitoria, are linked by a natural relationship (*cognatio*), an argument which is used by this philosopher to justify the trade, and the corresponding universal right to trade. At any rate, the Amerindians are considered as rational men even though their form of rationality is to some extent limited and, accordingly, lower than that of the Europeans. Therefore, the allegedly fundamental rights listed in his works are meant as natural, absolute, and, thus, abstractly universal, of which Indian Barbarians should be entitled to, but which are drafted in a showily asymmetrical and concretely unequal way in order to protect the Spanish interests and conquest (Ferrajoli, 1997). Not only can the Spaniards recourse to war because the Indian Barbarians, the *perfidi hostes*, are violating their rights but also in order to uphold the rights of Indian Barbarians from the tyrannical law which is enforced upon and does wrong by them:

> Another possible title is founded either on the tyranny of those who bear rule among the aborigines of America or on the tyrannical laws which work wrong to innocent folk there, such as that which allows the sacrifice of innocent people or the killing in other ways of un-condemned people for cannibalistic purposes. I assert also that without the Pope's authority the Spaniards can stop all such nefarious usage and ritual among the aborigines, being entitled to rescue innocent people from an unjust death (de Vitoria, 1538/1964, p. 159)

The denial of some absolute rights to which a person cannot renounce can be a legitimate cause for the just war. Therefore, according to de Vitoria, the just cause is not

the sins related to the violation of the natural law, but rather the violation of universal individual rights. This shift must be borne in mind insofar as it marks an important difference with the past since what justifies the right to make war is not anymore the violation of the natural law but rather the violation of the rights which are, at least allegedly, recognized to all men. Accordingly, the Barbarian Indians can be eradicated because they are causing harms to men, violating their most basic rights, such as, on the Spaniards' side, the right to trade, the right to circulate freely in Amerindians' territory and the right to preach and declare the gospel. As a matter of clarification, de Vitoria considers, at least initially in his argumentation, the resort to war as just from both sides, even though not in equal measure, indicating different sources of potential justification of the resort to war. In fact, these sources are, on the side of the Spaniards, the international law (*ius gentium*), and the related alleged violation of universal rights perpetuated by the Amerindians, and on the other side, that of the Amerindians, an 'invincible ignorance' (*ex una parte est ius et ex altera ignorantia invincibilis*). Indeed, Spaniards are legitimated in making war to the Amerindians due to the law while the latter are partially legitimated, at least *prima facie*, to fight against the conquistadores due to the perceived threat and justified fear (*et merito timent*) represented by them (Tosi, 2006; see also AA. VV., 1994). However, an accurate and in-depth reading of de Vitoria's doctrine makes it clear that he does not assess the putative innocence of the Amerindians, deriving from their invincible ignorance, a valid excuse to recourse to war against the Spaniards. As a matter of fact, the latter sought, at least according to De Vitoria's interpretation of the interrelation between Spaniards and the Barbarian Indians, to persuade Amerindians to avoid going to war with them and respect their right to trade, to circulate freely and to preach and declare the gospel. Thus, in the light of his interpretation of the conditions for a just war and the protection of universal rights, the Spaniards legitimately exercise their right to war, in the last resort, widely more rightfully than the Amerindians.

The last argumentation clarifies further what has been previously touched upon, that is the fact that de Vitoria's reasoning is biased towards the defense of European interests. For this reason, we should also be cautious to carry out an anachronistic

interpretation of de Vitoria's thought *sub specie modernitatis*, i.e. through the length of modernity[10], that is within an 'evolutionary' development of the legal and political thought that would have its natural outcome, or its culmination, in the secular doctrine of human rights (Luppi, 1988, p. 464). However, even though de Vitoria's recognition of fundamental rights to Barbarian Indians led to some extent to a *de facto* legitimation of their extermination by the Spaniards, his theoretical contribution to the universalism of rights and to the concept of individual right cannot be denied since, at least theoretically, he outlined a list of fundamental rights, and he ascribes them to all men.

1.1.b The validity of natural law *etsi deus non daretur*

Another scholar who fostered the development of the natural rights as universal individual rights, as part of fundamental rights, is Hugo Grotius. In the wake of Francisco de Vitoria, Grotius, who is the author of the definition of the *ius* as *qualitas moralis* of the man, believes that the rights of men are founded on the natural law, which in turn expresses the *appetitus societatis,* which are proper to all men (Baccelli, 2009, p. IV; Bobbio, 2005, p. 10). As the source of the natural law expresses something which is proper to all men, in the same vein all men are recipients of the natural law and holders of natural rights. This position had partially strengthened the individual and universal character of natural rights and had established the basis for the social contract theories which would have been adopted and amply developed by preeminent authors such as Thomas Hobbes and John Locke, and later, among others, Jean-Jacque Rousseau, Immanuel Kant and John Rawls (Ashford, Mulgan, 2018), insofar as people are led to establish a social life in compliance with the human reason with which all men are endowed. Obviously, what differs between these authors is the process and the result of the codification of natural law and universal natural rights through the means of reason. As for Grotius, his main contribution is probably the implicit original but cautious attempt to secularize the natural rights conceiving a moral foundation of

[10] An example of this apologetic – and, accordingly, to some extent parochial and misleading –interpretation of de Vitoria's and School of Salamanca's thought is the editorial series *Corpus Hispanorum de Pace* dedicated to the School of Salamanca and directed by Luciano Pereña. The name of the editorial itself is already significant to show the trend of the volumes included and the biased understanding of the School of Salamanca as a School of peace and the description of Francisco de Vitoria as a humanist, anti-imperialist and democratic master of peace (Pereña, 1981, pp. I-VII).

natural rights on human reason rather than on religion. Indeed, in the first book of his main work *De Jure Belli Ac Pacis*[11] he states that «What we have been saying [on natural law and natural rights], would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness: that there is no God, or that the affairs of men are of no concern to Him» (Grotius, 1625/2012, prolegomena §11). Even in this case, however, one must be careful not to overestimate Grotius' secularizing attempt, isolating its emblematic expression *etsi deus non daretur*[12] from his wider theory of morality and natural law, since his overall doctrine remains confined in a religious background and widely based on religious assumptions. In fact, while Grotius does not deny that the natural law ultimately comes from God, in accordance with the Scholastic tradition, he admits that the natural law would be valid *etsi deus non daretur*, that is as if God did not exist (or, more correctly, even if God were not a given), since the nature of the man is the rationality which makes them able to realize the natural law. Thus, human reason is conceived as the source of the natural law and natural rights which would conserve their validity even if God were not given. His innovative thought marks a shift from the classical naturalism, according to which natural law and natural rights are based on Christian religion, to the modern naturalism, which replaced religion with human reason as the element of foundation of the natural law and natural rights. Therefore, it is worth noticing that Grotius' maxim and reasoning

[11] This *magnum opus* is traditionally considered as the foundational act of modern international law and, accordingly, its author, Hugo Grotius, as the father of international law and modern naturalism (Vico, 1720, p. 9).

[12] Even this formula has been subjected to different, and sometimes opposed, interpretations. Indeed, this maxim has been used both by Enlightenment's authors and figures from the Scholastic school - such as Francisco Suarez and Domingo de Soto, therefore, even before Grotius' famous mention of it (Appolonov, 2018, p. 63) - till, recently, by the leadership of the Roman Catholic Church (Adinolfi, 2005; Ratzinger, Pera, 2005). While there is a wide agreement on the general meaning of this formula, that is the belief that moral tenets are rooted on the natural reason (*naturàlis ràtio*) and are expressed in terms of imperatives of the common sense (*recta ractio*) (Appolonov, 2018) the main difference between opposite factions relies on the rightful foundation of natural law on human reason, and not on religious morality, and, the related judgment, either positive or negative, of this secularization of natural law (and, more generally, of morality). Some of the major figures of the Enlightenment understand this maxim as the founding axiom of their thought, let alone of the modernity, envisioning moral principles detached from the religious morality while some religious leaders, such as Joseph Ratzinger, seeks to reverse the meaning of this maxim, using its own underlying logic and recalling the Pascal's wager, inviting people to live as the God exists (*veluti si Deus daretur*) even though they are not generally convinced by the fact that God truly exists. However, there are also authors, mainly objectivists, such as Grotius himself, which combines and, to some extent, reconciles these two opposite standings, asserting that natural law and natural rights are founded on human reason, and thus existing *etsi deus non daretur*, at the same time, without, however, doubting the existence of God and its relevance for the human being. In the wake of objectivists, some other Christian authors of the contemporary era, such as Dietrich Bonhoeffer and his fellows, recall Grotius' maxim inviting religious people to behave rightly in the light of the human reason and not merely due to their faith (Bonhoeffer, 2015, p. 439; for a critical view of Bonhoeffer see Lenehan, 2013).

determine a gnoseological shift in the explanation of the concepts of moral principles, natural law and natural rights relying not anymore, or at least not only, on religious assumptions but rather on the human reason. However, it would be a mistake to envision Grotius' thinking as the realization and culmination of this process – which may, instead, be retraced in the thought of the Enlightenment and post-Enlightenment, especially in their emphasis on the autonomy of the human person (Lenehan, 2013) and their research of the foundation of morality and truth out of religion, or, precisely, *etsi deus non daretur* (Ratzinger, Pera, 2005). To sum up, it would be more accurate to look at Grotius as a clear expression of the long and gradual transition in the foundation of natural law and universal rights from classical naturalism to modern naturalism and as part of the process of secularization of the *ius gentium*. At any rate, it is possible to assert that, to some extent Grotius can be conceived as an ancestor of the secular reorientation of the conceptions of justice and rights which Rawls sums up with the phrase «political not metaphysical» (Rawls, 1985). However, still, beyond his cutting-edge assumptions about natural law and rights and his innovative reforming principles for the governance of international relations, Grotius' conceptualization of natural rights and natural law is biased as well towards the interest of the European sovereigns. Indeed, he theorizes the natural right to occupy uncultivated lands (Grotius, 1625/2001, pp. 72-76; see also Tuck, 1999, p. 108) and the legitimacy of the military intervention by sovereigns to punish weighty violation of the natural law and the *ius gentium*, including the cases in which the violation (*iniuriae*) does not regard the sovereign or his subjects. Furthermore, clearly at odds with de Vitoria's assumptions, Grotius maintains that the war is just also against those who do not respect their parents or eat human flesh (Baccelli, 2009, p. 28). In this regard, Grotius appears to downgrade the human nature of the Amerindians considering them being endowed with a lower rationality than Europeans. Accordingly, notwithstanding Grotius' above-mentioned crucial accomplishment in natural law theory, he seems to fail in recognizing, as de Vitoria did, equal rationality to the Amerindians resizing *de facto* the universal entitlement of natural rights to each human being.

After Grotius, the other main social contract theorists of the early modern period Thomas Hobbes and John Locke – whose theories are both deeply and differently affected by the events occurring in England at their time – made relevant contributions on the development of the concepts of universal and individual rights (Ashford, Mulgan, 2018), even if, as Grotius, they kept referring to the notions of natural law and natural rights.

1.1.c Natural rights as individual rights

Francisco de Vitoria and Hugo Grotius, along with early modern philosophers and jurists, had to deal with the unprecedented events of the discovery of America by Europeans and above all the interactions with peoples so distant from them in different aspects, not only geographically but also economically, politically, culturally, technologically, and socially. These disruptive occurrences – besides being probably the foundational act of universal fundamental rights (Baccelli, 2009, p. 37), in the primordial forms previously sketched out – had been animating the Western philosophical debate for a long period since the dramatic confrontation between such different cultures triggered the development of new theoretical models and prompted the major thinkers to comment, *inter alia*, the nature of the Amerindians and their universal rights as men (when they had been recognized as such). Furthermore, the debate around the New World would have not spared the subsequent philosophers, that, however, had been also deeply affected by other revolutions that had occurred throughout Europe in the seventeenth and eighteenth centuries. This is also the case of Thomas Hobbes whose peculiar attention for stability and the defense of a strong central power have been partially determined by the sight of a bloody civil war (which may be seen as something similar to the Hobbesian fictional state of nature of *bellum omnium contra omnes*) and of a beheaded king, Charles I of England. In this peculiar historical background Hobbes, accredited as one of the fathers of political realism[13], develops his idea of the sovereign state and of the contractual theory, his conceptualization of the state of nature and the social contract. Furthermore, thanks to Hobbes, compared to the

[13] For example, the statist scholar Thomas Nagel (2005, p. 113) recognizes Hobbes as the first author to systematically outline the so-called "political conception" of justice according to which no justice is possible without the state sovereignty.

previous legal and political philosophy tradition, for the first time, two novel relevant points are outlined, that is the clear distinction between the moral and juridical levels and the difference between the concepts of law and right.

Indeed, the classical formulation of the concept of individual right, which have been consolidated henceforth, can be attributed to Thomas Hobbes thanks to his contraposition of law and right, *lex* and *ius*, duty and freedom:

> For though they that speak of this subject use to confound ius and lex, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent (Hobbes, 1651/1998, p. 80)

In the Hobbesian naturalistic foundation of rights, the universalism of the rights-holders and the universalism of the foundation of rights tend to identify themselves in the same conception: «every man has a right to every thing, even to one another's body» (Hobbes, 1651/1998, p. 90). The right of every man to everything in the state of nature is based on the principle of self-preservation which is valid for each man and, since it is supposedly demonstrated with the same scientific rigour of mathematical theorems[14], has to be recognized by everyone (Hobbes, 1642/1983, p. 73; see also Baccelli, 2009, p. 10). The rights which resulted from this principle are natural rights whose holders are all men as such. Hence, a rationalistic paradigm of universal individual rights is firstly drafted. Moreover, according to Hobbes «a law of nature, *lex naturalis*, is a precept, or general rule, found out by reason» and «the right of nature is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto» (Hobbes, 1651/1998, pp. 79, 80) reaffirming the assumption that human reason is the foundation of natural law and natural rights, even though in Hobbes there

[14] This is what makes Hobbes a naturalist lawyer precursor of positivism and to some extent of legal positivism. As Norberto Bobbio intelligibly stated, Hobbes was a naturalist lawyer who gradually turned into a positivist since he started with typical arguments of the modern natural law theory (such as the transition from the state of nature to the civil state) and then shifted to an absolute idea of sovereignty, which represents the basis of his political absolutism (Bobbio, 1965).

is an attempt of corroborating, or contaminating, natural law theory with empirical investigation. Furthermore, in Hobbes, the radicalization of the individualistic aspect of natural rights, conceiving them in terms of natural liberty and power, leads to a preeminent role of the concept of natural individual rights, of which natural law is the derivative one (Baccelli, 2005b). Rights are power and liberty of the individuals and for this reason they can be completely transferred to the sovereign that becomes their legitimate holder (Baccelli, 2009, p. 28) and that has absolute power over the subjects. In fact, the sovereign is the only body able to ensure peace among people and avoid the condition of *bellum omnium contra omnes*, i.e. the war of every one against every one, which distinguishes the state of nature (Hobbes, 1642/1983, p. 86) in which men, all together, become wolfs, *homo homini lupus*[15], fighting fiercely with each other. Hence, the Hobbesian absolutistic traits of the natural law can be understood in the light of the exigency to avoid, by any means, people making war on each other, putting reciprocally in danger their lives. The *Leviathan*[16], as representation of the absolute state, is fundamental for the subjects to avoid perishing and, for this, they can be required to sacrifice all their fundamental liberties and powers – something which is not conceivable for other authors, such as Locke – in the name of the preservation of the highest of all goods, that is the life, through the assurance of peace and social order by the absolve sovereign. Human beings are urged to give up on the unavoidable and absolute sovereign all the individual rights recognized to them in the state of nature which, in turn, will make possible the protection of the most important individual right, the right to life. It is clear that the Hobbesian interpretation of the state of nature[17], from

[15] The 'anthropologizing' interpretation of this famous saying has been strongly criticized by Paul J. Johnson (1982) and Geismann (1988).

[16] The Hobbesian Leviathan, or the mortal God as the author defined it, is depicted in the iconic, wicker-mannish frontispiece of his major work. Rather than being a biblical monster, even though being inspired to it, this Leviathan's famous representation corresponds to a kinglike figure wielding a sword, symbolizing the temporal power, and a crozier, symbolizing the religious power. This representation aims at meaning that all the powers must be indivisibly held in the hands of the sovereign, and they cannot be removed unless incurring in the return to the state of nature. Moreover, and maybe more importantly, the body of the Leviathan is shaped by a multitude of men whose survival depends on the existence and the preservation of the Leviathan.

[17] «Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withall. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account

which, or, in opposition to, the natural law is derived, is deeply pessimistic[18], considerably more than the Lockean one, where different forms of cooperation are possible. This is due to the above-mentioned concrete occurrences which to a great extent affected Hobbesian personal experience and theoretical elaboration. In Hobbesian reasoning, it is not the *appetitus societatis* which prompts people to escape from the state of nature and establish a social contract; rather it is the fear of death, and even more the fear of a violent death, which leads people to sign and abide a *pactum societatis* which can be better defined as a *pactum subiectionis* according to which the sovereign can exercise his absolute power without any limits and responsibilities. It is precisely in the (absolute) state – once having absorbed all the powers and thus having taken its ideal form, that is being turned into the Leviathan – which Hobbesian legal positivism reached its maximum since the only law which would be valid is that established by the state and there are no legitimate rights beyond the legal ones enacted by the sovereign state. Accordingly, *ius* and *lex* are valid, not insofar as they are recognized as morally just, but rather if they are legally recognized by the sovereign power.

As for the question of the New World, Hobbes argues that the conditions of savage people in many places of America are close to the kind of the state of nature which make them live at permanent risk[19]. Furthermore, at the international level, since the sovereigns are all independent, the relations among them are also similar to those among the individuals in the state of nature, the so-called *domestic analogy* (Bull, 1977, p. 46) and, thus, the protection of individual rights, of both subjects and foreigners,

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of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short» (Hobbes, 1651/1998, p. 78).

[18] Examples of similar contemporary views of the state of nature, even though slightly revised, are those of Thomas Nagel and Danilo Zolo. On the one hand, Nagel's conclusion about the problem of global justice, «though it presupposes a conception of justice that Hobbes did not accept, is Hobbesian in spirit: the path from anarchy to justice must go through injustice» (Nagel, 1995, p. 147). On the other hand, Zolo (1998b) founds his belief that moral notions, such as justice, cannot have a relevant role in political affairs and international relations precisely on the assumption that the nature of human beings is excessively aggressive or uncooperative. Accordingly, both Zolo and Nagel, as Hobbes, consider the state as the only relevant political agent at the global level. Moreover, while both of them are deeply critical toward the perspective of a global state, Nagel (2005) based his anti-cosmopolitan critique on arguments from political philosophy while Zolo (1998b) addresses the problem of a cosmopolitan world state from the point of view of politics and international relations.

[19] «For the savage people in many places of America, except the government of small families, the concord whereof dependeth on natural lust, have no government at all, and live at this day in that brutish manner» (Hobbes, 1651/1998, p. 78).

mainly becomes a matter of the sovereign. Accordingly, at the global level, following Hobbesian reasoning, the only way to escape the state of nature and ensure global justice would be a global (absolute) sovereign. However, transposing the issue of global disorder internally and endorsing a realist-utopian position (Grewal, 2016), Hobbes opts for another solution, arguing that if sovereign states are peaceful and well-ordered, they are less likely to make aggressive war to other states[20].

1.1.d The inalienability of fundamental natural rights

Before delving into the characterization of the Lockean account of natural law and natural rights, it is important to specify that, as slightly touched upon in the previous paragraph, the social contract theorist John Locke, generally recognized as the father of the classical liberalism, lived in a completely different context comparing to his English compatriot Thomas Hobbes (even though these two authors were separated by a few decades). Locke develops his main contribution during the Glorious Revolutions, which is generally considered as a positive event, above all compared to the first English Revolution which was a real civil war and which occurred during the Hobbes' era. This is the main reason why while Hobbesian argumentations are oriented toward the defense of the absolute monarchy, Locke embraced various instances of the English revolutionaries against the monarchy and made them his own in his reasoning, which clearly takes shape in the eloquent criticism toward the divine right of kings widely outlined in the first essay of his major work *Two Treatises of Government*.

Despite the fact that Hobbesian and Lockean argumentations show many differences in their very last conclusions, Locke seems to share and develop the scientific setting of Hobbes, endorsing the approach of empiricism which was gaining momentum at that time, arguing that morality can be demonstrated in the same way as Mathematics (Locke, 1689/1975), and other so-called hard sciences and scientific truths, thus empirically conducting the investigation of natural law and natural rights

[20] In the light of the recent humanitarian and preventive wars, often conducted by peaceful and democratic states, it is tough to assess the extent to which Hobbesian prediction has been reliable, however it is demonstrated that democratic states are less likely to recourse to war against each other (Lake, 1992).

and apparently negating the possibility of appeal to innate ideas[21]. However, Locke seeks to correct Hobbesian alienability and transferability of fundamental rights and, to this aim, reconsiders the property as a natural right, which, instead, was not for Hobbes. Indeed, in contrast with Hobbes, as for the property rights, Locke founds them – broadly understood, as it will be explained subsequently – on the ownership of oneself[22] recognized to each human being (Zuckert, 1994) and conceives the separation of sovereign power (which is, instead, indivisible for Hobbes) in legislative, executive, and federative powers (Locke, 1690/2004, pp. 161-166). Moreover, and perhaps more importantly for the purpose of this research, natural rights, which composed Lockean *properties* of the man, are not transferable to a superior power, not even in the name of the protection an allegedly higher good, such as the social order, as in Hobbesian theory of the social contract. To illustrate, the term *properties*[23] is used by Locke to identify those fundamental, so not alienable and transferable, rights – the right to life, to freedom, and to property[24] – which are already in force in the state of nature and, accordingly, to some extent already effectively enjoyed (Pecora, 2018, p. 40). A fourth

[21] Scholars diverge on the presence of innate ideas in Lockean theory, and, accordingly, on the evaluation of the extent to which Locke argues that natural law and natural rights can be known through reason. Some Lockean experts, such as Strauss (1953) and Laslett (1988) see a contradiction on Lockean reasoning insofar as sometimes, as in the *Second Treatise* (Locke, 1690/2004, pp. 104-214), Locke seems to refer to innate ideas, while other times, as in the essay *The Reasonableness of Christianity* (Locke, 1695/1824, Vol. 6), he states that none has satisfactorily outlined the whole natural law from the reason alone. Even though, both Strauss and Laslett highlight a contradiction in the Lockean theory overall understood, the first sees this contradiction as a Lockean warning to escape an excessive trust in the concept of natural law unfolded thank to the reason while the second suggests that we should distinguish between Locke the philosopher and Locke the political scientist. On the contrary, various scholars, among the others, Yolton (1958), Ashcraft (1987), Simmons (1992), Tuckness (1999), Connolly (2019), believe that Lockean statement in *The Reasonableness of Christianity* about the fact that nobody has deduced natural law and natural rights from really first principles does not mean that none of these principles are possible to be identified. In addition, according to them, even though Locke does not provide a clear and systematic deduction of natural law, Lockean discussion on deduction (Locke, 1689/1975) is aimed more at demonstrating that reasoning in moral terms is possible than at outlining a full-fledged explanation of natural law.

[22] «every man has a "property" in his own "person". This nobody has any right to but himself» (Locke 1690/2004, p. 115).

[23] The concept of the *properties* of some fundamental rights can be conceived as a rudimental expression of the recent concept of the right to have rights fostered by Hannah Arendt and Stefano Rodotà since both terms underscore the effective enjoyment of some rights entitled to each human being (in the second case including also collective rights) which are jeopardized by the overwhelming power of the sovereign in the modern era and by the imbalanced distribution of powers and private actors in the contemporary age (Rodotà, 2012).

[24] «The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions» (Locke 1690/2004, p. 107). Some scholars, such as Dunn (1967, 1980), Ashcraft (1986), Tully (1980), argue that, for Locke, natural law, and not natural rights, come first. This implies that Lockean focus on rights, natural rights to life, liberty, and property, must be understood as a way to highlight the primary role of the corresponding duties, related to these rights, that we owe to other people, that is the duties not to kill, enslave, or steal. A different noteworthy reading of Lockean argumentation is that of Tierney (2014) according to which there is no need to prioritize natural law toward natural rights or vice-versa since both must be considered as corollaries. This understanding of duties and rights is close to the view of liberal socio-economic justice which is endorsed by this dissertation, and which is discussed more in depth in the third chapter.

natural right is the right to punish[25] those who violate the above-mentioned rights since the natural law prescribes the protection of these rights (and recognizes a right to punish those who do not respect them). Thus, fundamental rights cannot be transferred to the state since the latter is precisely committed to protect these fundamental rights (Baccelli, 2009, p. 28). Accordingly, rather than an absolute sovereign, Lockean state resembles more an umpire, *qua* impartial arbiter providing binding judgements based on the rule of law, or to a night watchman, patrolling the streets during night to ensure everyone's security but with the hope that his intervention is not necessary and there is no need for him to exercise his powers and authority (Eskelinen, Chattarjee, 2011, p. 663). Even though in Locke there seems to be a return to the partial prominence of the natural law over the natural rights, while the foundation remains always the human reason[26], natural rights are provided with a wide and deep protection. Indeed, according to the Lockean social contract only the fourth right, the right to punish, is transferred to the Sovereign while the other rights are considered as inalienable. This is due to the fact that at the basis of the relationship between the government and the individuals there is a trust[27], according to which the powers to enforce the law of nature, and the protection of the inalienable individual rights, are deposited on the state (Wootton, 1993).

Thus, Locke makes a list of fundamental rights which also the Sovereign is obliged to respect, otherwise men have the right to resistance, the so-called *appeal to Heaven*:

> As there can be none between the legislative and the people, should either the executive or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them, the people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to Heaven; for the rulers in such attempts, exercising a power the people never put into

[25] «Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property — that is, his life, liberty, and estate, against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it» (Locke, 1690/2004, p. 141).

[26] «the state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions» (Locke 1690/2004, p. 107).

[27] While for Hobbes the relationship between the sovereign and the people is the subjection and the social contract creates a new authority which has interests of his own (Eskelinen, Chattarjee, 2011).

their hands, who can never be supposed to consent that anybody should rule over them for their harm, do that which they have not a right to do. And where the body of the people, or any single man, are deprived of their right, or are under the exercise of a power without right, having no appeal on earth they have a liberty to appeal to Heaven whenever they judge the cause of sufficient moment. And therefore, though the people cannot be judge, so as to have, by the constitution of that society, any superior power to determine and give effective sentence in the case, yet they have reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, by a law antecedent and paramount to all positive laws of men, whether they have just cause to make their appeal to Heaven (Locke, 1690/2004, p. 179)

Therefore, not only does Locke affirm, in contrast with Hobbes, that there are some inalienable rights which cannot be transferred to the sovereign, but he also conceives this fundamental meta-right, the *appeal to Heaven*, which enables men, once the civil society has been set up, to avoid respecting the positive laws enacted by their rulers. Each man is entitled to this meta-right since people have reserved the ultimate determination to themselves which belongs to all mankind. However, even though Locke describes the «just cause» to make the *appeal to Heaven* consisting of the violation of fundamental rights of men and the abuse of the right to punish by the constitutive power, he fails to specify the means through which men can force the rulers to respect the fundamental rights they are violating, or, in different words, how this *appeal to Heaven* can be concretely claimed and exercised. In any case, his contribution to corroborate the protection of some fundamental rights and the status of men as rights-holders is evident. In his *appeal to Heaven*, it can also be searched out that one's own right can also be claimed *against the state* which presumes that beyond the positive and legal rights there are basic and natural (moral) rights which, thus, are not limited to those recognized by the settled rules (Dworkin, 1970). Moreover, beyond the property of men to his own person and fundamental rights, Locke is also able to provide an explanation to the right to private property which had been a longstanding issue since the earth was to be conceived as something in common to all men. Locke claims that the labor of his body and the work of his hands are the means by which a man can get the property of something since his work embodies the natural thing appropriating it and

increasing its intrinsic value[28]. However, Locke points out that one can get the property of something «at least where there is enough, and as good left in common for others» (Locke, 1690/2004, p. 116). This specification leaves space for mitigation of the right to private property, which would not be considered as a natural right *tout court* as for the right to property and seems to set a valid limit to the appropriation of things which must be done in respect of the same right of others. Moreover, in the wake of Grotius and Hobbes, Locke recognized the state as the main political authority in global relations. At any rate, differently from his antecedents, he maintains that a just global arrangement of sovereign states would be shaped by national governments which are legitimized through consent by their people[29] and which respect the social contract stipulated between the people and the government (Eskelinen, Chattarjee, 2011, p. 663). Lockean contribution to the debate around the universalism of fundamental rights and global justice can be retraced in his revolutionary conception of property and his novel understanding of (material and moral) equality[30], both deeply cutting-edge views for his own era.

In his repeatedly mentioned major work, that is *Two Treatises of Government*, he also dedicates ample space to the question of the New World, along with its inhabitants, the «wild Indians», and their conquest, reaching the same conclusion, even though through slightly different justifications, of his predecessors: the occupation of America, the war conducted by the Europeans and the extermination of the wild Indians are rightful. Even though Locke admits an «equality of men by Nature» (Locke, 1690/2004,

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[28] «Though the earth and all inferior creatures be common to all men. […]. The "labour" of his body and the "work" of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this "labour" being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to» (Locke, 1690/2004, p. 116).

[29] Even though putting Locke in the current cosmopolitan strand would be anachronistic, it is not chimerical to speculate about Locke's standing in the cosmopolitan debate about the shape global governance should take and the distribution of power at the global level. Indeed, in the debate between those cosmopolitans, relative the few, such as Nielsen (1988) and Cabrera (2008), that argue in favor of a world-state, and those (more or less federal) cosmopolitans, such as Held (1995), Kaldor (1999), Pogge (2008, 1992), Archibugi (2011), who understand cosmopolitan democracy in the shape of a confederation of liberal states John Locke would have probably been on the side of the second strand.

[30] «Locke was also an advocate of equality, and profoundly opposed to any form of slavery, whether physical or moral, the latter meaning someone whose situation is so desperate that he or she cannot be regarded as autonomous and so could conceivably come to be regarded as the unearned property of another person, whose charity sustains the person in desperation» (Eskelinen, Chattarjee, 2011, p. 663).

p. 106) and is critical toward sound inequalities of different sorts among men, several elements downgrade the American Indians to a lower level of civilization. The organization of their communities is not comparable with that of a political society[31], their condition is similar to the state of nature[32] and their laws and attitudes are in violation of the natural law and, for the latter reason, they can be exterminated[33]. Even the Indians' unproductivity of the work infringes the natural law since the waste of land is an injustice against the whole mankind and a violation of the divine rule to make it productive. Accordingly, Amerindians can justly be escheated of their lands. In order to fight this injustice and make the American *waste land* productive, English people are legitimized to make war to American Indians and to occupy their territories (Parekh, 1995) even if it implies the grave violation of the fundamental right to life (Baccelli, 2009, p. 33; Tuck, 1999, p. 173). It is clear that even in Locke a theory of the equal universal entitlement of natural rights is compounded with a theory of cultural inequality which turns to be a theory of spoliation and subjugation (Baccelli, 2009, p. 31). Therefore, even though it is unlikely to be hugely surprising that Lockean account of natural law is more liberal than Hobbesian one, as well as Lockean list of inalienable fundamental rights is wider than the one outlined by Hobbes, perverse and paradoxical effects of the Lockean conception of rights are still present. Since, as underlined above, Lockean conception of natural rights has been effectively used in North America to dispossess the Amerindians of their lands (Tully, 1993), it is possible to notice that, in the face of the proof of its implementation, Lockean overall argumentation shows not only to be far from succeeding in protecting in the equal way the fundamental rights of different peoples but also, once again, to being able to justify the violation of the Native Americans' rights by Europeans.

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[31] «Thus we see that the kings of the Indians, in America, which is still a pattern of the first ages in Asia and Europe, whilst the inhabitants were too few for the country, and want of people and money gave men no temptation to enlarge their possessions of land or contest for wider extent of ground, are little more than generals of their armies; and though they command absolutely in war, yet at home, and in time of peace, they exercise very little dominion, and have but a very moderate sovereignty, the resolutions of peace and war being ordinarily either in the people or in a council, though the war itself, which admits not of pluralities of governors, naturally evolves the command into the king's sole authority» (Locke, 1690/2004, pp. 151, 152).

[32] «Thus, in the beginning, all the world was America, and more so than that is now». (Locke, 1690/2004, p. 125).

[33] «[…] having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security (Locke, 1690/2004, pp. 109, 110).

1.1.e Natural law and rights as moral concerns

For the main purpose of this work, i.e. the analysis of the contributions of the above-mentioned authors in the development of the concept of universal rights, it is worth mentioning Thomas Pogge's examination of the common features of natural law, natural right and human rights looking at them as moral notions. Pogge maintains that even though human rights are a quite new concept in history, as a moral notion it has evolved from earlier concepts, that is the natural law and natural rights. Indeed, according to Pogge, «all three concepts have in common that they were used to express a special class of *moral concerns*, namely ones that are among the most *weighty* of all as well as *unrestricted* and *broadly shareable*. These four common features of the three concepts constrain not the content of the select concerns, but their potential status and role» (Pogge, 2008, p. 60). These three concepts are a special class of moral concerns insofar as their uses can be conceived «as making moral demands on human conduct, practices, and institutions» (Pogge, 2008, p. 60). Being understood as *common concerns* to the whole of mankind, they can potentially be claimed by anyone against any other person or institution which has the moral duty to respect and implement them. Their significant *weight* derives from the fact that their respect is paramount in comparison to other moral and nonmoral concerns. As we have seen in Locke, the respect of natural rights is so preeminent that the violation of some fundamental rights may legitimize the individual to *appeal to heaven* and, thus, to act in contrast with the constitutive power. Therefore, both individuals and social institutions ought to respect these moral weighty demands. At the same time, these moral concerns are conceived as *unrestricted* in the sense that «whether persons ought to respect them does not depend on their particular epoch, culture, religion, moral tradition, or philosophy» (Pogge, 2008, p. 60). Thus, the unrestricted characteristic of these moral demands makes them potentially relevant for persons and peoples of any time and place and provides an inclusive openness which strengthens their attractiveness – an element which is linked to the fourth feature. The *broad shareability* of these moral demands consists of their capability to be «understood and appreciated by persons from different epochs and cultures as well as by adherents of a variety of different religions, moral traditions and philosophies. […]. The shareability

of moral demand is, then, a function of how widely it can be shared across persons and cultures and of how accessible it is to each of them» (Pogge, 2008, p. 60). Thus, the possibility of these notions to be easily and broadly shareable by as many persons as possible is related to their capability to be understood and appreciated by persons and peoples regardless of their cultural, philosophical and religious background. The concepts of natural law and natural rights, as conceived in western fifteenth- through eighteenth-century philosophical and political tradition partially embrace these features, however they are drawn according to the parochial considerations and concerns of a specific group of people. This is not to say that a theory elaborated in a particular part of the world in the framework of a specific culture and philosophy cannot be shareable, and thus universal, as such, but rather that it can be able to be widely shared if it can be to some extent appealing any particular epoch, culture, religion, moral tradition, philosophy and any particular consideration, interest and concern. Even if the notion of right as a moral concept has been able to become more unrestricted and shareable over time, it is questionable whether it has been completely purified by any particularism and factionalism, which would endanger its shareability. This is one of the issues which this research seeks to shed light on.

Beyond these mild continuities, Pogge catches a relevant shift from natural law to natural rights, which has already been mentioned in the previous paragraphs, that is the conceptualization of man as a rights-holder:

> expressing moral demands in the natural-rights rather than the natural-law idiom involves a significant narrowing of content possibilities by introducing the idea that the relevant moral demands are based on moral concern for certain subjects: rightholders. By violating a natural right, one wrongs the subject whose right it is. These subjects of natural rights are viewed as sources of moral claims and thereby recognized as having a certain moral standing and value (Pogge, 2008, p. 61)

This shift in terminology implies a rise of the individual which is recognized as the bearer of moral claims and demands which other persons are obliged to respect. Violating natural rights means not anymore wronging God or lacking rationality but

rather injuring other subjects. Thus, the natural law becomes to some extent subordinate to the fundamental natural rights and it is conceived as a means to recognize and enforce them. In this way, the rules of the society become more intersubjective and inter-relational insofar as the concept of natural rights involves moral demands on one's conduct toward other subjects and the law must be respected in order to uphold subjects' natural rights. Therefore, the above-mentioned shift in terminology is also a shift in the content of unrestricted and broadly shareable moral rights which would have received even greater impetus with the shift from the notion of natural rights to human rights.

1.1.f The particularistic universalism of the modern era

Even if the above-mentioned modern-era authors focus mainly on the notions of natural law and natural rights, these concepts can to some extent be conceived as the forerunners of the contemporary fundamental rights since the theories and the studies of the authors analyzed in this research have made a noteworthy contribution to the theoretical evolution of the concept of universal rights. However, the universalism sketched out by de Vitoria, Grotius, Hobbes and Locke is clearly developed in compliance with the interests of a particular group of people. Indeed, except for Hobbes, their universalism ends up being built on the concerns of the Europeans and to legitimize the conquest of America at the expense of the fundamental rights of the Native Americans. The particularistic declination of this universalism, which has proved in action to be deeply discriminatory, partisan and asymmetric, is probably its main shortcoming and may be an aspect of which neither the more recent concept of human rights has been able to get rid of. As a matter of fact, even during the Enlightenment period, in particular in the German Enlightenment, this spread and rooted Eurocentric view[34], based on eighteenth century spreading pseudo-scientific research on races (Stanfield, 1995), leads to the conceptual elaboration of the superiority of the European race over the other races, which contemporary authors label as the

[34] On the anti-Eurocentric and anti-racist feature of recent ethnic studies see Lowy, 2005. For an overall and cross-cutting critique of Eurocentrism see Kanth, 2005, while for an analysis of the Eurocentric conception of international relations and world politics in the late modern period and in contemporary history see Hobson, 2012.

'dark' sides of the Enlightenment philosophy (Eze, 1997). Even one of the greatest worldwide recognized philosophers, i.e. Immanuel Kant, whose main contribution on universal rights and international relations will be analyzed in the following paragraph, cannot be considered as free of criticisms of this sort (Serequeberhan, 1996) even though in the last decade of the eighteenth century he seemed to drop the hierarchical account of races and the superiority of Whites over Non-whites in favor of a more cosmopolitan and egalitarian view (Kleingeld, 2007).

1.2 The notion of right in the essay Perpetual Peace: A Philosophical Sketch

In spite of the fact that the authors that have been previously discussed – particularly de Vitoria and Locke – provide remarkable contributions towards the universal recognition of some fundamental rights and the elaboration of the paradigm of moral rights, in the final instance, because of different reasons, their particularistic universalism legitimizes the burdensome and unilateral claims of some people, the Europeans, at the expense of the (potentially worthy) interests of others, the Amerindians, derogatory addressed as *perfidi hostes* or Indian Barbarians.

The particularistic character indwelled in the modern-era conception of the notion of (fundamental) rights (Baccelli, 2009, 2005a) is partially tackled by the contribution of Immanuel Kant, whose work *Perpetual Peace: A Philosophical Sketch* enlarges the categories of individuals to which universal fundamental rights are entitled, even though he kept excluding women from the enjoyment of fundamental rights whose universal entitlement, according to Kant, regards only the men. Kant's conceptualization of rights aims at preserving peace and at recognizing fundamental rights to all individuals equally, enabling them to be formal and effective rights-holders.

The essay *Perpetual Peace: A Philosophical Sketch* can be defined as a philosophical, political and, to some extent, legal project[35] which outlines a hypothetical organization of the domestic, international and cosmopolitan law and rights in order to support the maintenance of the peace and the warranty of the respect of the fundamental rights to all human beings. It is interesting how Kant reverses the argumentation on this

[35] «Kant is neither a blunt natural law philosopher nor just a positivist legal thinker. He is, as I claim, a legal constructivist» (Corradetti, 2017, p. 413).

matter, that is rather than focusing on the conditions according to which a war can be considered as just, he mainly describes the (allegedly legal) norms for governments according to which peace can be permanently ensured. To this aim, particularly worthy to be mentioned is the enunciation of a third category of public law (Kleingeld, 1998), beyond the domestic or constitutional and international ones, that is the cosmopolitan law which addresses not the national citizens or the states but the individuals as «citizens of a universal state of humankind» with «corresponding rights of citizens of the world» (Rauscher, 2017). Thanks to this new sphere of law, not only does Kant recognize rights – mainly related to the right to hospitality which will be discussed later on – to all human beings as such, but he also clearly conceives the obligation of states to respect fundamental rights of all human beings, even if they are members of another state. Before analyzing the most revolutionary part of Kant's work, a brief discussion of the other two spheres of law and some remarks on Kantian contractualism is required.

In the wake and, to some extent also in opposition, of modern authors such as Grotius, Hobbes and Locke[36], and beforehand of contemporary authors such as John Rawls, Kant makes use of the social contract, and, hence, of the state of nature, as the basis for the legitimization of his project of perpetual peace. As a matter of fact, in the beginning of the second section of his work he clearly claims that «A state of peace among men who live side by side is not the natural state (*status naturalis*) is rather to be describe as a state of war […]. Thus, the state of peace must be established. For the mere cessation of hostilities is no guarantee of continued peaceful relations, and unless this guarantee is given by every individual to his neighbor – which can only be done in a state of society regulated by law – one man is at liberty to challenge another and treat him as an enemy» (Kant, 1795/1903, pp. 117-119). Therefore, Kant's account of the state of nature is not as pessimistic as Hobbesian one which corresponds to an endless war of everyone against everyone (*Bellum omnium contra omnes*) (Hobbes, 1642/1983,

[36] Kantian social contract theory differs from Grotius', Hobbesian, and Lockean ones in the constitutive foundation of the social contract since the first, so-called contractualism, is grounded on the equal moral status of persons while the latter, so-called contractarianism, whose roots are mainly retraceable in Hobbes, is based on mutual self-interest. Thus, contractualism and contractarianism differ in their understanding of human nature since «Under contractarianism, I seek to maximise my own interests in a bargain with others. Under contractualism, I seek to pursue my interests in a way that I can justify to others who have their own interests to pursue» (Ashford, Mulgan, 2018). It is important to clarify that this distinction does not go back to Kant, but is the result of the twentieth century revival of this tradition.

p. 86). Still, in the Kantian state of nature «although there is not perhaps always actual open hostility» it persists a «constant threatening that an outbreak may occur» (Kant, 1795/1903, p. 118). Because of this risk, the cessation of hostility and a durable peace among men, and states, can only be secured by common rules which equally apply to all of them. Beyond the different nature of Kantian social contract, another novelty of this work – compared to the previous main social contract projects – is the attempt to conceive a social contract which does not only cease the conflicts among man but also establish the conditions for a lasting peace. To pursue the latter objective Kantian contractualism introduces a new element in the social contract theory which is a contract among states able to avoid the state of nature in international relations. Thus, differently to the previous social contract theorists, Kant assumes that peoples, as states, are potentially able to agree on a contract as individuals have already done as rational autonomous agents with equal moral status[37]. Accordingly, Kantian understanding of social contract is based on the concept of morality whose content is derived from an agreement between all those agents in the moral domain (Ashford, Mulgan, 2018). The rules and principles according to which governments ought to be domestically organized, the international relations ought to be run and states ought to treat persons which are not their members are outlined in the three Definitive Articles for perpetual peace among states (Section 2). According to Kantian perspective of social contract, those (moral and political) principles[38] are the result of the binding agreements persons, and also peoples, were to rationally establish among themselves as equal autonomous agents and, in this sense, with an equal moral status.

[37] This reasoning is founded on a flawed interpretation of the already mentioned concept of *domestic analogy* (Bottici, 2007; Bull, 1977, p. 46). Moreover, this aspect had already been the subject of Hobbes' reflection (see paragraph *1.1.c*), later taken up by the Abbé de Saint Pierre (1713), who recommended European states to sign the same pact established among individuals fully extending the social contract logic to international relations. Saint Pierre's contribution, affected in turn the opinion on this matter of Rousseau (1762/1947), according to whom war arises from the relations between states not among individuals and peace can be reached only through a revolution creating a higher powerful federal body. It is worth noting that Kant built on and developed part of his argumentation on the works of the latter two authors.

[38] In his writing on global peace, Kant is aware that moral principles alone are not enough, but it is necessary to found them on the sphere of law. This aspect was already caught by Hobbes and makes an important difference in comparison to previous thinkers such as Grotius.

In the footnote of the last part of the introduction of Section 2, three types of constitutions are outlined as different social contracts – according to the agents, i.e. citizens, peoples, and persons, which are taken into account – related to each other:

> the postulate upon which the following articles are based is: - "All men who have the power to exert a mutual influence upon one another must be under a civil government of some kind." A legal constitution is, according to the nature of the individuals who compose the state: (1) A constitution formed in accordance with the right of citizenship of the individuals who constitute a nation (*ius civitatis*). (2) A constitution whose principle is international law which determines the relations of states (*ius gentium*). (3) A constitution formed in accordance with cosmopolitan law, in as far as individuals and states, standing in an external relation of mutual reaction, may be regarded as citizens of one world-state (*ius cosmopoliticum*) (Kant, 1795/1903, p. 119)

Besides clearly enunciating other two social contracts, in addition to that among citizens of a state entity, which concern the interrelations amongst states and the treatment of men as part of a unique mankind, the above-mentioned footnote underpins the formulation of a universal binding agreement which looks at the human being as such and which applies equally to all agents. The national constitution ought to be compliant not only to civil and international law, but also to the cosmopolitan law of the universal state of mankind of which men and state are members. *Mutatis mutandis*, applying this principle to the contemporary age, it would be possible to hypothesize the compliance of national constitutions with the rights enucleated in supranational Conventions, agreements and charters of rights, such as, at the global level, those affirmed in the UDHR[39]. In section 2, The three Definitive Articles specify how each constitution should be conceived.

The *First Definitive Article* focuses on the interrelations amongst men in a specific sovereign state:

[39] At the regional level, the European Convention on Human Rights can be a relevant example of a binding document which enforces 'cosmopolitan' rights on which those states agree signing this Convention (Gragl, 2013; Lupu, Voeten, 2012).

*"*The Civil Constitution of Every State Shall be Republican*"*. The only constitution which has its origin in the idea of the original contract, upon which the lawful legislation of every nation must be based, is the republican. It is a constitution, in the first place, founded in accordance with the principle of the freedom of the members of society as human beings: secondly, in accordance with the principle of the dependence of all, as subjects, on a common legislation: and, thirdly, in accordance with the law of the equality of the members as citizens (Kant, 1795/1903, pp. 120, 121)

In this article, Kant reaffirms the idea of the social (original) contract at the basis of the republican, and thus civil, constitution and explains how it should be shaped. Persons, as men (the term human beings would be, for that time, inappropriate), subjects, and citizens, are rights holders and duties bearers as the republican constitution, of which they are contracting parties, establishes for them. Each status of the person is related to a specific principle on which the constitution ought to rely and which would not be refused by any autonomous rational agent. In the first footnote of the article Kant provides an interesting account of liberty which points out his conceptualization of the moral conception of fundamental rights and law. According to Kant, lawful or judicial external liberty cannot be defined as the privilege, or right, of doing anything one wills so long as he does not injury another[40] but rather the privilege, or right, of not having to obey any external laws except those one would have consented to (Kant, 1795/1903, pp. 120, 121). The moral foundation of right is thus conceptualized in a negative sense as freedom of the individual to avoid being forced to respect laws on which he would not agree[41]. In the same vein, the external judicial or legal equality in a state is the relationship among the citizens in which no one can lawfully bind another without at the same time subjecting himself to the law by which he can also be bound (Kant, 1795/1903, pp. 120, 121). Therefore, no one can ask another person to abide by an obligation that they would not consider valid for

[40] The explanation of a "right" would be something like this: - Freedom is the possibility of actions which do not injure anyone. A man does not wrong another - whatever his action - if he does not wrong another": which is an empty tautology (Kant 1795/1903, p. 120).

[41] Here a clarification between freedom and free will in Kantian reasoning is required. Indeed, while (negative external) freedom refers to the absence of external constraints on what we choose or want to do, free will is understood as a condition of morality making a person exercise his/her free will in deciding between good or evil according to practical reasons (Kant, 1785/1998). In the attempt to clarify this difference in a nutshell, freedom can be seen as an essential component of free will. For a wider discussion of this difference see Hodgson, 2010; Sidwick, 1888.

themselves and, from this, comes one's right to demand others' respect of an obligation which they have claimed to be imposed on them. Even though Kant states that no definition of judicial or lawful independence is required since this already lies in the concept of a state's constitution as such (Kant, 1795/1903, pp. 120, 121) it is possible to understand it as the character of constitution to be indiscriminately imposed upon all persons. Thus, one has the right to refuse to respect a law which binds him but not others which are part of the constitution. These three principles[42] represent inalienable and inborn rights, which, according to Kant, belongs necessarily to the whole humanity (Kant, 1795/1903, pp. 120, 121). The universality of those rights relies on their moral foundation since they would allegedly be accepted by any rational autonomous agent.

The *Second Definitive Article* sketches out the conditions and modalities according to which the relations among states should be set:

> "The law of nations shall be founded on a federation of free states". Nations, as states, may be judged like individuals who, living in the natural state of society - that is to say, uncontrolled by external law - injure one another through their very proximity. Every state, for the sake of its own security, may - and ought to - demand that its neighbour should submit itself to conditions, similar to those of the civil society where the right of every individual is guaranteed. This would give rise to a federation of nations which, however, would not have to be a state of nations (Kant, 1795/1903, pp. 128, 129)

In contrast to Hobbes, Kant maintains that a contract among states would be possible in order to avoid reciprocal injuries and secure (perpetual) peace. Even though the content of this article may depart from the core of the work, a brief, however challenging, examination is necessary. The difficulty of the discussion of this article lies in the fact that it includes a potential contradiction[43] which leaves space for sharply different interpretations.

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[42] The principles of freedom, equality, and independency as essential constitutive elements of rights show communalities with the notions of reciprocity and generality which are at the basis of the Forst's moral constructivist conception of human rights and the distribution of rights and duties on which rely Pogge's account of social justice.

[43] «That would be contradictory, since a state implies the relation of a superior (legislating) to an inferior (obeying), i.e., the people, and many nations in one state would then constitute only one nation. This contradicts the presupposition, for

In both the Kant literature and the debates among Kantian political theorists, the standard view understands the article in a minimal sense and, thus, conceives Kantian contract between states as a league of nations in which states preserve their almost full sovereignty (Kleingeld, 2004; see also Rawls, 1999; Bohman, Lutz-Bachmann, 1997; Carson, 1988). On the opposite side, there are also authors that – attributing to the Kantian contribution a relevant influence in shaping contemporary international organizations, from the League of Nations to the United Nations, from the European Parliament to the International Court – draft different models of international organizations recalling the perpetual peace projects (Archibugi, 1992). In the wake of these opposite positions, hereinafter this paragraph seeks to interpret the second definitive article understanding it in a double perspective: between the theory – what would be just at the ideal level – and the practice – what occurs in reality – it is possible to trace a middle way which may be the most morally desirable and practically feasible solution.

The ideal league of peace *(foedus pacificum*) would lead to a State of nations (*civitas gentium*) (Kant, 1795/1903, pp. 134-136) which would enforce a strong limitation of national sovereignty. However, nations prefer to continue to run their political relations through war rather than ceding a consistent amount of their sovereignty. Therefore, since states «reject in *hypothesi* what is correct in *thesi*» (Kant, 1795/1903, p. 136), the best viable solution is a pacific confederation which maintains the freedoms of the states and does not enact global public compulsory laws nations ought to be subjected to. Hence, the international law should be founded on a negative substitute of that contract which led individuals to create a state and, so, on a «federation averting war, maintaining its ground and ever extending over the world». Doing that, this kind of federation, which is *de facto* more similar to a confederation, «may stop the current of this tendency to wage war and shrinking from the control of law» (Kant, 1795/1903, p. 136*)*. However, if nations opt for this non-ideal solution, the possibility of the outbreak of war would always be present.

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here we have to weigh the rights of nations against each other so far as they are distinct states and not amalgamated into one» (Kant 1795/1903, pp. 128, 129)

The *Third Definitive Article* retrieves the third type of Constitution, sketched out in the introductory part of the Second Section, which looks at the human beings as citizens of one-world state and, for the object of this work, is the most noteworthy. Indeed, in this article, Kant deals with the right of the man as such so to elaborate a third sphere of law and rights beyond the domestic law and the international law:

> the rights of men, as citizens of the world [*Weltbürgerrecht*], shall be limited to conditions of universal hospitality. We are speaking here, as in the previous articles, not of philanthropy, but of right; and in this sphere hospitality signifies the claim of a stranger entering foreign territory to be treated by its owner without hostility. The latter may send him away again, if this can be done without causing his death; but, so long as he conducts himself peaceably, he must not be treated as an enemy. It is not a right to be treated as a guest to which the stranger can lay claim - a special friendly compact on his behalf would be required to make him for a given time an actual inmate - but he has a right of visitation. This right to present themselves to society belongs to all mankind in virtue of our common right of possession on the surface of the earth on which, as it is a globe, we cannot be infinitely scattered, and must in the end reconcile ourselves to existence side by side: at the same time originally no one individual had more right than another to live in any one particular spot (Kant, 1795/1903, pp. 137, 138)

According to Kant, the meaning of the cosmopolitan right, *stricto sensu,* is the right of visitation or hospitality that is not to be treated with hostility when one arrives in the land of another. To illustrate, this right can also be understood as the right to *non-refoulement* when one's life is endangered (Corradetti, 2017, p. 425). In any case, the cosmopolitan right to visit or hospitality ought not to become a right of permanent settlement. On the other hand, the local has a right to refuse the foreigner when this can be done without causing his/her destruction. Thus, Kant distinguishes what the foreigners, and the locals, have a right to from what they do not have a right to, yet, since he is not utterly clear about what line of delimitation he is drawing (Kant, 1795/1903, p. 138), a wide margin of interpretation is left[44]. The latter question points out the issue of the right balance among different rights whose partial explanation can

[44] As Corradetti (2017, p. 425) notices «the cosmopolitan right to visit instantiates a variety of substantive claims: from claims to *non-refoulement* when one's life is endangered, to demands of transnational commercial agreements».

be understood in the light of Kantian principles of the civil constitution but which raised several other long-standing controversies, above all with reference to the global level, which, in any case, are not going to be addressed here. However, some clarifications can be made by temporally and spatially contextualizing Kantian argumentation on this kind of (cosmopolitan) right and understanding those rights in relation to the universal common right of possession of the globe. In the colonial context and while the extermination of Amerindians and the invasion and exploitation of their lands were still ongoing, Kantian account of the right to hospitality as sojourn but not as permanent visitation, along with the local's right to reject a person if the refusal does not endanger his/her life, can be understood in an anti-colonial and not anti-immigration perspective, which may be argued to be without contextualizing the text of the article. Indeed, Kant supposedly limits the cosmopolitan right to the right to hospitality in order to avoid the trade from becoming – as allegedly legitimately[45] occurred in several places of the world, above all in the New World – permanent settlement. Moreover, the rights of foreigners, or more broadly of the citizens of the world, seem to be enlarged not only by the clause that the refusal ought not to cause the destruction of them but, also, by the common possession of the surface of the world which belongs in virtue to the whole mankind since originally no one had more right than anyone else to particular parts of the Earth. According to this argumentation each man is entitled to an equal portion of the surface of the Earth along with what is therein. Therefore, this common universal right of each man leads to the extention of the basic rights of men, as citizens of the world, beyond the simple right to hospitality meaning more than a simple entitlement to not be refused in the case of the life of the person is at risk. In this sense, the tension between the rights of the locals and those of the foreigners seems to be attenuated insofar as both of them are recognized to have a common right of possession on the surface of the earth. Hence the interpretation of the right to hospitality in a broader sense, which may implicate not only the right to political asylum but may also include protection from starvation and/or fatal disease (Kleingeld, 1998). Another element

[45] de Vitoria justifies the punishment of Amerindians by colonialists and the Spaniards permanent settlement in America arguing that Amerindians were violating their universal right to trade (see paragraph *1.1.a*).

which points out the necessity to find ‘cosmopolitan’ rules which bound the whole humanity, and, as a consequence, enforce the rights of the citizens of the world, is the peculiar spherical shape of the world which forces men to reconcile each other and leads them to be mates obliged to share the same planet and to organize together their life on it (Kant, 1795/1903, pp. 138).

According to several scholars, among which Noberto Bobbio (1969), the consistent relevance and peculiar innovation of this article are its openness towards the universal rights of men as citizens of the world. In this sense, the pursuit of global justice can be considered as a viable way to ensure fundamental rights to all human beings regardless of their national membership and their settlement. Rights which may imply a protection beyond their state of origin or, in some cases, even against it.

The last part of the Third Definitive Article makes clear the Kantian perspective of this third sphere of rights, i.e. the rights of the men as such:

> The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it. Hence the idea of a cosmopolitan right is no fantastical, high-flown notion of right, but a complement of the unwritten code of law-constitutional as well as international law-necessary for the public rights of mankind in general and thus for the realisation of perpetual peace. For only by endeavouring to fulfil the conditions laid down by this cosmopolitan law can we flatter ourselves that we are gradually approaching that ideal (Kant, 1795/1903, p. 142).

This part of the Third Definitive Article, with particular reference to the phrase «unwritten code of law-constitutional as well as international law» demonstrates the presence of some elements of natural law theory in Kantian reasoning since he refers to an unwritten law and right which precedes the positive legislation. Moreover, it is above all interesting to note that already two centuries ago, the perception of the thickening of global relations, even though always taking the nation as the main point of reference, leads such an authoritative and influential author to believe that the violation of a right could have had global resonance and to start to speak in favor of a cosmopolitan right.

According to this assumption, the idea of a cosmopolitan law in order to protect the rights of the man as a citizen of the world is ideal but not chimerical since human beings can make feasible steps to pursue this ideal. Focusing on the right of the man as such, this Kantian work triggered, or, better saying, fostered, a strong debate, still ongoing, on the individuation and description of the universal fundamental rights to which each human being is entitled and how to implement these fundamental rights at different levels of governance. This discussion develops on the concrete possibility and feasible ways to make those rights recognized and protected by effective and efficient instruments, of which a 'cosmopolitan constitution' is the most ideal example and the above-mentioned regional Courts and tribunals[46], Conventions and Charts are the concrete steps towards this ideal. The main contribution of Kant, that is the clear exposure of a third sphere of rights, which belongs to every man as such, is sketched out in a philosophical, political and legal project, the *Perpetual Peace: A Philosophical Sketch*, which combines theoretical assumptions with practical implications. For this reason, not only does this work point out the ideal of a perpetual peace, and the conditions to realize and maintain it, and draft the rights of the man as a citizen of the world, but it also sketched out, although summarily, practical steps to follow by the humanity in order to pursue those ideals.

1.3 An overall view on the contemporary theories on universal rights

Hitherto, this work has focused on the historical evolution of the concept of universal fundamental rights, in the sense of a moral concern typical of each human being as such, pointing out strong and weak points of the main theories on this matter. In this regard, the early modern authors provide a valid and comprehensive argument in defense of the universalism of fundamental rights, even though their theories, let alone their conceptualization of universal fundamental rights, demonstrated to be inclined to favor the concerns of the Europeans, often at the expense of other peoples, and not of the man as such. One of the main exceptions[47] is represented by Immanuel Kant whose

[46] See Footnote 36.

[47] Kant's argumentation represents an exception to the previous authors' perspective since his work does not demonstrate to be conceived in order to uphold the interests of Europeans. However, his conceptualization of the man as citizen of the world is also affected by geographical and temporal contingencies as long as he avoids entitling to the men more than a

work *The Perpetual Peace: a philosophical sketch* theoretically readdressed the universalistic character of the notion of fundamental rights conceiving rights which belong to mankind as world citizens and which are detached by the interests of specific people(s).

The contemporary debate on the universal power of the concept of fundamental rights is considerably vast and, for sure, it will not be thoroughly explored herein. Rather, this paragraph aims at providing a sketch of some contemporary theoretical conceptualizations of the notion of fundamental rights and few apologists and critics of the potential universalism of fundamental rights without, in any case, disregarding – even though taking for this moment aside – its historical relativism and the detachment between the theoretical conceptualization of universal fundamental rights and their effective implementation. Even though this paragraph may be considered as excessively reductive, it is worth briefly mentioning how the conception of right has evolved in the more recent era. Indeed, these helpful arguments may come in handy for a cross-cutting understanding of the main topic of this work and a context in which frames the following chapter on the distribution of rights and duties at the global level and the relation between different categories of fundamental rights.

1.3.a A sketch of the contemporary conceptualizations of the notion of universal fundamental rights as moral rights

Among those which conceive the existence of a catalogue of rights beside the ones listed in the legal system[48], the philosopher and jurist Ronald Dworkin elaborates a noteworthy and rich defense of the existence of rights outside of the written law. To this aim, along with John Rawls, Dworkin makes an attempt to re-actualize the natural law theories of the modern period (Baccelli, 2005a). Indeed, according to Dworkin, «citizens have right apart from what the law happens to give them» and «have moral rights against their governments» (Dworkin, 1977, p. 184). Hence, not only does Dworkin argue that there are rights which overcome those recognized by the legal

simple right to hospitality because he is clearly influenced by the violent occupation of America by Europeans, in addition to excluding the woman from the enjoyment of rights.

[48] In opposition to the legal positivism which states that law and rights are a matter of what has been legally approved (Green, 2018).

system but also affirms that those moral rights can be claimed even against the state. However, he partially leaves open the issue of the agents entitled to make those claims effective, above all at the global level. In relation to the holders of those rights, recalling Rawls' *Justice as Fairness* (1985), he states that it exists «a natural right of all men and women to equality of concern and respect, a right they possess not by virtue of birth or characteristic or merit or excellence but simply as human beings with the capacity to make plans and give justice» (Dworkin, 1977, p. 266). Dworkin, via Rawls, defines the right to equality as the right to equal respect and concern in the design of political institutions. Taking aside at this moment the different accounts of equality and justice and the tension between equality and liberty, what is relevant here is the unit of reference of universal rights which is women and men as such. Almost taken for granted, Dworkin defines the human being as such as the proper and morally lawful rights-holders.

In his rationalistic re-actualization of rights, Dworkin recognizes some moral rights which go even beyond those singled out in the Constitutions since «though the constitutional system adds something to the protection of moral rights against the Government, it falls far short of guaranteeing these rights, or even establishing what they are» (Dworkin, 1977, p. 186). Here come the problematic questions, which will be to some extent addressed in the following chapter: 'which can be defined as universal fundamental rights?' and 'what is the relation among different rights?'. It is worth mentioning that Dworkin limits these fundamental basic rights to individual, *qua* civil and political, rights excluding collective, *qua* socio-economic, rights. This conceptualization of universal fundamental rights, in addition to the fact that it is predominant in the west philosophical, political and judicial tradition, excludes that universal fundamental rights may also include socio-economic rights. However, this point will be deeper discussed in the following chapter.

In contrast with Dworkin's rationalistic re-actualization of universal fundamental rights, Jurgen Habermas does not support the idea of the derivation of the universal fundamental rights only from morality. Rather, according to Habermas, the law and the rights are functional to ensure social integration relieving the individual from some

cognitive, motivational and organizational pretensions, typical of morality (Baccelli, 2005a; Habermas, 1992). According to the Habermasian *theory of communicative action* and *intersubjective agreement* what is essential is to recursively converge to a universal consensus on fundamental rights. Foremost, a necessary proviso for this understanding is that each agent adopts a performative attitude of a speaker which wants to agree with a second person about something (Habermas, 1984, p. 27). Fulfilled by the latter condition, the consensus theory of truth, which establishes the truthfulness of a statement according to its shareability, would overcome each parochial criterion and ethnocentric horizon stating the assumptions for the conceptualization of an open universalism of the fundamental rights. Nevertheless, connecting the political justification of fundamental rights with their constitutional adjudication and referring to the Italian case, former Justice Cartabia emphasizes how, since the 90s, we have been experienced a shift from the Habermasian *Constitutional patriotism* to an epoch of *new rights* which go beyond the national justification embracing the European level (Cartabia, 2009, pp. 537, 538). Accordingly, the paradigm of fundamental rights seems to gradually become a universal heritage recognized globally rather than an expression of the national legal tradition. Moreover, even though Habermasian theory has the merit to challenge the long-standing problem of the allegedly particularistic bias of the universalism of fundamental rights, it has been criticized for subjecting the truth, in this case the shared conception of the universalism of fundamental rights, to the agreement and belief of the majority.

Another noteworthy reasoning on fundamental rights, which seeks to combine elements of naturalism, legal positivism and constitutionalism, is that of the legal philosopher Ferrajoli. According to his theory, each rule of law, above all if endowed with a rigid constitution, is not anymore subjected only to external evaluation, according to the natural principles of justice, but also to a domestic assessment, that is according to its own tenets listed in those positive tables of natural law and rights which are the Constitutional Charter (Ferrajoli, 1989, p. 351). The latter has the great merit of having legally enacted the fundamental rights of the human being:

> The ‘guarantistic’ constitutionalism is, thus, to conceive itself, at the theoretical level, as a completion of the legal positivism, since it consists in the positivization of the same choices with which the legislator must comply, both of the rule of law and the democracy, since it implies the subjection of each power, included the political and the legislative one, to formal and substantial norms directed, in first instance, at limiting and binding their use and in second place censoring and removing their violation to guarantee the rights of all (Ferrajoli, 2013, p. VI)

According to Ferrajoli, the contemplation of fundamental rights, not only in the nineteenth century constitutions, but also in the Charter of the United Nations and in the UDHR, makes the fundamental rights *Jus cogens*. The entire catalogue of civil, political, and socio-economic rights has to be ascribed to the ‘person’ and not anymore only to the ‘citizen’ (Ferrajoli, 1994). The fundamental rights, which are the primary rights of the persons, entitled to all human beings (for instance the right to life and to personal integrity) (Ferrajoli, 2001, p. 8), include a wide range of rights which are not only civil and political ones.

However, since not only does Ferrajoli point out the formal recognition of fundamental rights but also the relevance of the guarantee, through legal norms, of the enjoyment of each fundamental right (Ferrajoli, 2001, p. 8), it is impossible to deny that the actual protection of fundamental rights is still strongly related to the membership of a specific political, judicial community. Accordingly, the substantial ascription of fundamental rights to the ‘person’ rather than only the ‘citizens’ ought to be envisioned as still considerably ideal. Fundamental rights are formally recognized to each human being but fulfilled differently according to their own citizenship. Notwithstanding, the insubstantial protection of the fundamental rights listed in the international Charters and Conventions and national Constitutions must represent an exhortation for the implementation of international rights to make fundamental rights more effective. Indeed, if an abyssal divarication between the legal norm and the reality exists, it must be countered or at least reduced since it would be a source of delegitimization not only of politics but also of the legal system as a whole (Ferrajoli, 2001, p. 31; Zolo, 1998a). However, the reduction of this gap – which can be considered as one of the main tasks of the agents of global justice (see chapter IV) – necessarily also requires a

reconceptualization of universal fundamental rights and the specification of the relations between different categories of rights.

Thanks to the work of Norberto Bobbio – written a few decades before the other above-mentioned contemporary authors in reply to the critics of the notion of universal rights, mainly *qua* individual rights – it is possible to have a sketch of the different positions on the long-standing debate about the holders of fundamental rights. However, before delving into Bobbio's contribution to the current discussion on universal fundamental rights a specification on Bobbio's view on earlier conception of fundamental night is necessary. Indeed, besides sharing the Hobbesian idea that natural rights cannot be considered as real rights – but rather are *unarmed rights* since unlikely positive law it lacks the feature of coercibility, that is the possibility to be effectively enforced – he also eloquently describes Hobbesian argumentation on natural rights as a brilliant and mischievous exercise of retaliation (Bobbio, 2004, p. 93, 1965). This exercise refers to Hobbesian twofold radicalization and neutralization of the concept of natural right, which completes the conceptualization of subjective rights as freedom and power of the individual, thus radicalizing the individual character of rights, but then neutralizing these rights transferring all of them to the Sovereign – the only one able to effectively protect the most important right, that is the right to life (see paragraph *1.1.d*).

As for his assessment of the conception of rights in the second half of the twentieth century, Bobbio considers the progressive spread, specification and positivization of fundamental rights as the Kantian *signum pronosticum* of the moral progress of humanity (Baccelli, 2005a). Distinguishing between those who accuse the fundamental rights of excessive abstractness and those who accuse them to be even too concrete, some relevant elements from both sides deserve attention. The first is mainly a historical criticism, from Burke to the theorists of Restauration and Hegel (Bulgan, 2015, pp. 182-197), saying that the notion of right cannot be truly and effectively universal since its conceptualization is historically relative and, accordingly, its excessive abstraction may lead to easy misuse[49]. The second, from Olympe de Gouges

[49] *Mutatis mutandis*, Amartya Sen (2009, pp. 15-26) draws a similar criticism to the notion of Justice arguing, in his essay *The idea of justice*, that the contractualistic approach to Justice, which he refers to as transcendental institutionalism and to

to Marx and the contemporary criticism of the 'Westernization of the world', shows that the man of the seventeenth-through nineteenth- century Declarations of rights is, actually, male, bourgeois, Christian, white, western. According to this kind of criticisms, the individual of the Declarations is not the human being as such and, thus, the rights of these Declarations are far different than those which ought to be equally and impartially recognized to each human being regardless his/her gender, race, class, religion, skin color, origin. In plainer words, the rights entitled to each human being by the Declarations are the rights of a specific man and expression of peculiar and parochial concerns. Hence, according to those criticisms the notion of individual rights is excessively abstract to the extent to which it allows wide misrepresentation, and, at the same time, extremely concrete insofar as they are related to the concern of specific persons and peoples. Addressing these criticisms, Bobbio argues that rather than abstract, seventeenth- through nineteenth-century rights are the expression of concrete claims, that is real 'acts of war' against intolerable privileges and abuses of power. In addition, if these claims have been affirmed by a particular class in a specific historical and geographic context, it does not mean that they do not have universal power as such (Baccelli, 2005a). For sure, the criticisms toward the notion of rights and their holders are worth taking into account in order to avoid the universal character of the concept of right and the list of fundamental rights being biased in favor of particular concerns and peoples. Thus, the process of conceptualization of universal fundamental rights should be able to consider the human being as an ideal rights-holder, on the one hand, as a temporally and spatially de-contextualized citizen of the world and, on the other hand, as a person whose peculiar characteristics are worthy of respect. For those reasons, the criticisms can be functional for a theoretical redefinition of the notion of universal fundamental rights to make it - even though it may seem paradoxical - effectively 'more' universal avoiding a western-biased conceptualization which is hostile to

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which belongs contractualist theorists from Hobbes to Rawls, is both infeasible but also redundant. This is because theories of justice associated with the approach of transcendental institutionalism, for how they different from one another, seek to envision perfectly just social arrangements and institutions which are not just far from being realizable in practice, but they are not even helpful to make justice concretely advance. Thus, Sen defends a comparative approach to the practical reason of justice which can guide policies, strategies or institutions to let (global) justice progress through small but concrete steps, such as «the reform of the patent laws to make well-established and cheaply producible drugs more easily available to needy but poor patients» (Sen, 2009, p. 25).

multicultural comparison and, hence, being able to include different peoples' and person's instances and demands. In addition, Bobbio argues that the claiming character of the universal fundamental rights can foster the human beings' awareness of their entitlements and, vice-versa, the claims for a formal and substantial recognition of fundamental rights along with actual guarantees of their protection can widen the categories of human beings which can effectively enjoy these guarantees and, thus, be defined as real rights-holders. A clear and noteworthy practical example is provided by the audacious act of Olympe de Gouges which declined the *French Declaration of the right of man* in feminine gender (and was beheaded for that, paying for her revolutionary action with her life). That brave and revolutionary act gave momentum to the inclusiveness of the notion of fundamental rights, fostering the shift from the rights of men to the right of the human being. This fact shows how the effective enjoyment of rights can be fostered by extending the categories of the human beings considered as rights-holders, possibly until including the whole of humanity. To this aim, the UDHR and the following *pacts on civil and political rights* and *on economic, social and cultural rights* can be considered as a formal starting point to avoid that the enjoyment of fundamental rights will not be a prerogative of few specific inhabitants of the world.

1.3.b Some approaches toward the universalism

Before deepening the core topic of this dissertation, that is the current global (under)fulfillment of different universal fundamental rights and the agents of global justice entitled to implement them, this dissertation goes through an overall discussion of the different perspectives on the universalism and, more precisely, the possibility to find a common understanding of human fundamental concerns which underpin the potential shareability of the notion of rights. To this aim, this paragraph will briefly analyze on which basis the universalism of this notion can be built and the tension between its justification and its consensus.

Among those who focus on the consensus and the implementation rather than the foundation of fundamental rights, Bobbio argues that the conceptualization of an ultimate foundation of universal basic rights may not be beneficial and, accordingly,

they should find their broad justification on their intersubjective and relational character. Indeed, assuming that rights are something desirable – i.e. aims worth to be pursued, and, notwithstanding their desirability, they have not been yet completely and equally recognized everywhere – the conceptualization of their universality adducing the motivations which justify the choice which we have made and which we would like to be adopted by the others too, may be an adequate means in order to bring them to a wider recognition (Bobbio, 2005, p. 6). Thus, according to Bobbio, an indisputable foundation of rights may feed the dogmatism, risking upholding the humanitarian fundamentalism which underpins the cynical imperialism of 'the rights of the West', that is a biased conceptualization of universal fundamental rights bent on western interests and concerns (Tedesco, 2009, pp. 15, 16). Always referring to the fallacy of the foundationalism of the of universal rights, Bobbio argues that it is essential to abandon the research of an ultimate (and extrajudicial) foundation of the universalism of fundamental rights, and, rather, the focus should be put on the theme of the consensus around them (Tedesco, 2009, p. 18). For him, nowadays it is possible to state that the problem of the rights of the human being has found a solution into the UDHR (Bobbio, 2005, p. 18). Thinking about the rights as relative, and thus historical, in order to find a foundation, not granted once and for all, Bobbio assumes that their universalism lies on the *consensus omnium gentium* which would have distinguished the UDHR (Tedesco, 2009, p. 18). Even though the origin of the conceptualization of the notion of right is not universal, there is no deterministic relation with the possibility of the spreading of this notion (Donnelly, 1989, pp. 69, 70). Thus, even if it may be misleading to conceive the consensus on the UDHR as a fact taken for granted along with the fact that it has formally universalized not only the rights but also the values which underpin them (Tedesco, 2009, pp. 18, 19), it is not utopian to look at the UDHR as a starting point to strengthen this consensus. Nevertheless, for the purpose of this work, the focus will be kept on the relation among different categories of universal rights and their justification at different fundamental levels rather than an elaborated analysis of their foundation which will be just briefly touched upon in this paragraph.

In regard to the justification of universal fundamental rights, in a similar way an indisputable foundation of rights may raise a vicious dogmatism, an excessive blurred conceptualization of the notion of universal rights may more easily lead to manipulation and misuse to defend particular concerns as long as this concept would become an empty container to be fulfilled with whatever is useful to legitimize specific purposes. A third way to overcome this core issue can be a shared search for a solid interpersonal justification, able to include different perspectives on the notion of universal fundamental rights but, at the same time, trying to conceive it as a valid basis to understand universal rights as human common moral concerns.

Another perspective on universalism is based on the non-cognitivist theory, which considers some common values as the assumptions for the deductive constructions of fundamental rights. Accordingly, as argued by Ferrajoli, in order to define which rights are fundamental it is possible to refer to the value of equality, democracy, peace, and protection of the weakest (Ferrajoli, 2001), which can be considered as the more shareable values all over the world. Furthermore, Ferrajoli supports the idea that the axiological justification of fundamental rights lies on the values and vital needs which have been historically affirmed through fights and revolutions and which lead people to claim specific (allegedly universal) rights.

Addressing universalism from a multicultural perspective, the philosopher Charles Taylor underlines how the spontaneous spreading of common values can provide an idea of what would be similar to a universal spontaneous consensus of the concept of universal fundamental rights. This process can lead to a reciprocal understanding, which moves toward a fusion of horizons, according to the dialectical concepts elaborated by Hans-Georg Gadamer (2001), in which the moral universe of the other gets closer to us, and, thus, less foreign (Taylor, 1999, p. 126). Taylor's reasoning, which falls into the hermeneutical philosophy, seems to point out a viable path for the intercultural shareability of the notion of fundamental rights which must be founded on an inherently dialogical dialectic and on the awareness that no perspective is dominant toward the others (Baccelli, 2009, p. 79). In this sense, a contextual but not ethnocentric adaptation of universalism is conceived, which includes values potentially universal,

recognized by each culture which, nevertheless, expresses them in different ways (Pastore, 2004, p. 7; see also Corradetti, 2010). The hermeneutics can, thus, be seen as a means to build a consensus on the notion of universal fundamental rights and to find common values which uphold it. However, the problem of the potential conflicts among different fundamental rights remains partially unaddressed.

To keep the distance from a 'particularistic universalism', in which the universal criterions and their interpretation are biased by local concerns, the philosopher Richard Rorty believes in a search for the justification of fundamental rights not in the hooks hanging from the sky, but rather in crevices of each own acculturation able to offer footholds to try to go beyond it (Rorty, 1991). This research necessarily presupposes a relation of equality among different cultures and the continuous interchangeability of the cultures which must be defined as an entity with open borders (Baccelli, 2009, p. 118). From this point of view, fundamental rights cannot be limited to a specific unchangeable catalogue, but they should be conceived in such a way that they are always in expansion and at the same time do not make it inconceivable to have a fixed basic core. For this reason, accepting the particular importance attributed by several cultural experiences to the socio-economic rights and the concept of collective rights is a preliminary step which is indispensable to undertake a productive intercultural dialogue and to make the understanding of the concept of universal fundamental rights more shareable (Baccelli, 2009, p. 117). Still, the different weight given by various cultures to different rights does not answer the problematic question of which category of rights, if any, would have priority in case of conflict.

Before moving forward with the research, and the examination of the problematic points and the unanswered questions raised in this chapter, in order to tackle the core topic of this dissertation, an example of the intercultural understanding and common justification of the concept of fundamental rights which may be found in temporally and spatially different contexts is worth mentioning. Even though the comparison may seem

simplistic, not properly academic and too ambitious[50], some analogies on the conceptualization of rights by Hans Kelsen and Mahatma Gandhi can be detectable. Indeed, according to Kelsen's *Pure theory of law*, there is complete correlativity between individual right and duty (Kelsen, 1931). In a similar vein, even if more in philosophical and literary than in legal and systematic terms, Gandhi conveys the principle according to which each right is related to a duty. As a matter of fact, when he was asked to express an opinion about the concept of human rights, he gave a simple but meaningful answer:

> I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from a duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for[51].

Chapter II. The limitations of statism and cosmopolitanism[52]

This critical chapter seeks to answer the following question: What are the fundamental rights and duties to be implemented and enforced at the global level according to the main theories of global justice? Thus, the chapter further develops the debate on global justice underlining the limitations of the mainstream theories on this topic, i.e. statism and cosmopolitanism (or globalism) (Brooks, 2020, 2012, 2008; Risse, 2017, 2012; Held, Maffettone, 2016; Brock, 2013; Brock, Moellendorf, 2007; Forst, 2012). Indeed, statist scholars argue that concerns of justice apply only within the national borders (Miller, 2007, 2005, 1992; Nagel, 2005; Blake, 2013) failing to take into account the systemic nature of global politics (Wallerstein, 2004) and the general duties we owe toward other fellow humans as moral equals (which are not part of our

[50] Indeed, it is important to note that Hans Kelsen and Mahatma Gandhi also endorse different approaches toward universal rights and duties since while the former can be reconducted to the strand of legal formalism the latter develops his idea in a pragmatic perspective.

[51] Letter from Gandhi to Julian Huxley in response to the UNESCO Initiative in 1947 to invite a group of important intellectuals to express their judgment on the preparation of the *Universal Declaration* and their evaluation about the attempt to define and encode a list of human rights. See UNESCO, *Paths to Peace, INDIA's Voices in UNESCO*, Unesco New Delhi, 2009.

[52] Part of this chapter has been published as scientific articles in the *RUDN Journal of political science* and in the *Science Journal of Volgograd State University. History. Area Studies. International Relations* and as proceedings of the 2019 Conference of the Italian Society for Political Philosophy.

national community) while cosmopolitan scholars state that there are principles of justice applying at the global level (Pogge, 2008, 1989; Moellendorf, 2016, 2009; Beitz, 2009, 1999; Nussbaum, 1994; Goodin, 1988) lacking to take into account the (weak) feasibility of their cosmopolitan reforms and the moral and political relevance of associative duties among fellow countrymen.

The main goal of this chapter, in the wake of the central purpose of this research, is to underline the noteworthy limitations of the above-mentioned conceptions of justice envisioning, in the next chapter, a conceptualization of global justice and universal fundamental rights, and their corresponding duties, which is able to adapt to the thickening of the relations among peoples and persons at different levels while being sensible to the different contexts in which the claims of justice are framed.

Thus, the three aspects of the debate on universal fundamental rights and global justice this chapter takes into account – in the analysis of statism and cosmopolitanism and in the following proposal aimed to overcome their limitations – are the levels (local, national, global) at which principles of justice apply, the relation among different categories of fundamental rights and the justification of their corresponding duties. As anticipated in the introduction, this chapter will neither delve into different conceptions of the currency of (global) justice nor deepen the founding elements of the concept of (socio-economic) justice and universal fundamental rights.

In order to clarify at best the boundaries of the debate, which make an argument worthy to be taken into account in the discussion of the object of this chapter, it is important to bear in mind that the reasonable disagreements and theoretical dispute between conceptions of global justice and universal fundamental rights occur within a shared acceptance of a broadly universal moral landscape, so-called cosmopolitan plateau, as Held and Maffettone put it (2016, introduction), which has hitherto been reached. According to this cosmopolitan plateau, both cosmopolitan and statist scholars do not doubt the broad but relevant ideas that human beings, as moral equals (Dworkin, p. 25), deserve equal fair treatment and grave global inequalities are a burdensome fact not only from the moral and ethical points of view but also from the social, political and economic ones (Rehbein, 2015; Bauman, 2011; Sassen, 2007) and, accordingly, are a

matter of some kind of concern. Thus, there is a wide and transversal acceptance of the idea that human beings are moral equals and, accordingly, they must be recognized as equal duty-bearers and rights-holders. Different theories can diverge on which rights must be considered as more relevant, for example libertarians strive for liberty-rights while communitarians for social, economic and cultural rights, or at what level norms of distributive and political justice are more or less applicable, the national one for statism and the global one for cosmopolitanism. However, a theory which argues for the denial of the equal moral status of all human beings must not be considered worthy to be taken into account insofar as it goes beyond the boundaries of reasonable disagreement. The main overall implication of the cosmopolitan plateau is the general shared commitment to basic human rights (Cohen, 2004), which however has not led to a consensus on a shared conception of global distributive and political justice (Held, Maffettone, 2016) since, again, the enforcement of basic human rights is considered a matter of humanitarian relief for statism (Miller, 1992, p. 301) and a question of comparative justice for cosmopolitanism (Pogge, 2008, p. 57). Moreover, the concept of human rights itself is not devoid of criticism (Kennedy, 2012, 2002) as discussed in paragraph *1.1* and, further on, in paragraph *2.4.c*.

2.1 Global Justice and universal fundamental rights: a preliminary clarification

The object of this chapter involves terms – among the others, (global) justice and rights and duties – which are debated in several fields of study and whose conceptualization has been at the core of long-standing disputes which are widening more and more. Even though different theories on universal fundamental rights and their historical roots have been widely analyzed in the previous chapter, further clarifications are required, above all on the relations between rights and duties, in order to provide the theoretical basis to discuss the main points of this and the following chapter. Thus, before probing the main theories of global justice and sketching out the original contribution of this work to the debate on this matter, it is worth making further terminological and methodological clarifications about the object of this chapter. Even though it would be almost impossible to sketch out a precise definitive conception of

global justice and universal fundamental rights and duties, as we have partially proved in the previous chapter, a wide agreement has been reached in the way they are outlined below.

Trying to catch its essence, justice can be formally summarized in the ancient Latin formula, from the jurist Ulpian, *suum cuique tribuere*[53] according to which an action is considered as just when it gives each person his or her due (Gosepath, 2001, p. 136). Rephrasing the latter concept to better explain what justice is, it is possible to say that «justice, at its core, concerns itself with who deserves what and why» (Waters, Scheinpflug, 2017) or justice can also be understood as the commitment to fighting against morally arbitrary inequalities (Giovanola, 2016; Forst, 2012). Being slightly more precise, however losing neutrality getting a bit closer firstly to the cosmopolitan conception of justice and secondly to Rawlsian and statist conception (Risse, 2012, p. 24), social justice can be respectively defined as the fair distribution of fundamental benefits (e.g. claims, liberties, powers, and immunities) and burdens (e.g. duties and liabilities) to all (Pogge, 2008) and can be considered as «the first virtue of social institutions» (Rawls, 1971, p. 3). It goes without saying that global justice regards the fairness of the above-mentioned distribution at the global level. To provide a first sketch on the standing of statism and cosmopolitanism on this topic, statism argues for the fact that the current global distribution of rights and duties is fair, or at least global burdensome inequalities are not related to justice, and relieving the burdens of the worse off at the global level is a matter of humanitarian aid while cosmopolitanism states that principles of justice apply also at the global level considering the current global distribution as unjust (Mikalsen, 2017; Brock, 2013; Risse, 2012).

As already mentioned above, it is possible to define rights as fundamental benefits and duties as fundamental burdens. Looking at the core meaning of the concept of rights, to have a right means to have a valid claim (Feinberg, 1970) which entails (justifiable) duties to others. As also the author of one of the most sophisticated analysis of the very basic conception of rights, Hohfeld, admits, «"in the strictest sense" all

[53] Also the Greek poet Simonides provided a similar meaning of the concept of justice in the first book of Plato's *Republic* (380BCE/1996).

rights are claims» (Hohfeld, 1919) and, in a nutshell, duty is «that which one ought or ought not to do» (Hohfeld, 1913). Duties are obligations, or justified burdens, which persons or peoples ought to bear. Obviously, there are different categories of rights and duties, such as moral and legal ones, which we will touch upon further on. For the main purpose of this chapter, however, the focal point to bear in mind is that each right has one or more corresponding duties, and each duty can be understood as a justifiable restriction of the level of fulfillment of one or more rights. In order to provide a first broad idea about the intricate and complex relations between different kinds of rights and duties it is possible to think about the right to free speech and the right to honor and privacy vis-à-vis their corresponding duties. The enforcement of the duty to respect one's own honor and privacy implies restrictions to the implementation of the right to free expression and, in the same vein, the duty to respect the freedom of speech implies (slight) restrictions to the exercise of the right to honor and privacy. The practical implications of this crucial problem are pervasive and detectable even in our everyday life. Many countries still have laws regarding blasphemy meaning that swearing – or, more generally, showing disrespect toward sacred things – can entail different kinds of penalties from a small fine in countries such as Italy to the death penalty in countries such as Saudi Arabia (USCIRF, 2017). Even though few people and scholars may argue for the fact that it is just to condemn to death a person for blasphemy, a religious person may find a fine reasonable for that. However, taking aside the severity of the punishment and the individual opinions on this matter, the just mentioned example underlines the difficult exercise to balance different kinds of (competing) rights, specifically, in this case, the right to free expression versus the right to one's own honor. Thus, is the blasphemy law just? Providing a clear answer would go beyond the scope of this dissertation. However, the question highlights the need for a balance between different rights, which is a crucial topic that will be investigated further on. For this moment, to sum up, quoting Hohfeld again, it is important to bear in mind that «'Duty' and 'right' are correlative terms. When a right is invaded, a duty is violated» (Hohfeld, 1913; Riva, 2016) and, for this, they can be seen as two sides of the same coin, i.e. social justice.

As already touched upon in the introduction, this chapter makes use of a critical methodology comparing the main points of the two leading theories on the above-mentioned topics and trying to go beyond them proposing a *balanced approach* toward global justice and a *fair mean* of universal fundamental rights able to tackle their drawbacks. Some further relevant remarks must be outlined in regard to what this chapter takes into account and what it leaves out in order to avoid losing the focus on the main aim of this work. To illustrate, this chapter restricts the analysis of statism and cosmopolitanism concentrating on their conception of the scope of justice, i.e. the assessment of the extent to which the global context can be considered as a context of justice and the rights and duties which persons and peoples ought to enjoy and ought to bear at the global level according to their paradigms. The chapter does not deal with the universal foundation of both civil and political rights, *qua* classical individual rights, and, social and economic rights, so on defined as socio-economic rights, focusing on their dialectic relations and global justification, as well as on the justification of the corresponding duties they entail.

Before proceeding, another methodological clarification is needed in order to explain the logic behind the organization of the structure of this chapter. The analysis of the state-of-art on the theories of global justice is mainly conducted through the critical analysis of the most relevant points of the argumentations of their preeminent exponents. However, although the following paragraphs outline a partial division of the different authors' reasoning, their theories are discussed not focusing on the author's standing itself but rather to describe an aspect of the whole picture of the respective theories, that is statism or cosmopolitanism, to which they are supposed to belong[54]. Therefore, the main aim of the following paragraphs, after an empirical sketch on the current level of global inequalities, is the elaborated composition of two mosaics made of the most relevant pieces of different authors' contributions.

[54] Since statism and cosmopolitanism, as all the other labels, are clear cutting categories, it is important to notice that, even though some theorists can be considered as 'fully' statists, such as Nagel, or 'fully' cosmopolitans, such as Nussbaum, the majority of thinkers on this matter ought to be assessed as more or less statists or cosmopolitans as we will see in this chapter. Just to mention a few, Blake argues that there is «no inherent contradiction between the statist and the *moral* cosmopolitan» (Blake, 2016) while Ypi envisions a conception of cosmopolitanism, namely statist cosmopolitanism, which recognizes the state an intrinsic normative standing and the role of the most relevant agent of global justice (Ypi, 2012).

2.2 A broad empirical picture of contemporary global inequalities

«inequality is a violation of human dignity»[55]

Göran Therborn

The discussion of the scope of global justice and universal fundamental rights is inherently related to global socio-economic and liberty inequalities. Indeed, principles of justice are elaborated and enforced to tackle different forms of inequalities and to make possible the normative assessment of the extent to which they must be assessed as unjust and, accordingly, corrected (Giovanola, 2016, p. 14) while the entitlement of different fundamental rights to each human being is related to the measure according to which inequalities in socio-economic opportunities and fundamental liberties turn into the denial of the secure access to a fundamental right no one should be withheld of. In fact, global inequality poses the problematization of the unequal enjoyment of the secure access to the object of civil and political and socio-economic rights which is in place in our world and which can give rise to claims to justice. In this regard, the wide global socio-economic and liberty inequalities are obviously connected to the secure access to the object of socio-economic and civil and political rights and, to some extent, to the current theoretical conceptualization of their global scope. Nevertheless, it is important to clarify that the (universal) scope of these rights cannot in any way be simply justified by the global rise in socio-economic and liberty inequalities, which however might be a consequence of the lack of recognition of the global scope of justice and of the weak effort to enforce the global implementation of universal fundamental rights.

This paragraph merely aims at providing a broad illustrative picture of the current global situation concerning different forms of inequality, above all in the enjoyment of socio-economic rights on the one hand and civil rights on the other. The normative assessment of these inequalities – the extent to which these global inequalities are a

[55] «It is a denial of the possibility for everybody's human capabilities to develop. It takes many forms, and it has many affects: premature death, ill-health, humiliation, subjection, discrimination, exclusion from knowledge, or from mainstream social life, poverty, powerlessness, stress, insecurity, anxiety, of self-confidence and of pride in oneself, and exclusion from opportunities and life-chances» (Therborn, 2013, p. 1).

matter of justice and, therefore, must be corrected, according to different theories of global justice – will be one of the topics touched upon in the following paragraphs. Anyhow, a brief description of the global socio-economic and liberty inequalities, along with a first sketch on the potential problems affecting the theories which discussed their (un)fairness, is still relevant in order to understand the extent of the problem global justice deals with. In a nutshell, this paragraph seeks to analyze how things currently are while the following paragraphs aim to analyze how things ought to be, that is how the global scope of justice ought to be drawn and different fundamental rights ought to be understood and implemented at the global level.

The problem of different forms of inequality has recently attracted a considerable interest among moral and political philosophers and philosophers of international relations and world politics – besides various non-governmental organizations whose work to fight against global inequality is well-known – above all thanks to the effort of John Rawls (1971, 1985). His noteworthy contributions have tried to reconcile the eternal dispute between liberty and equality through the clear formulation and in-depth discussion of the two principles of justice: the greatest equal liberty principle[56] and the different and equal opportunity principles[57]. These principles apply to the unjust political and socio-economic inequalities (Giovanola, 2016, p. 14) and correspond to the rules according to which social institutions should be shaped (Rawls, 1971, p. 3). Thus, Rawl's contribution has been relevant to foster the debate on which inequalities must be considered as unjust, those which are morally arbitrary, according to him, and which socio-economic inequalities can be justified, i.e. those which are to the greatest benefit of those people which are relatively worse off.

Rawls and theorists of social justice aside, till the end of the twentieth century, outside philosophy, the topic of the rising of various forms of global inequalities has shown to be not so appealing. However, recently, it seems to have been able to catch the

[56] «Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all» (Rawls, 1971, p. 302).

[57] «Social and economic inequalities are to be arranged so that they are both:
(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
(b) attached to offices and positions open to all under conditions of fair equality of opportunity»
(Rawls, 1971, p. 302).

attention of authors from different orientations and disciplinary fields (Rehbein, 2015), such as, among the others, the economists Anthony Atkinson, Branko Milanovic, Thomas Piketty, Amartya Sen, Joseph Stiglitz, the sociologists Göran Therborn, Zygmunt Bauman, Luciano Gallino, the jurists Luigi Ferrajoli and Ronald Dworkin, the political scientists Nadia Urbinati and Ulrich Beck, and the theorists of international law, international relations and world politics David Held and Daniele Archibugi.

Even though there is a slight disagreement on the empirical measurement and assessment of socio-economic inequalities[58], scholars that deal with this topic broadly agree to denote a growth of phenomena of socio-economic inequalities, that occurred in different dimensions, such as education, wealth, health, liberties and representation, in the last two decades at both national and global levels (Jomo, 2007; Lenger, 2015). Just to provide an overall but explicative picture of the severity of the growth of wealth inequalities in the recent years, the Oxfam report on wealth inequalities published in 2018 points out that eighty-two percent of the wealth generated in the year 2017 went to the richest one percent of the global population, while the 3.7 billion people who make up the poorest half of the world saw no increase in their wealth (Oxfam International, 2018, p. 2). Moreover, the same report, retrieving the evidence of the Credit Suisse Research Institute's Global Wealth Report (2018, p. 10), reveals that, in 2017, 42 people owned the same amount of wealth as the poorest half of humanity, while, in 2016, the number of these people was 61. About the historical evolution of socio-economic inequalities, even though between 1990 and 2010 the number of people living in extreme poverty (i.e. on less than $1.90 a day) halved in absolute terms, and has continued to decline since then (Hardoon, 2015), the World Inequality Report (2018) from the World Inequality Lab shows that the top 1% captured 27% of total global income growth between 1980 and 2016 and owns more than the 50% of global wealth. Meanwhile, the bottom 50% only received half of that, i.e. 12% of total income growth, marking a steady trend in the unequal distribution of the global income wealth. Furthermore, Wealth inequalities seem to get worse getting close to the top and the

[58] The decision to examine first socio-economic inequalities and then inequalities in political rights and civil liberties is merely conventional and does not aim at expressing an order of importance.

bottom of the pyramid of wealth inequalities. Indeed, as the colossal work of Thomas Piketty on the distribution of the *Capital in the twenty-first century* underlines, the 0.1% richest people owns around 20% of global wealth and their wealth has steadily grown in the recent decades, for an amount of around 6-7% per year (Piketty, 2013, pp. 435-440). Inequalities in health and education are similarly worrying. Data from World Health Organization underlines that in 2000, in many poor countries, the infant mortality rate in the bottom population quintile of wealth is roughly two to four times higher than it is in the top population quintile (Gwatkin, 2000, p. 12) while the risk is close to zero in wealthy countries which do not experience relevant internal inequalities in infantile mortality. There is also a stark inequality in life expectancy which is generally above 80 years in the most affluent countries while in the (less developed) countries with the worst health care life expectancy is between 50 and 60 years (Roser, Ortiz-Ospina, Ritchie, 2013). The WHO conjectures that health inequalities are generally related to individual income inequalities even though the economic dimension is by no means the only one that matters (Gwatkin, 2000, p. 8). Other dimensions which are considered relevant for health inequalities are differences in environment, gender, occupation, ethnicity, education. As for education inequalities, in 35 out of 114 countries, fewer than 50% of the poorest children have completed primary school and in 65 out of 115 countries more than 50% of young people have not completed upper secondary school (WIDE). These can be considered as indicative facts to provide a broad idea of the gravity of the issue.

As for freedom and political inequalities, that is inequalities in the enjoyment of political rights and civil liberties, it is likewise difficult to provide a comprehensive and objective picture. These reasons are the focus of the majority of research on national and international inequalities, which takes the state as the main unit of reference, and the methodological bias affecting these studies related to the partial lack of impartiality of the organizations which carry out this research. In any case, beyond the structural problems related to the research methodology, it is worth seeking to provide a sketch of the current measure of freedom and political inequalities at international and global levels. Even though it cannot be said to be free from the above-mentioned criticisms,

the work of Freedom House can be taken as a benchmark of the current global level of democratization and unequal enjoyment of political rights and civil liberties. The global report on political rights and civil liberties covers annual developments in 195 countries and 15 territories (Freedom House, 2021). The factors which are taken into account to assess the enjoyment of political rights are the regular electoral process, political pluralism and participation, functioning of the government; while the categories scrutinized for the assessment of the enjoyment of civil liberties are freedom of expression and belief, associational and organizational rights, rule of law, personal autonomy and individual rights, with further specific under-headings for each section (Freedom House, 2021). According to the reports of the last two decades, 2020 has been the 15th consecutive year of decline in global freedom. Another specific report focusing on the level of democracy in the region stretching from central Europe to central Asia has shown a gradual drop in the democratic scores of the countries analyzed with a record low of 10 out of 29 countries classified as democracies in 2019 (Csaky, 2020).

According to some scholars, generally cosmopolitan ones, the structural margin of error which affects this data, above all related to different criteria of measurement and assessment, cannot be a valid justification of the current level of socio-economic and freedom inequalities whose persistence ought to be considered as shameful and, to some extent morally untenable, according to the always more powerful technological means available to tackle it, the worldwide growing awareness of this crucial issue and the supposed great progress in moral norms (Pogge, 2008, p. 5).

Moreover, global, supranational, transnational, international inequalities are much wider, and, for this, more worrying, than those at national state level but they catch much less attention (Beck, 2005). As a matter of fact, theoretical studies and empirical research dealing with global socio-economic and freedom inequalities, even if growing, are relatively marginal compared to those related to national inequalities. The attitude to focus on domestic issues, such as, in this case, the national socio-economic inequalities, has long affected not only the social sciences, including the above-mentioned noteworthy works of Piketty and Stiglitz (Giovanola, 2016, p. 61), but also, more or less consciously and directly, few moral and political philosophical sixteenth-through

twentieth-century theories of rights which the particularistic universalism[59] is a clear example. This methodological nationalism[60] (Beck, 2000) or regionalism neglects to take into account the special and temporal revolution of the global era adopting a local view rather than a global perspective. This fact can also explain the perceived marginality of the huge global inequalities compared to the attention captured by the national inequalities. Moreover, this trend can be understood as a consequence of the fact that «groups live in mutual isolation and lack vivid awareness of one another's circumstances, experiences, and perspectives on the world» (Pogge, 2008, p. 4). As a matter of fact, in different spheres of human life, wealthy societies are slightly concerned by global inequalities because they live in extreme isolation from severe poverty[61]. If rather the poorest of the world starving to death were literally neighbors of us, as affluent countries' inhabitants, we would probably care more about this focal issue. Thus, global inequalities are broadly unable to catch the proper attention they would deserve not only because scientific research does not focus enough on them but also because they are not commonly perceived as a matter of concern, which are two factors, in any case, strongly intertwined. Furthermore, since the methodological nationalism takes the nation-state and its borders as unit of analysis (Sassen, 2007) and/or as a limit of the validity of the theoretical elaborations on socio-economic and liberty inequalities, this fact may also affect those theories which presume to address the human being as such as the main unit of reference. As a consequence, the claim of universality of some philosophical theories may lose appeal insofar as they are merely the expression of the local context and, above all, they lack in making their tenets valid for the whole world. For the topic of this dissertation this bias is relevant insofar as it may jeopardize the universal claim of the philosophical reflection on global justice and

[59] Even if de Vitoria, Grotius, Hobbes and Locke focus mainly on the notions of natural law and natural rights, these concepts can be conceived as the forerunners of the contemporary fundamental rights since the theories and the studies of these authors have made a noteworthy contribution to the theoretical evolution of the concept of universalism of the holders and the foundation of universal rights. However, the universalism sketched out by the above-mentioned authors is clearly developed in compliance with the interests of a particular group of people (see Baccelli, 2009, 2005a).

[60] According to Beck (2007b, pp. 163, 164; 2007a) this methodological nationalism is both a consequence and a legitimization of the normative nationalism which characterizes the standing of the policymakers and deeply affect, in turn, the perception and the study of social researchers.

[61] «The one-third of human beings who die from poverty-related causes includes no one we have ever spent time with. […]. If we had such people as friends or neighbours, we would think harder to help end this ongoing catastrophe». (Pogge, 2008, p. 4).

universal fundamental rights. For example, even John Rawls, which has had the merit to foster the debate on social justice, cannot be considered immune to criticisms of this sort insofar as his reasoning shows to be conditioned by this rooted model of thought. Indeed, in his essay *The Law of Peoples* the principles of international justice are based on the category of peoples understood as «state unity, territoriality, morality and memory» (Beck, 2002) and they differ from the principles of justice singled out in its main work *A Theory of Justice*. In his theory of justice, described also in the essay *Justice as Fairness*, the first and the second principles of justice, in the framework of his overall reasoning, end up being valid only within the borders of the national society.

The same criticism may be directed to the Rawlsian account of the lottery of birth, a philosophical argument also used by the social contract theorists Thomas Hobbes, John Locke, and Jean-Jacques Rousseau (1762/1947; Martinez, 2016), which may be one of the strongest and most valid arguments against inequalities assessed as morally arbitrary. Indeed, the lottery of birth, as the term itself may suggest, points out the fact that since human beings do not decide where to be born, no one ought to be held responsible for the available opportunities due to the place of birth and natural assets. According to Rawls, «distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective. There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune. […]. Therefore we may want to adopt a principle which […] mitigates the arbitrary effects of the natural lottery itself» (Rawls, 1971, p. 64). Thus, a human being with special needs as well as a person born in a really poor place cannot be considered responsible for their lack of opportunities, comparing to those available to others, and, accordingly, the different enjoyment of socio-economic opportunities and civil liberties, deriving from morally arbitrary factors, ought to be subjected to some kind of correction and redistribution. Indeed, «[…] undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for. Thus, the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native

assets and to those born into the less favorable social positions. The idea is to redress the bias of contingencies in the direction of equality» (Rawls, 1971, p. 86). Since the principle of redress excludes the better off and would claim for excessive compensation which may lead to other downsides, Rawls opts for another redistributive principle, the different principle, which, however, does not discard the idea of redressing undeserved inequalities related to natural assets and social condition. Therefore, the concept of the lottery of birth underlines the unjustifiable fortuity, along with the moral arbitrariness, of the allocation of socio-economic opportunities and civil liberties due to social circumstances and natural assets which would give persons a right to have some kind of compensation. Still, even though socio-economic inequalities related to social circumstances are wider and more worrying at the global level, Rawlsian international principles of justice are less demanding than those applying at the local level, showing that moral standards find a limit in the national borders.

A last observation that is worthy of regards is another peculiar type of inequality that occurs at the global level, power inequality. Among the meanings which this concept can take, power is also understood as the most basic of all goods, a meta-good of social and political justice (Forst, 2012, p. 248) through which the other most relevant goods are distributed, and this is one of the reasons why power inequalities are so relevant in the discussion of justice. Inequalities in power are as pervasive as they are sneaky because they are difficult to be detected and accordingly be corrected. Redistributing wealth, equalising citizenship, providing universal wealth assistance are decisions afferent to politics in which, thus, the measure of the other interactional forms of inequalities are managed (Fraser, 1997). However, the normative assessment of the fair distribution of power and the main limitations of its implementation will be investigated more in depth in paragraph *3.5*. From the empirical point of view, the clear definition of the global inequality in power is likely even more difficult than the analysis of the inequalities in fundamental liberties due to the different conceptions of its nature, the different forms it can take, such as political, economic, social powers, and the multiplicity of the actors at stake (VeneKlasen, Miller, 2007). While some political philosophers assessed power as the first question of justice (Forst, 2012, p. 258) other

social scientists believe that power inequality is the main source of other forms of pervasive inequality of wealth, health, resources, education and opportunities characterizing the economic and social global, transnational, international and national structures (Philips, 2017; Rohwerder, 2016; Wenar, 2016; Scott-Villiers, Oosterom, 2016; Gaventa, 2006). There is a kind of dialectical relation of reciprocal reinforcement between power inequality and other forms of inequality. Even one of the most fervent defenders of the statist view on justice, David Miller, admits that the wide power inequality in the global arena among nation-states[62] is the most crucial issue which affects the relations among nation-states, and which reinforces and expands existing burdensome peoples' and persons' inequalities. Other experts of international relations and world politics note that different non-governmental actors[63], such as multinational corporations, are rising at the global level. In many cases, the 'private power' of these agents even exceeds that of some nation-states, as we will see more thoroughly in chapter IV, thus deeply affecting not only the global inequality of relevant goods but also the capacity of some states to enforce norms for the correction of internal inequalities.

2.3 Statism and the 'absolutization' of associative duties

First of all, prior to the analysis of the main points of statism, it is necessary to underline once again that almost all statist scholars do not deny the gruesome facts of inequality in world economy and in global democracy and, accordingly, the unequal enjoyment of fundamental socio-economic opportunities and basic liberties. In the words of one of the most convinced statist scholars, Thomas Nagel, this is a situation which is a «disaster from a more broadly humanitarian point of view» and, for this, «there is some minimal

[62] «To conclude, once we have disentangled the issue of global inequality from questions about global justice, and in particular the deprivation suffered by people living in poor societies, we may still be concerned about the effects of large inequalities. But these concerns will be derivative, and will centre mainly on differences of power between rich and poor countries, and the likely effects of these on global justice in the future» (Miller, 2005, p. 78). In any case, it is important to underline that Miller focuses on power inequalities among states and avoids considering these power inequalities a matter of justice (See paragraph *2.3.b*).

[63] «global agents such as multinational corporations, the International Monetary Fund (IMF), the World Trade Organization (WTO), financial networks and rating agencies, transnational social movements, private military companies, cross-border criminal cartels, nongovernmental organizations (NGOs) and others. Since they are neither individual people nor governments, these new agents escape the traditional agency categories of liberal political theory, as well as those of international relations theory. Peculiar as they may seem in theory, these new agents can nonetheless be extremely effective in practice. Their decisions and actions can have very significant impacts on the lives of people the world over, on the relations of states, and on the fate of future generations and nonhuman nature» (Jamieson, Di Paola, 2016).

concern we owe to fellow human beings» (Nagel, 2005, p. 118). Quoting the cosmopolitan scholar Thomas Pogge, Nagel underlines that «roughly 20 percent of the world's population live on less than a dollar a day, and more than 45 percent live on less than two dollars a day, whereas the 15 percent who live in the high-income economies have an average per capita income of seventy-five dollars a day» (Nagel, 2005, p. 118). Moreover, even though the situation seems to be improving in absolute terms, global relative deprivation, inevitably linked to the absolute deprivation, remains a heavy global burden (Oxfam International, 2018; Ypi, 2012) which can put in doubt the improvements in the fight against global inequalities referred to by many statist scholars (Nagel, 2005).

However, the main question we should focus on is whether those global burdensome inequalities in socio-economic opportunities and fundamental liberties give rise to any justifiable demand for justice. In other words, what is necessary to understand is the potential and practical applicability of standards of liberal socio-economic justice at the global level. According to statism – and this chapter refers mainly to the three preeminent exponents of this theory, i.e. Michael Blake, David Miller, Thomas Nagel – egalitarian distributive norms can apply only among citizens of a common state in virtue of the 'associative duties', *qua* special duties, they owe one another as members of the same national community. Accordingly, comparative principles of justice apply only within national borders since, for statists, the primary context of justice is the national one and the political communities (peoples) organized into states are the primary focus of global justice (Mikalsen, 2017). Therefore, global justice can be understood only in terms of principles of justice which regulate the relations among states but not the relations among persons belonging to different states since «the moral units of the order are peoples, not individuals, and the values have to do with the relations among these collective units rather than relations of individuals across the world» (Nagel, 2005, p. 124). The following subparagraphs will critically delve into the most relevant aspects of statism through the examination of the argumentations of their leading defenders underlining their contribution to the debate on universal fundamental rights and global justice and the main problematic limitations of these theories.

2.3.a The political and associativist conception of justice

To understand the statist conception of (global) justice, it is crucial to underline that all statist views are associativist (Blake, 2016), giving to different forms of particular relations a strong moral relevance. However, not all associativists are statists, for example Moellendorf (2009, 2016) defends an associativist view of cosmopolitanism according to which relations among global agents, besides states, and, thus, other kinds of associations, such as the global trade, give rise to norms of distributive justice at the global level. In fact, associativists believe that powerful norms of distributive justice exist and can be enforced only in case the subjects involved share some form of association. The strength, and, accordingly, the scope, of comparative norms of justice which apply at global and national levels hinges on the relevance of the peculiar relations, assessed according to the level of coercion (Nagel, 2005; Blake, 2016; Moellendorf, 2016), cooperation (Sangiovanni, 2007) and/or particular (national) sentiment (Miller, 2007). It goes without saying that, according to statism, the nation-state is the most relevant form of association which, thus, makes possible the application of the most demanding norms of distributive justice at the domestic level. This follows from the belief that particular relations among fellow citizens are the most relevant and, accordingly, give rise to the strongest associative duties according to which sound norms of egalitarian distributive justice can be applied only within the borders of the nation-state. Some statists (Nagel, 1999, 2005, p. 132; Blake, 2001, 2016) believe that the justification of the exclusive application of these demanding norms of justice at the national level relies on the essentially political conception of justice and on coercion as a distinctive element of the national institutions, while others (Miller, 1992; 2007) find its justification in the ethical dimension of nationality.

As one of the preeminent representatives of the realist school and the Hobbesian (political) understanding of justice, and perhaps the most convinced statist scholar (Culp, 2013, pp. 22-23), Thomas Nagel argues for the fact that no standards of liberal socio-economic justice can hold at the global level and only states are relevant agents of justice in the global arena. Indeed, according to his understanding of global justice, nation-states, *qua* peoples, and not individuals, are the most relevant moral units of

concern at the global level and, accordingly, values of justice can apply only to the relations among these collective agents. Being peoples the moral units of the global orders, the duties and principles of justice which hold at the global level are different than those existing among fellow citizens, as individuals[64], and mainly regard liberal international duties such as nonaggression and fidelities (Nagel, 2005, p. 124), and some secondary duties of developmental assistance to «peoples living under unfavourable conditions that prevent their having a just or decent political and social regime» (Rawls, 1999, p. 37). Indeed, in Nagel's opinion, what really counts for a meaningful conception of liberal socio-economic justice, and its adequate implementation, is the presence of (already existing) *associative* obligations since, in Nagel's words, «justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation» and «though the obligations of justice arise as a result of a special relation, there is no obligation to enter into that relation with those to whom we do not yet have it, thereby acquiring those obligations toward them» (Nagel, 2005, p. 121). Hence, associative duties are, in their very core meaning, strong (particular) political relations which the fellow countrymen owe one another, and they are the *conditio sine qua non* for the existence and realization of justice. This conception of justice makes it unequivocal the absolutization of associative duties as the only duties which give rise to demands of egalitarian distributive justice. If associative duties are the ones which only count as duty of justice, insofar as fellow citizens are part of the same collective body and are bound by a shared institutional framework, there is no reason according to which they must comply with national coercive norms rather than withholding them in favor of the accomplishment of other more stringent (associative) duties, such as those arising from their membership to local groups or their family (Pogge, 2008, p. 101). Moreover, giving proper relevance to the moral equality of each human being (as also Nagel supposes to do), regardless of the particular collective agent they belong to, it is unreasonable not to take into account

[64] This view, arguing for different principles of justice applying at the global and national levels, is called dualistic (Rawls, 1999; Nagel, 2005, p. 124) and it is the opposite of the monistic idea according to which the moral unity of concern must be always individuals and the principles of justice which govern their relations hold both at the local and global levels (Pogge, 1989; Beitz, 1999, p. 151; Forst, 2012, p. 195).

other kinds of duties, such as general duties[65], that we owe to other human beings as such.

As for Nagel's basic understanding of justice, he argues that «even if justice is taken to include not only collective self-interest but also the elimination of morally arbitrary inequalities, or protection of rights to liberty, the existence of a just order still depends on consistent patterns of conduct and persisting institutions that have a pervasive effect on the shape of people's lives» (Nagel, 2005, p. 116). Even though Nagel recognizes the central commitment of justice to fighting against morally arbitrary inequalities, he does not accept the possibility to understand the global context as a context of justice: the reason is that for how morally motivated and justifiable the individual demands for (global) justice can be, they cannot have practical expression insofar as no coercive norms can implement them. Besides, Nagel compares two conceptions of justice, the cosmopolitan, or moral conception, which we take apart for a while inquiring into it further on, and a second conception, which Nagel defines 'political conception' of justice, recalling the Hobbesian conception of justice, according to which «justice should be understood as a specifically political value, rather than being derived from a comprehensive moral system, so that it is essentially a virtue – the first virtue – of social institutions» (Nagel, 2005, p. 120; Rawls, 1971). According to the political conception, states are not, as cosmopolitans surmise, merely instrumental to the realization of a fair distribution of rights and duties among human beings, but «their existence is precisely what gives the value of justice its application» (Nagel, 2005, p. 120). However, not only does this conception empty justice of its inner moral dimension, but Nagel states that he opts for this conception of justice, rather than the cosmopolitan one, because «the political conception is accepted by most people in the privileged nations of the world, so that, true or false, it will have a significant role in determining what happens» (Nagel, 2005, p. 126) without, in any case, justifying the reasons for this questionable choice. This weakens his defense of the political

[65] Statists generally give more weigh to special duties, such as, as just said, associative duties, while some cosmopolitan, such as Goodin (1988, p. 272), comes to understand special duties as «distributed general duties» or «merely devices whereby the moral community's general duties get assigned to particular agents». In this meaning, special duties are 'downgraded' to derivative from general duties since the former derive their moral strength from the latter.

conception of justice insofar as he justifies this decision on the basis that it is preferred by the majority of people taking as given that the most shared option is the fairest one.

Moreover, Nagel makes a distinction between negative rights, such as bodily inviolability, freedom of expression and freedom of religion, and positive rights, such as right to democracy, equal citizenship, non-discrimination, equality of opportunity and the amelioration, through public policy, of unfairness in the distribution of social and economic goods (Nagel, 2005, p. 127) arguing for a priority of the first category over the latter one, insofar as negative rights «set universal and prepolitical limits to the legitimate use of power, independent of special forms of association». This is because «it is wrong for any individual or group to deny such rights to any other individual or group» while socio-economic justice is fully associative since «it depends on positive rights that we do not have against all other persons or groups, right that arise only because we are joined together with certain others in a political society under strong centralized control» (Nagel, 2005, p. 127). Therefore, according to Nagel and more broadly to the statist theory, the scope of negative rights, in which the category of civil and political rights can be included, is wider than the scope of positive rights, in which the category of socio-economic rights can be included. This can be explained by the common supposition that negative rights imply less burdensome duties, i.e. duty not to do, than positive rights which implies more demanding duties, i.e. duty to do. Even though one of the aims of this dissertation is to overcome this supposition, this task will be addressed in the final part of this chapter. For now, it is just relevant to understand this focal difference and the statist position on this matter.

In any case, even if Nagel categorically excludes that global morally arbitrary inequalities can entail demands of justice, he states that they are a matter of humanitarian assistance since «the most basic rights and duties are universal, and not contingent on specific institutional relations between people» (Nagel, 2005, p. 130). Thus, as previously anticipated, Nagel, presumably, maintains the equal morality of all people, along with the entitlement of universal fundamental rights to each of them, denying, however, any possible global implementation of universal fundamental rights, besides the mere humanitarian aid, *qua* remedial intervention to relieve peoples and

persons from extreme deprivation of fundamental goods. That is, the lack of coercive power at the global level makes it impossible to implement comparative norms of distributive justice (Sleat, 2016, pp. 171, 172) and, accordingly, the enforceability of demanding claims of egalitarian distributive justice. It remains unclear how the entitlement of universal basic rights and duties to each human being is conciliable with a conception of liberal socio-economic justice which does not admit the enforceability of any individual claims to fundamental rights and basic justice at the global level.

Similarly to Nagel, even though endorsing a less strong statist position, Blake considers the coercion an essential element for the existence of demanding norms of egalitarian distributive justice, but, to some extent in contrast to Nagel, Blake conceive statism as «a particular vision of what the global equality of persons entails» and, for this, «it is not incompatible with the equality of persons, but one particular vision of what that equality would demand». Hence, Blake understands the state as the (particular) justificatory form of association for the coercive implementation of sound norms of comparative justice. However, it does not exclude that particular forms of association and coercion give rise to justifiable demands of justice (but, for sure, not as sound as those which occur at the national level). Indeed, Blake surmises for an associativist view of the scope of liberal socio-economic justice according to which coercive power is a constitutive element for the implementation of norms of distributive justice. Since at the global level «there is no ongoing coercion of the sort observed in the domestic arena in the international arena» (Blake, 2001, p. 284) different principles apply respectively at the global and domestic levels. Accordingly, as the international and global order coerce people in a different, and weaker, way than the national realm, only sufficientarian principles of justice are conceivable at the global level while egalitarian distributive justice must be realized at the national level. Blake leads the justification of coercive power back to the liberal principle of autonomy according to which the violation of the autonomy of a person through coercion is possible only in the case in which it is reasonably justifiable (Blake, 2001, p. 271). An example of this justifiable violation is the enforcement of the equal distribution of the egalitarian share of national common good which fellow citizens have contributed to bring about and

which can improve the exercise of their autonomy. However, this reasoning is defective for two reasons: on the one hand, as Lea Ypi (2012, pp. 115-120) empirically underlines, a reasonable sufficientarian threshold, for example in standards of living or income (Vandamme, 2017), can be ensured only through the implementation of comparative principles of redistribution, since absolute deprivation is almost always related to relative deprivation; on the other hand, the current level of interdependence and interconnectedness of the global relations, and in particular of the global economy, would make even a coercive power that would impose a partial fair redistribution of benefits and burdens in the global arena reasonably justifiable.

In short, in the wake of Hobbesian (political) account of justice, Nagel surmises that, currently, outside the state there is no justice and, given the absence of global state, there cannot be global justice[66]. This conception of justice, completely domestic in scope, may be considered excessively bent to the current *status quo*, risking looking more a description of the contemporary, for some unjust, global enforcement of the distribution of rights and duties, rather than a comprehensive normative theory of global justice. Nevertheless, Nagel does not totally deny the possibility of a global justice however «the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states» and the path from anarchy to justice must go through injustice (Nagel, pp. 146-147). Thus, further steps in the progress of justice at the global level seems possible although only through measures which would increase the level of injustice in the short term and the creation of a coercive world state. However, Nagel believes that a world state is implausible due to the diversity of the values endorsed by different political communities and the untenable extra-demandingness of the claim of the global poor toward the global affluent in a coercive world-state system (Nagel, 1991). Even though a full confutation of the first argument would go beyond the scope of this work, it is relevant to observe that different studies (Taylor, 1999; Baccelli, 2009) have shown the compatibility of different

[66] For a comprehensive and exhaustive criticism of Nagel account of (global) justice: Cohen, Sabel, 2006, p. 147; Julius, 2008.

doctrines with the main values underpinning universal fundamental human rights[67]. As for the second point, a more specific and sound critique can be posed. Indeed, if there is a wide gap between the global wealth and the global poor the demandingness of the claim for a global redistribution of the worse off should be assessed in the base of the responsibility of the well off for the burdens of the worse off and according to the moral urgency of this claim and cannot be considered implausible, as Nagel does, just according to its potential (excessive) strength. In short, a morally justifiable claim cannot be disqualified on the ground of the political refusal *per se* of those agents which should shoulder the corresponding duty to satisfy that claim.

As a final but crucial observation, it is also noteworthy to underline that Nagel's manichean and binary conception of justice, strictly related to the existence of coercive power, reasons only in terms of a full-fledged implementation of robust principles of fair distribution of rights and duties excluding the possibility according to which the global scope of justice may gradually expand through small steps and denying the potential contribution of other agents, such as the Permanent Peoples' Tribunal (see paragraph *4.3*), which may improve the degree of justice at the global level.

2.3.b The national responsibility of particular injustices

As another preeminent scholar of statism, Miller frames the debate on the justification of the fair distribution of rights and duties around the difference between the philosophical concepts of ethical particularism and ethical universalism (Miller, 1992). Sketching out their core meaning can help to understand how, according to Miller, only the ethical dimension of nationality, as a form of ethical particularism, is able to justify norms and institutions of egalitarian distributive justice. In a nutshell, ethical particularism maintains that, even at the most fundamental level, there are no ethical judgments and moral principles which are universally shared or, even just shareable. On the contrary, ethical universalism holds that some ideas have universal power, i.e. there are universal principles which apply to the whole humanity and are grounded on the vary basic feature with which each human being is endowed,

[67] For a broad analysis of the compatibility of the concept of human rights with the values of non-western culture see Coacci, 2020c.

rationality[68]. Applying these opposite ethical views to social justice, it is possible to argue that according to ethical particularism different national communities follow different principles of distributive justice while according to ethical universalism some common principles of egalitarian distributive justice hold at the global level. More specifically, in its analysis of the principles which rule individual and collective relations, Miller states that the very basic feature of ethical universalism is rationalism with which each human being is endowed, rationality, while ethical particularism is rooted on the peculiar actual commitments and ties among human beings and fundamental principles are attached directly to these relations[69] (Miller, 1992, pp. 284, 285). Accordingly, the main counter arguments exposed by each side to refute the other go as follows. On the one hand, universalism charges particularism with a failure of rationality, giving more weight to existing subjective factors such as motivations and sentiment in guiding people's ethical life rather than to their moral reasons, On the other hand, particularism criticizes universalism for relying on an implausible understanding of the moral agency, prescribing untenable responsibility and duties to each human being, and thus claiming for an excessively demanding commitment to abstract rationality for the human agency (Miller, pp. 288, 289). In a nutshell, the weakness of universalism may be to ask too much to human beings in virtue of their common rationality and sound universal duties while particularism may ask too few to human beings in virtue of their existing relations and ties and their corresponding subjective commitment and motivations.

Coherently with his ethical particularism and strong cultural pluralism, Miller endorses a contextual view of social justice according to which unalike principles of justice apply to different social communities, thus recognizing peculiar forms of human association giving rise to equally distinctive obligations, such as egalitarian distributive duties rising from national relations among compatriots (Miller, 1999). This is also the

[68] Paraphrasing the social contract theorist Scanlon, those universal principles which cannot be reasonably rejected (Scanlon, 1998, p. 4; see also Pogge, 2001).

[69] In this regard, Miller's argumentation is one of the best elaborated examples of the relational approach to global justice, which ground justice on peculiar relations and common institutions, opposed to the non-relational approach to global justice which ground justice on allegedly universal fair principles ruling all kinds of human relations. For a comparison of relational and non-relational approaches toward global justice see Kime, 2010.

main difference between Nagel's and Miller's standings insofar as, even though Nagel believes that justice is relative in scope, he endorses a unified view on justice as intrinsically grounded on the distinctive feature of coercion. Instead, in virtue of a contextual understanding of justice and the peculiar forms of relations which bound human beings, Miller argues for three primary components of justice i.e. equality, desert and need. For example, Miller sets the global minimum of human rights, which everyone regardless of their national affiliation can justifiably claim, according to the moral urgency of basic intrinsic human needs (Miller, 2007, pp. 178-185). However, Miller's extreme relativism on the principles of liberal socio-economic justice can be subjected to a criticism similar to the one already sketched out in the previous paragraph in reference to Nagel, even though through a different perspective. If different obligations are in place, each of them taking their power from a different and legitimate forms of bond or relationship, and there are no universal paramount principles which establish a hierarchy among them, what makes a specific obligation, say, that obligation we owe toward our relatives in virtue of our family attachment, less or more relevant than that we owe toward our fellow countrymen in virtue of our national sentiment? It seems that without a comprehensive account of a measure of the weight of different kinds of obligations rising from different forms of relations it is difficult to explain why a specific duty takes priority over another (besides the comparison between associative duties and duties toward foreigners which Miller clearly sketches out). As a matter of fact, sketching out the difference between the duties we owe to our compatriots and the duties we owe to the rest of the world, Miller defends the priority of special obligations among fellow countrymen over the duties we are supposed to owe toward other human beings as such. Indeed, Miller argues that «the duties we owe to our fellow-nationals are different from, and more extensive than, the duties we owe to humans as such» (Miller, 2000, p. 57) and, accordingly, duties we owe to our fellow-members are greater in scope than those we owe to outsiders (Miller, 1993).

In Miller's view, the special relationship citizens have with one another motivates them to pursue social and political justice in their community and justifies the imposition of norms of fair distribution of benefits and burdens among them.

Accordingly, the most interesting and original points of Miller's statist view of global justice and liberal nationalism are his defense of the ethics of nationality as the main condition for the realization of demanding principles of egalitarian distributive justice and the global minimum of basic human rights to be set at the global level. Since only the special obligations we owe to our compatriots can give rise to norms of egalitarian distribution, global justice ought to be understood not in terms of equality, but in terms of basic human rights that belong to human beings everywhere and which can entail merely remedial responsibility on outsiders (Miller, 2007). Thus, Miller admits that we owe some responsibilities toward the world's poor but of a kind that protection of universal fundamental rights can only be a matter of sufficiency and not equality, and, accordingly, of humanitarianism rather than of justice, strictly understood (Miller, 2007). However, Miller defends a global protection of basic human rights justifying stronger duties of assistance than those outlined by Nagel arguing that «when basic human rights go unprotected any agent, individual or collective, who is able to help protect them may in principle bear remedial responsibilities» (Miller, 2007, p. 164). At any rate, it remains unclear how this global protection can be enforced, above all in the light of a relative view of social justice according to which agents bear responsibility only for the (under)fulfillment of rights at the local level. Moreover, if we endorse, as Miller suggests, a minimal universalistic conception[70] of human rights as the global minimum which emphasizes the moral urgency of the situation in which person or group see their rights being denied (Miller, 2007, p. 164), in principle there would be no reason to avoid supporting the idea according to which the grave and systematic morally arbitrary denial of universal fundamental rights can potentially justify robust norm of redistribution at the global level. In other words, if the moral urgency of a universal fundamental right is recognized, to the same extent the moral urgency of the imposition of the corresponding duties must be admitted.

[70] This thin universalism is meant in broad sense and must not be confused neither with the universalistic conception of justice of cosmopolitans (Pogge, 2008, p. 98) nor, above all, with the thin universalism and moral minimalism of Walzer (1994) from which Miller clearly takes the distance underlining its limitations without, however, challenging it empirically. It is relevant to note that Miller's global minimal list of human rights is thicker than that of Walzer insofar as Walzer includes only negative rights, such as the right not to be tortured, which consists in a set of prohibitions, while Miller believes that grave violation of basic positive human rights, such as starvation, can justify international intervention, conceiving Walzer's minimalism «not enough» (Miller, 2007, p. 173).

There are, however, other motivations which lead Miller, following Rawls, to refute global responsibility of egalitarian justice. In fact, even though Miller's understanding of the principles and the currency of social justice deeply differs from Rawls' (1971, p. 53), insofar as Miller argues for no single basic measure and for contextual principles of social justice (Miller, 1999), they still share a similar view on the (domestic) scope of justice and the local responsibility for the realization of principles of liberal socio-economic justice. Indeed, both defends a *responsibility objection* to global justice and the extension of principles of egalitarian distributive justice at the global scale according to which the actual causes of grave liberty and socio-economic inequalities ought to be found on the peculiar political and economic features of the national communities (Rawls, 1999; Miller, 2007). That is, since the domestic order of different political communities, shaped by the national institutions, is majorly responsible for the internal unfair and unjust structures and policies of the nation-states, that specific political community, and not external agents and/or institutions, bear the responsibility for their member's (under)fulfillment of fundamental rights. However, two interrelated counter objections can be drawn. The first, which refers to the internal circumstances of injustice, relates to the inappropriate overlapping between the responsibility of the political elite of a nation-state in perpetrating domestic unjust norms and inequalities and the responsibility of their members. A citizen of a dictatorial regime, say North Korea, would have probably not worship his/her own leader firmly supporting his/her unjust policies if he/she was born in another more liberal country, say Canada. Thus, it can be considered as misleading to attribute the responsibility of deeply unjust norms and inequalities to the members of the political community uniformly, above all when the leader is not democratically legitimated by its citizens and their autonomous agency is evidently compromised. Moreover, a corollary of the latter argument, which statists often neglect, is the moral arbitrariness of being born in one political community rather than another, the so-called lottery[71] of birth, which strengthens the potential justification for some kinds of redistribution at the

[71] For a discussion of the justification of the claim to redress morally arbitrary socio-economic due to the lottery of birth see Coacci 2021a.

global level. The second counter objection regards the external responsibility of the internal injustices. The national responsibility argument states that global reforms of egalitarian redistribution, such as a global taxation, may worsen internal unjust inequalities insofar as they may represent a kind of reward of the acts and choice of the decision-makers of the so-called burdened peoples, which may exploit these resources to strengthen the internal unjust system of strong inequalities. Even though this worry is empirically plausible, and even discharging from dealing with dictators may not improve the internal situation (Armstrong, 2020), the fact that the rulers' national policy is so wrong-headed, being aimed at strengthening burdensome inequalities and the violation of universal fundamental rights, may be considered as a further major reason to find a viable way to rescue those worse off who suffer from that situation, rather than leaving them at the mercy of their rulers[72].

2.3.c The limitations of the statist view

Some limitations of the statist view have been underlined in the previous paragraphs as critical objections to the specific main arguments of this theory. This subparagraph recalls and further delves into the most relevant criticisms of statism underlining those points which will be helpful to the investigation of the main topic of this dissertation.

Besides lacking to recognize the proper relevance of the moral dimension of the concept of liberal socio-economic justice and, accordingly, the moral priority of the human being as such over the nation-state, statist theory seems to be excessively bent to the *status quo* without being able to adapt to the fast changes in persons' and peoples' global relations. Indeed, statist ideas fail to take into account the global level as an increasingly relevant context of justice in the light of the progressive thickening of global interconnection and interdependence (Zolo, 2006a, pp. 3-4; Beck, 2006, 2000). This is not to say that the apparently irreversible processes of globalization are *per se* a justification for the existence and the imposition of principles of global justice, but it

[72] For an extended analysis of the most relevant criticisms to Miller's account of social justice – for example the blurred distinction between basic and citizenship rights, the focus on community and nationality rather than individuals and (global) institutions, and the denial of the extension of different rationales of justice to subnational and supranational relations – see De Schutter, Tinnevelt, 2011; Young, 2000.

may be reasonable to suppose that the scope of social and political justice[73] ought to widen as much as the relations among peoples and persons become stronger. Moreover, statists, on the one hand, gives much relevance to the rights to liberty and self-determination of collective agents, as states, without however properly taking into consideration the rights of individuals at the global level and, on the other hand, absolutizes *associative duties* as the only category of duty which can rise demands of justice (Seglow, 2017, pp. 138-143; 2012) and which, thus, justifies their assessment on the restricted scope at the global level.

Moreover, the statist view seems to excessively rely on a Westphalian order – which is, for some authors (Cohen, Sabel 2006; Buchanan, 2000), vanished and obsolete – shaped by the international society of states, whose main task is to protect state's sovereignty (Julius 2008; Linklater, 1998) and to lack of attention not only to the weight of the current global relations but also to the role of non-state agents affecting the global distribution of relevant goods. This latter criticism has really practical implications whose deeper investigation is left to chapter IV.

As for the scope of social and political justice along with the fulfillment of universal rights and enforcement of the corresponding duties at the global level the main weakness of statist view regards the imbalance between the protection of the liberal rights of peoples, due to the high moral normativity which they recognize the state agency, and the protection of fundamental rights of human beings as such. Indeed, notwithstanding statists argue in favor of humanitarian aid (Miller, 2007, p. 178; Nagel, 2005, p. 125), in particular to alleviate gruesome and exceptional issue, such as a catastrophe, they do not offer solutions for systematic and, to some extent, normalized, violation or under-fulfillment of universal fundamental rights. An example may clarify better the limitations of this controversial approach. To figure, we can think about the comparison between a disastrous occasional event, such as an earthquake occurring in a specific territory, and the lack of a safe shelter suffered by millions of people and the

[73] The definition "political justice" as integral part of "social and political justice" does not refer to a political conception of justice as sketched out by Nagel but rather aims to stress out the fact that the fair distribution regards both social and political rights (Forst, 2012). In this sense, it takes a similar meaning to the term "liberal socio-economic justice" which is used elsewhere in this work.

corresponding duties and responsibilities which they give rise to. Statist view would tend to give more relevance to the remedial relief of the burdens related to the catastrophe rather than the lasting and systematic suffering of the homeless, which would be more problematic from a broad moral point of view. This simplifying example stresses out the statist paradoxical attitude according to which the global systematization of the deprivation of the access to the very basic object of a fundamental right is considered less problematic than its suspension for a short time.

Two other issues follow from the previous argumentation, precisely the equal enjoyment of universal fundamental rights among human beings at the global level and the justification of the corresponding duties.

Indeed, statists would contend that sound norms of equal redistribution to fight against gruesome inequalities cannot hold at the global level, due to the lack of global associative duties which would justify the enforcement of these norms, and the domestic (under)fulfillment of fundamental rights are related to the national responsibilities. However, recalling the contribution to the debate of Goodin (1988), we should wonder «what is so special with our fellow countrymen». This rhetorical question is helpful to reason on the excessive weight that statists give to the obligations we owe to our compatriots. Indeed, if the moral relevance of the special duties should not be denied, the strength of the general duties we owe toward other human beings as such regardless of their affiliation – and, above all, the moral urgency of the claim for justice of the non-compatriots which can potentially justify our obligation toward them – should not be neglected as well.

Furthermore, the absolutization of the national responsibility for domestic inequalities as the only source which grounds norms of egalitarian distributive justice and justify different levels of enjoyment of basic liberties and fundamental socio-economic opportunities from individuals, leads to an underassessment of the responsibility of the global order in the reinforcement and reproduction of global unequal distribution of relevant goods of justice and the correlative inequalities in the enjoyment of universal fundamental rights.

As for the grave violations of universal fundamental rights at the global level, the statist minimal conception of basic human rights seems to underestimate their moral force and the corresponding, for them, demanding, duties which should be enforced on others in order to concretely ensure the secure access to the object of these basic human rights. If statists are correct in giving the proper attention to the corresponding duties which the protection of rights bears – an argument which is often partially disregarded by cosmopolitan scholars (Beitz, 2009) – it is also true that they underestimate the moral urgency of the systematic and pervasive denial of the secure access to the object of universal fundamental rights, and the level of coercion and associativity of the global political, social and economic relations and the corresponding institutional orders (Moellendorf, 2009, 2016). While statists entail a minimum set of basic human rights to each human being as such, they deny the enforcement of the corresponding duties which would make possible the realization of those universal fundamental rights.

A corollary point of the latter argument relates to the question: Do statists take seriously the equal morality of human beings? Statists would provide an affirmative answer since their analysis of norms of egalitarian distributive justice, and, thus, fair distribution of rights and duties, takes into account the particular relations among people which justify the enforcement of demanding norms of egalitarian distributive justice. However, not only may statists, as exhaustively explained by Lea Ypi, confuse motivations and principles in the prioritization of compatriot obligations but they also underestimate the moral urgency of demands of justice coming from other human beings as non-compatriot moral equals. This is not to say that statism is morally perverse, as Blake (2016) charges some critics to argue for, but just that they do not take the equal moral agency of all human beings enough seriously, prioritizing peoples' prerogative and subjective relations over the equal enjoyment of rights by all human beings.

A further drawback of statist view on justice which has been repeatedly underlined in this work regards its bending to the current *status quo* which makes it more a descriptive theory of the current global distribution of benefits and burdens rather than a normative theory which aspires to guide its fairness and, thus, contribute to

the advancement of justice at the global level. The state-centric view of global justice, along with statist minimal conception of universal fundamental rights, privileging the liberal rights of peoples over the fundamental rights of persons, may not only be unable to adapt to the current changes affecting international relations and the global system as a whole and the growing peoples' and persons' interdependence and interconnectedness but may also underassess the pervasive pressure of the global common challenges, of which the pandemic has been just a fresh example, and centrifugal forces, such as those of rising global private agents, on the capacity of states to enforce norms of egalitarian distributive justice at the domestic level and to protect the fundamental rights of their citizens.

Another criticism, maybe the most important one in relation to the aim of this research, is directed to the 'extra-demandingness' political approach toward liberal socio-economic justice, making an excessively clear-cutting division between the domestic and the global scope of justice. This is a drawback which is almost specular to the problem which affects the cosmopolitan view of justice, which will be analyzed in the following paragraph, since both of them look at liberal socio-economic justice as either realized or not. However, statism, giving more relevance to the political aspect of justice and, thus, its practical enforceability, believes that it cannot have global scope while the majority of cosmopolitan views focus on the moral aspect of justice, maintaining that liberal socio-economic justice has global scope according to its very own nature (Gosepath, 2001), and, consequently, demanding reforms of cosmopolitan egalitarian justice ought to be enforced at the global level to realize universal principles of justice. Again, both views of global justice incur the mistake according to which justice must be conceived in binary terms, as either achieved or not, and cannot be understood as a project realizable to some extent and through gradual steps. The third paragraph will seek to reconcile the moral and political sides of the same coin of liberal socio-economic justice.

To sum up, statist positions generally defend a domestic scope of social justice, the priority of associative (particular) duties among fellow citizens over other forms of obligations and the moral normativity and self-determination of different peoples, as

political communities, which determine and enforce the distributive norms ruling the relations among their members. While statism is able to give proper relevance to the peculiar relations among individuals, to the corresponding obligations and principles which rise from these ties, they seem to overestimate the rights of peoples over the rights of their members and may underassess the weight of other forms of duties which we owe toward human beings which are not our fellow countrymen, above all in the light of the thickening of global intercourse among peoples and persons.

2.4 Cosmopolitanism and the chimera of a full-fledged global justice

Cosmopolitans (or globalists) envision themselves in a diametrically opposite position to statists. Similarly to statists, although with considerably more strength, cosmopolitans denounce the grave burden of global inequalities in basic socio-economic opportunities and fundamental liberties. In this regard, they stress the point that a plan to end severe poverty for over 2.5 billion human beings – whose aggregate shortfall amounts to barely $300 billion annually which are well under the 1 percent of the aggregate annual gross national incomes of the high-income economies – could be carried out through reforms which would entail a negligible reduction in the standard of living for the 1 billion people living in the high-income countries (Pogge, 2008, p. 10). However, not only do cosmopolitans argue in favor of the relief of the worse off according to the negligible sacrifice it would entail to the wealthiest ones but, more importantly, they underline that this fact is a matter of justice insofar as global unfair inequalities are enforced and replicated by the global order which, for this, ought to be assessed as unjust (Moellendorf, 2009; Pogge, 2008).

Some cosmopolitan scholars, such as Martha Nussbaum (1997) and Anthony Arthur Long (2008), trace cosmopolitan thought back to the stoics and, before them, to the Greek philosopher Diogenes the Cynic[74], or the Socrates gone mad as Plato is alleged to have called him (Long, 2008, p. 50), since when someone asked him where he came from, he used to answer: «I am a citizen of the world [*kosmopolitês*]»

[74] Even though Diogenes did not mean the word Cosmopolitanism as understood in the current era the most ancient attestation of the use of the term cosmopolitan (*κοσμοπολίτης*) is linked to Diogenes, who has thus probably been the one to invent this word (Moles, 2000).

(Nussbaum, 2002, p. 2). However, there is a wide agreement on the idea that this answer reflects more an anarchical thought rather than a cosmopolitan one since it was meant to explain a refusal toward any political bound from the norms of the *Polis* to his behavior (Ypi, 2012, pp. 12, 13).

Etymological disputes aside, the very core idea of cosmopolitanism is that all human beings, regardless of their political affiliation, are citizens in a single world community based on universal moral norms (Kleingeld, Brown, 2019) which no one can reasonably refute and, accordingly, each person must be entitled to equal rights and duties. According to cosmopolitanism, principles of justice regulating the fair distribution of rights and duties hold also at the global level and global justice should be conceived in terms of an institutional cosmopolitanism based on universal human rights (Pogge, 2008, p. 175) which leads to assess the global order as unjust insofar as it is unable to globally ensure the overall protection of fundamental rights. Furthermore, cosmopolitanism develops in the framework of the broad philosophical argument of moral universalism which maintains that some ideas have universal power, i.e. there are universal principles which apply to humankind as a whole.

There is a wide variety of categories of cosmopolitanism, such as moral, political, legal, institutional, economic. However, according to one of the leading exponents of cosmopolitanism, Thomas Pogge, there are three specific transversal features which are shared by almost all the diverging strands of cosmopolitanism: *individualism* according to which the ultimate units of concern are individual human beings or persons rather than other categories of agents, like nation-states, which can be units of concern only indirectly, in virtue of the participation and representation of their members; *universality* according to which the status of ultimate unit of concern attaches to every living[75] human being equally; and *generality* according to which this special status has global force, which is to say that persons are ultimate units of concern for everyone not only for their compatriots, fellow religious, or suchlike (Pogge, 2008, p. 175, 1992, pp. 48, 49). Therefore, cosmopolitanism maintains that persons are the most important unit

[75] For some scholars, such as Thomas Pogge (2008, p. 38), Joel Taylor (2013), Axel Gosseries along with Danielle Zwarthoed (2016) and Lukas H. Meyer (2009), even the future generations ought to be taken into account as unit of concern in the current questions of global justice.

of justice and the global context ought to be considered as the primary context of justice since persons are, first and foremost, members of a single universal community. As a consequence, states can only be secondary or indirect units of concern since they are subordinated to the most relevant units of concern, i.e. persons.

2.4.a Moral universalism and global socio-economic justice

Even though various attempts have been undertaken to bridge different conceptions of cosmopolitanism, moral cosmopolitanism remains for sure the strongest one due to the very own essence of cosmopolitanism, that is its moral conception of justice. Accordingly, moral cosmopolitanism will be the one taken into account in the following analysis, mainly relying on the particularly influential cosmopolitan conception of justice of Thomas Pogge.

In its very basic understanding of justice, Pogge defines justice as «a social system's practices or "rules of the game," which govern interactions among individual and collective agents as well as their access to material resources» and a concept associated with «the morally appropriate and, in particular, equitable treatment of persons and groups» (Pogge, 2008, p. 37). Pogges argues in favor of the combination of two compatible conceptions of moral cosmopolitanism: interactional moral cosmopolitanism and institutional moral cosmopolitanism. To illustrate this distinction, interactional moral cosmopolitanism formulates fundamental principles of ethics that assign responsibilities for the implementation of universal basic rights directly to persons and groups, whereas the institutional moral cosmopolitanism postulates fundamental principles of social justice that assign these responsibilities to the institutional scheme (Pogge, 2008, p. 176). However, developing a variant of institutional moral cosmopolitanism – precisely one which makes persons and peoples bearing responsibility for the support to a global unjust order[76] which authorizes and enforces unfair inequalities in violation of a universal general negative duty not to unduly harm the others (Pogge, 2008, p. 142; Pogge, 2005b) – Pogge affirms that only the institutional conception of cosmopolitanism can be considered as a matter of social

[76] «we, the citizens and governments of the affluent societies, in collusion with the ruling elites of many poor countries, are harming the global poor by imposing an unjust institutional order upon them» (Pogge, 2005a).

justice while the interactional conception, still not irrelevant to reduce global unfair inequalities, remains a question of individual ethics. Thus, Pogge endorses an institutional and moral understanding of justice and human rights, in this regard, following Rawls which conceives justice as the «first virtue of social institutions» (Rawls, 1971, p. 3). According to Pogge, the institutional order or basic structure is to be identified as the totality of the more fundamental and pervasive institutions which often have a significant impact on the lives not only of participants but also those of non-participants[77]. As a consequence, the global institutional order must be meant to involve global, international, transnational, supranational, and national social institutions. These social institutions bind peoples' and persons' interactions establishing the basic, and, theoretically, even-handed and morally appropriate, distribution of duties and rights among them. Moreover, Pogge argues that the greater responsibility of a specific distribution is borne by those persons and/or people which uphold the specific shape of these social institutions. The latter must be considered as just when they enforce a fair distribution of rights and duties while they must be assessed as unjust when they enforce and replicate unfair inequalities. Thus, the global institutional order should be considered as just insofar as it is able to fairly distribute rights and duties treating persons' and groups' in a morally appropriate and even-handed way. On the opposite, the global institutional order should be assessed as unjust when they establish bounds and produce effects on individual and collective interactions in a parochial and biased manner, i.e. imposing unjustified rules in favor of the interests of some and against those of others[78], that is norms which depart from the equal treatment of people without justifying the derogation as a matter of fairness, say, for example, for the benefit of the worse off. A practical, even though simplistic, example of injustice, understood in this sense, may be the current lack of norms about minimum standards in working conditions to be respected by all countries participating in the

[77] «In thinking about the justice of social institutions, we should not, then – as is often done – ignore, or exclude in advance, the interests of past and future persons or those of present non-participants. Recognizing these interests does not preclude us from acknowledging the special status of present participants, who generally are more significantly affected by social institutions and also, by continuing and supporting them, tend to bear a greater moral responsibility for their shape» (Pogge, 2008, p. 38).

[78] To some extent it is a derivation of Kantian proviso according to which none should require another person to abide a law which would not keep valid for himself.

World Trade Organization. Indeed, agents involved in the World Trade Organization, persons and peoples from the affluent world, say, admit from others lack labor standards which they would supposedly not admit for themselves and their national society.

However, it would not be possible to assess social institutions in being just or unjust without a criterion of justice. According to Pogge, «we must aspire to a *single, universal* criterion of justice which all persons and peoples can accept as the basis for moral judgements about the global order and about other social institutions with substantial international causal effects» (Pogge, 2008, p. 39). Thus, since current global institutions affect all persons and peoples, and a pervasive global socio-economic order is in place, a universal criterion of justice is necessary. For example, the cosmopolitan scholar Charles Beitz[79] defends a membership-dependent account of cosmopolitan justice according to which the global interdependence brings about the conditions of a basic structure similar to the domestic one, and, for this, Rawlsian principles of distributive justice must be applied also at the global level. In the similar vein, Darrel Moellendorf[80] argues in favor of a membership-dependent account of cosmopolitan egalitarianism which claims that an association gives rise to duty of distributive justice when it strongly affects the life of its members whose relations produce relevant goods and powers and, for him, the global economy is a clear example of that kind of association which potentially justify the imposition of rules of redistribution of the goods and powers produced therein. However, cosmopolitan scholars may overestimate the pervasiveness of the global relations, which may be not thick enough to justify the rise of robust duties of distributive justice, besides precisely lacking to empirically

[79] Beitz seeks to transpose Rawlsian account of social justice at the global level: «Assuming that Rawls's arguments for the two principles are successful, there is no reason to think the content of the principles would change as a result of enlarging the scope of the original position so that the principles would apply to the world as a whole» (Beitz, 1999, p. 151).

[80] Moellendorf's defense of cosmopolitan justice proceeds as follows:

«1. Justificatory respect requires that the principles that structure the institutions of associations, which generate duties of justice among members, be principles that could be reasonably endorsed by the persons participating in the associations.

2. Associations give rise to duties of justice among members if they meet the following four conditions: they are (i) sufficiently strong, (ii) largely non-voluntary, (iii) constitutive of a significant part of the background rules that govern members' public lives and (iv) can be brought under the collective control of members.

3. If the members of an association, which gives rise to duties of justice goods, by their joint efforts produce goods and powers, useful to the members, to which goods and powers no person has a pre-associational moral entitlement, justificatory respect entails a defeasible presumption in favour of egalitarian rules regulating the goods and powers.

4. Among the kinds of associations that satisfy premises two and three (and thus also one) is the global economy.

5. Therefore, there is a defeasible presumption in favour of egalitarian rules regulating the goods and powers produced by the global economy» (Moellendorf, 2009, 2016).

specify the extent to which global relations affect individual life-chances of persons belonging to different political communities. As some critics underline (Risse, 2006) global institutions should be assessed as different than those at the domestic level, since the latter affect more directly and pervasively the individual prospects. Moreover, Beitz's global distributive justice, along with the application of Rawls' principles of justice at the global level, has been criticized by Rawls himself, not in virtue of the lack of a global basic structure, as, for example, Freeman argues (2007). Rawls rejected Beitz's account of global egalitarian distributive justice putting the accent on the lack of legitimation of the application of the principles of justice at the global level, disrespecting, and to some extent discharging, states from their responsibility in the life chances of their members (*responsibility objection*). Another argument which Rawls (1999; see also Barry, 1995) emphasized is the *reciprocity objection*, that is the fact that at the global level individuals do not participate in a scheme of mutual cooperation that would give rise to duties of egalitarian redistribution. According to Rawls, principles of justice «specify the basic rights and duties to be assigned by the main political and social institutions [the basic structure], and they regulate the division of benefits arising from social cooperation and allot the burdens necessary to sustain it» (Rawls, 1971, p. 7).

Coming back to the conceptualization of the universal criterion of justice, cosmopolitans claim that not only theoretical and moral but also pragmatic reasons push for a formulation of a valid universal criterion of justice. However, before providing a sketch of the conditions this universal criterion of justice is supposed to accomplish, it is necessary to give an explanation of the main features of the universalism of a moral conception, such as social justice. Pogge argues that a moral conception can be said to be universalistic if and only if: «(A) it subjects all persons to the same system of fundamental moral principles; (B) these principles assign the same fundamental moral benefits (e.g. claims, liberties, powers, and immunities) and burdens (e.g. duties and liabilities) to all; and (C) these fundamental moral benefits and burdens are formulated in general terms so as not to privilege or disadvantage certain persons or groups arbitrarily» (Pogge 2008, p. 98). These conditions are resumable in three words:

shareability, equality and generality. The first claims some basic moral principles to be shareable by all, that is, which everyone would reasonably accept, and, accordingly, they have to be minimal and respectful of differences in ethical views. The second establishes equality as the main element of the distribution without excluding specific departures which, however, would require proper reasonable justification. The third avoids arbitrary discrimination of specific categories of persons since it demands the principles to be singled out in general terms.

By illustrating the minimal conditions required by a moral concept, such as social justice, to be defined as universalistic, it is now possible to proceed with the examination of the general structure of a morally plausible criterion of justice. The aim is to understand how, according to the cosmopolitan view, a universal criterion of justice ought to be conceived in order to be able to allegedly gain universal acceptance, and meanwhile, to be respectful of the various individual and collective conceptualization of different, and necessarily more demanding, criteria of justice[81]. Indeed, «while a shared criterion of justice will of course impose important constraints, it should also be compatible with a significant diversity of national institutional schemes» (Pogge, 2008, p. 40). So, the criterion of justice neither does not need to match each ethical understanding of human life, nor must be precisely shaped following the specific *good* as a person defines it for himself since each conceptualization of one's own good differs from the other. In fact, since different conceptions of the *good* are in place, it is necessary to carry out a comparison amongst different institutional constraints which would imply alternative «gains and losses in flourishing of different persons or groups» (Pogge, 2008, p. 40). Thus, according to Pogge, the universal criterion of justice involves a dose of paternalism since it partially affects individual and collective lives, presupposing a common measure according to which the global distribution of benefits and burdens is to be conceived. In this regard, this common measure can be investigated according to the priority attributed by individuals and

[81] In this regard, Pogge believes that «respect of autonomy should be extended beyond persons to include societies and cultures as well. […]. Here, again, the wider, more literal sense of "autonomy": *having* one's own way of life, is appropriate rather than the narrower one: choosing one's own way of life». Thus, Pogge's understanding of autonomy, in relation to justice, seems to be drawn in a broad way in order to avoid the social institutions of justice to be too pervasive in affecting the human and collective way of life (Pogge, 2008, p. 40).

groups to certain values and aspirations[82]. If one is not available to give up their particular good, understood as power, resources, primary goods, capabilities, they ought not to uphold social institutions which would deprive others of it. That is to say that a common measure to evaluate the justness of social institutions may be conceived in such a way that it represents what counts more for persons and groups affected by them[83]. However, for how Pogge's conceptualization of a universal criterion of justice is well-elaborated and discursively shareable and may represent a positive ideal worth to be pursued, he only partially explains how such a criterion of justice can be legitimated to different political communities and, accordingly, can be implemented in different contexts of justice. A corollary of the latter criticism is the underestimation of peculiar relations which bind individuals insofar as this description of the features of a valid universal criterion of justice, and more generally Pogge's account of global justice, is weak in providing sound reasons for which a person should agree to partially give up their particular good to enforce a redistribution for the benefit of other people with which they do not presume to be related, and, accordingly, to share a common ground of justice.

In order to make the allegedly universal criterion of justice more shareable, and, accordingly, to ease the necessary paternalism required by a valid criterion of justice, Pogge sets four desiderata to be accomplished (Pogge, 2008, p. 41). First, the sought universal criterion of justice ought to work with a *thin* conception of human flourishing, in order to respect the autonomy of diverse cultures favoring social institutions acceptable to persons from different backgrounds. Though the concept of human flourishing and worthwhile life may be extremely subjective and many doubts can be raised on what they consist in, it would be rather difficult to disagree that some means, such as «nutrition, clothing, shelter, certain basic freedoms, as well as social interaction, education and participation» (Pogge 2012, p. 42), are strongly important for a decent

[82] «If we are not to go beyond how the relevant persons themselves define a good life for themselves, then this common measure can only be the *degree* to which particular social institutions meet the disparate values and aspirations of the persons affected by them» (Pogge, 2008, p. 40).

[83] These persons and groups do not exactly coincide with participants in social institutions insofar as the global basic structure affects, to different extent and levels, more persons and groups than those shaping and upholding this basic structure.

human life and, thus, whose secure access should be ensured to all. As a matter of fact, it is possible to conceive some basic means which are universally recognized as essential for each human being beyond any social, ethnic, national, religious differences (whose respect, by the way, is the main reason for this conception to be thin). As anticipated before, this universal criterion of justice must be conceived in such a way that it is potentially acceptable by all persons and peoples. Pursuing this aim, according to Pogge, it should not care to match the instances of each specific culture, so, it should not be bent to a specific conception of the good, rather it should be able to be appealing for all conceptions of the good. Second, the sought universal criterion ought to be *modest,* defining justice as a solid threshold compatible with an international diversity of institutional schemes. Third, the requirements of the universal criterion should not be understood as *exhaustive*. This means that other more specific and demanding criteria of justice, for example at the national level, may be endorsed to evaluate social institutions. What is essential, as the fourth desiderata, is that those criteria do not clash with the minimal universal criterion insofar as the first does not infringe with the provisions of the latter. In case of conflict, the universal modest criterion cannot be outweighed. According to Pogge an acceptable core criterion of justice ought to be formulated in terms of certain basic goods. Even though this dissertation does not delve into the debate on the currency of justice, as already underlined in the introduction, it is worth exploring the main characters of these basic goods, as Pogge outlines them. According to Pogge, these basic goods have to be, first and foremost, *broadly* and *abstractly* conceived «in particular, in terms of the extent to which the persons affected by an institutional order have the goods they need to develop and realize a conception of a personally and ethically worthwhile life» (Pogge 2008, p. 43). Thus, these goods ought to be recognized as worldwide essential for each human life. They need to be *basic*, *broad* and *abstract* in order to be considered so relevant that each human being would recognize them to be valid for an intersubjective, potentially universal, comparability and at the same time not harmful for each human life. As already underlined, since the criterion of justice must be minimal, the goods have to be basic, in order to increase their potential shareability. The request to provide everyone with

access to a minimum amount of food to survive sounds much more universally acceptable and feasible than the claim to provide everyone with the right to enjoy oysters as their ordinary meal. Rather than picking a specific type of basic goods – such as power for Forst (2012, p. 248), Rawls' social primary goods (1971, p. 53), Dworkin's resources (1981, p. 311), capabilities for Sen (1980) and Nussbaum (2011, see also Pogge 2002), Arneson's welfare (1989), Nozick's liberty-rights (1974) – Pogge opts for a hybrid approach which describes the four aspects in which the demand for basic goods should be severely limited (Pogge, 2008, p. 44). First, basic goods should be defined as the only essential goods without which a conception of a worthwhile life would be impossible. Second, the demand for these essential basic goods should be limited both quantitatively and qualitatively to what Pogge defines as a *minimally adequate* share. Third, not the goods themselves are fundamental but rather the access to these basic goods[84]. Lastly, basic goods should also be limited probabilistically. Indeed, social institutions can only provide persons with basic goods within certain limits. As a matter of fact, social institutions can only provide persons with basic goods within certain limits. Bearing in mind the notion of proportion as inner in the concept of justice, ensuring a group of persons full access to basic goods would be so inefficient that it would turn out to be ineffective for the overall benefit. An explicative example can be the paradox of considerable investments in the research in biomedical engineering, to provide mutilated persons with a functioning arm, say, in countries where some children still die because of easily treatable diseases. According to cosmopolitanism, thus, the global social order would be fully just if each person affected by this order has secure access to minimally adequate shares of all basic goods (Pogge, 2008, p. 44). However, the specification to the extent to which persons and peoples are affected by the (allegedly coercive) global social order and global relations remain ambiguous, since it is not accurately specified, and this renders difficult the attempt to precisely define the (global) scope of norms of egalitarian distributive justice whose enforcement would

[84] Here Pogge seems to get close to Sen's capabilities insofar as he admits that not only the good itself is relevant but also the access to it and, in turn, supposedly, the functioning at the disposal of the individual to enjoy the good. However, Pogge does not go that far, maintaining the focus on the access to the good while Sen focuses on the access to its functioning. In any case, Pogge openly refuses capabilities to be taken as a valid basic good of justice (Pogge, 2002).

ensure everyone's secure access to the minimal adequate share of basic goods for an existence worth living.

2.4.b The institutional cosmopolitan conception of human rights

This paragraph seeks to explain the main characters of the institutional cosmopolitan conception of fundamental rights with particular focus on the categories of rights on which institutional cosmopolitanism focus, generally moral and socio-economic rights, the ways in which these rights are supposed to be implemented at the global level and the justification of the corresponding burdens which others ought to bear for their realization. As already underlined in the beginning of this section, cosmopolitan scholars focus on different aspects of cosmopolitanism however sharing the idea that egalitarian distributive justice has global scope and universal fundamental rights, generally understood as human rights, must be realized at the global level. For example, Moellendorf establishes the global power of universal human rights on the equal dignity of individuals[85] while Beitz defends an internationalist-interventionist paradigm of fundamental rights, that is a conception of international human rights as a distinctive class of norms consisting in matters of international concern[86] and as a practice in the international system of interdependence and interconnection placing limits on the internal and external sovereignty of states (Beitz, 2009; see also Beitz, 2003).

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[85] «Let's assume that persons possess equal inherent dignity as expressed in the preambles of the major human rights documents of the twentieth and twenty-first centuries. The relationship between the rights enumerated in these documents and the foundational commitment to inherent human dignity is that respecting the latter consists in recognizing the former, which protect and enable dignity. An interpretation of human dignity is required to make this claim plausible. I suggest the following one. Human dignity consists in, among other things, our capacity to act in ways that are responsive to the reasons we have for acting; human rights, by protecting and enabling certain forms of acting (including deliberating and thinking), serve the aforementioned capacity. The freedoms of conscience and association and entitlements to education and medical care all serve the human capacity for practical reason» (Moellendorf, 2016). For a rejection of the commitment to basic equality based on dignity see Sangiovanni, 2017, pp. 13-71.

[86] «international human rights constitute a distinct class of norms. They are neither principles for individuals of the sort that might be said to regulate behavior in the absence of institutions nor principles for domestic political institutions, adherence to which is sufficient for the justifiability of those institutions to their own members. Human rights are, peculiarly, matters of international concern: they are norms worked out for one among many possible situations of human interaction, that found in a world order in which political authority is vested primarily in territorial states» (Beitz, 2009, p. 160). Beitz must be acknowledged the merit of an original systematization of the catalogue of human rights in three categories related to three broad matters of international concern: in anti-poverty rights, rights of political participation and the human rights of women (Beitz, 2009, pp. 160-196). In any case, it is important to underline that Beitz does not conceive the category of human rights, *qua* universal fundamental rights, as derivative from social justice (Beitz, 2009), rejecting his earlier view which supported this idea (Beitz, 1979).

Instead, Pogge's conception, on which this paragraph mainly focuses, rather than investigating the ultimate foundation of the concept of universal rights, provides an institutional understanding of human rights as a language in which «a complex and internationally acceptable core criterion of basic justice might best be formulated» (Pogge, 2008, p. 50), whose main aspect has been outlined in the previous paragraph. Placing the question of how universal rights ought to be conceived, Pogge argues for a validity of moral human rights which is independent of any social order – which however plays a crucial role for their realization – an idea which has been widely and progressively acknowledged since the aftermath of the World War II (Pogge, 2008, p. 58). About the recognition of moral rights as universal rights, their acknowledgement is traced back to the common phrase 'international recognized human rights' (Pogge, 2008, p. 59) enshrined in the UDHR whose Preamble underlines the Declaration to state moral human rights that exist independently of itself and which are entitled to each human being as such without distinctions of any kind.

Moreover, Pogge considers moral and legal rights[87] not in contrast to each other but rather claims that the first category pre-exists the second (whose instrumental role for the realization and adjudication of moral rights is, in any case, a matter of fact and recognized by this author). Indeed, the relation between moral and legal rights is conceived in such a way that avoids any conceptual connection between these two terms. Moral rights are moral claims which are valid[88] regardless of their actual legal recognition and judicial adjudication and, thus, their juridification ought not to be understood as essential for their existence. Pogge recognizes the relevance of legal rights for the implementation of (moral) human rights but he argues that such legal rights need not to have the same content of moral human rights and highlights that the secure access to the object of moral rights – that is what really matters – may be

[87] Just to briefly recall the difference between these two categories of rights, moral rights are those rights entitled to each human being as such, while legal rights are those rights which are enforced in a legal system and are endowed with judicial adjudication. For example, right to life can be considered as a moral right while the citizenship rights are, by definition, legal rights.

[88] In Pogge, the validity of these moral claims is explained in the light of the consensus which their enunciation in the UDHR as human rights has obtained. Accordingly, Pogge seems to leave pending the foundational question of universal fundamental rights and the concept of rights itself. Differently, Forst (2012, pp. 110, 218), as there will be illustrated further on, seeks to explain the validity of moral rights and duties according to their moral and political construction on the very basic moral right (and duty) to reciprocal and universal justification.

maintained also in other ways (Pogge, 2008, p. 52). it follows that although legal rights are effective means, probably the strongest, to realize moral rights there are other tools, such as non-legal practices and the commitment by a citizenry, which can be considered in their own way important to ensure moral rights. Pogge argues for the inclusion of the corresponding legal right of a moral right in the law or constitution when its juridification is required to ensure the secure access to its object – as it is, for example, for the right to vote (Pogge, 2008, p. 51). However, if it is true that avoiding conceptual connections between legal and moral rights[89] has the considerable advantage of the entitlement of fundamental rights to each human being regardless of their political and national affiliation and leads to a stronger denunciation of the eventual denial of the secure access to the basic object of a specific right, it is equally true that such a sharp separation of the moral and legal aspects of fundamental rights may cause greater difficulty in enforcing them insofar as their practical realization is left out of the focus.

Just to briefly recall the characters which give potential universal status to the general concept of universal fundamental rights, the notion of human rights, together with the concepts of natural law and natural rights, can be seen as «a special class of moral concerns, namely ones that are among the *most weighty* of all as well as *unrestricted* and *broadly shareable*» (Pogge 2008, p. 60). However, various changes – such as the replacement of *natural* with *human* and the detachment of the idea of moral rights from its historical antecedents in the medieval Christian tradition – distinguishes the new concept of moral right, strengthening his potential shareability and his universal appeal. The latter may be also reinforced through the coincidence of the object of the basic human needs with the object of a human right, intending the object in a broader sense. To illustrate, Pogge means the object of a right as whatever the right is a right to, such as freedoms-from, freedoms-to, as well as physical security, adequate food supply, health assistance and standard of living.

According to Pogge, these basic human needs are not to be understood as only physiological and psychological needs – notwithstanding they cannot be denied being

[89] This practice shows clear connections with the natural law theories according to which there are natural rights which pre-exist legal rights recognized by the positive law.

essential, even though not completely satisfactory, for all human beings[90] – but rather as all the needs considered as fundamental for a worthwhile life. This idea does not prejudice the conception of basic needs or interests to be conceived in a person-relative way or even in subjective terms (Pogge, 2008, p. 276) since it does not deny that some persons, such as those with handicaps, may need more means than the others to see their basic needs being satisfied; moreover, it does not infringe on individual different goals, desires, or preferences affecting how a worthwhile life is conceived insofar as only really basic needs can count as essential, and for this quality being universally shareable. Even though this dissertation does not aim to precisely single out a comprehensive list of basic needs, as basic objects of fundamental rights, an overall and simplistic sketch of what basic needs are can be reached by posing the point in negative terms, i.e. the lack of what would make a human being not survive and not live a worthwhile existence. In this regard, one could hardly deny that at least a minimum standard of living and a certain degree of freedom can be universally considered as very basic needs, and thus, basic objects of moral rights. However, even though basic needs are functional to flag the idea that only the most important interests of human beings should be seen as giving rise to human rights[91], the term *basic needs* may be misleading and excessively broad since they may lead to focus on physical and psychological needs of human beings ruling out the relevance of civil liberties and political rights to justify the rules which are enforced upon them.

In order to enable persons to develop, deepen, and realize an ethical world view of their own[92] Pogge argues that the required basic goods are liberty of conscience[93] and political participation[94]. More elementary basic goods which are important for an ethical

[90] For an allegedly biological hierarchy of needs, see Maslow, 1943.

[91] This specific point is also shared by David Miller which, however, as we have seen in the previous paragraph, deeply diverges from Pogge about the duties which basic needs justify, since Miller's needs-based justification of a global minimum of human rights cannot give rise to claims of egalitarian justice but only claims to external humanitarian relief in case of their grave violation (Miller, 2007, pp. 178-200).

[92] This should be an element required for even the modest criterion of basic justice according to which the social institutions ought to be designed (Pogge, 2008, p. 54).

[93] Along with «the freedom to develop and to live in accordance with one's own ethical world view so long as this is possible without excessive costs for the others. This freedom must include various other liberties, such as freedom of access to informal media (such as books and broadcasts) and the freedom to associate with persons holding similar or different ethical views» (Pogge, 2008, 54).

[94] «The freedom to take part in structuring and directing any comprehensive social systems to which one belongs. This includes the freedom publicly to express ethical criticisms of political institutions and decisions, freedom of assembly, and

and personal value of human life are «physical integrity, subsistence supplies (of food and drink, clothing, shelter, and basic health care), freedom of movement and action, as well as basic education and economic participation. All of these basic goods should be recognized as the objects of human rights – but only up to certain quantitative, qualitative, and probabilistic limits: what human beings truly need is secure access to a minimally adequate share of all these goods» (Pogge 2008, p. 55). As explained above, an essential requirement for the object of a moral right is to be minimal. In order to have a clue of the specification of the object of moral rights, one may think about those 'quantity' and 'quality' of basic goods, such as minimal standards of living and essential freedom, which would find fundamental for a worthwhile life, and, thus, which cannot ask the others to be deprived of. Therefore, the hypothetical threshold of basic needs, and, correspondingly, basic goods and objects of moral rights, may be built on this recursive reasoning (which corresponds, to some extent, to Forst's criteria of reciprocity and generality). Another relevant point to be mentioned is the potential secure access to the basic goods, rather than their direct delivery, in order to avoid establishing a specific way to realize that right but leaving space to find the best mechanism to ensure persons to autonomously enjoy this opportunity. This leads to two main aspects which assure the shareability of the concept of moral rights: on the one hand, potential secure access does not disturb the autonomy of persons insofar as it lets persons freely use this opportunity. For example, if a person wants to fast for a long period, they should not be obliged to eat, rather the availability of adequate nutrition for them must be ensured. On the other hand, the fact that the secure access to the objects of moral rights may be maintained in diverse ways in different economic and cultural contexts[95] frees the concept of moral rights to be attached to the interest or concern of a specific culture and tradition. Thus, what really matters is the secure access to the basic objects of moral rights. However, even though Pogge outlines a sophisticated explanation of the features of basic needs and basic goods, his reasoning on the object

freedom to participate on equal terms in the competition for political offices and in the struggle over political decisions» (Pogge, 2008, 55).

[95] Particular societies may opt for stronger criterions of justice which imply more demanding additional basic needs. However, «such additional basic needs would everywhere be understood as secondary to the universal human needs recognized by the globally shared conception of human rights» (Pogge, 2008, p. 57).

of moral rights lacks to specify what object prevails in case of conflicts rising between different kinds of fundamental objects of moral rights. For example, taking into account the really basic need of the hunger, ensuring the secure access to its corresponding basic good, i.e. food, also understood as the object of the fundamental right to adequate means of subsistence, entails the partial (under)fulfillment of the secure access to the basic freedom to dispose of one's own properties, which can be considered as the object of the right to private property. The picture gets even more complex at the global level, where the agents entitled to ensure fundamental rights are even more unclear than at the national level.

As explained in paragraph *2.1*, intending rights as a basic moral claim to something, they necessarily require more or less direct and demanding duties on others. The imposition of these duties, which is carried out by social (global) institutions, ought to be properly justified (a justification understood in a thinner sense than Forst's conception, which will be investigated more in depth in the next chapter, without denying that his explanation may have much in common with the way it is meant here). According to Pogge's institutional understanding of human rights, «a human right is a moral claim on any coercive social institutions imposed upon oneself and therefore a moral claim against anyone involved in their design or imposition», in other words, human rights are «claims on coercive social institutions and secondarily as claims against those who uphold such institutions» (Pogge 2008, p. 52). Social institutions and persons[96] upholding and perpetuating them share responsibility insofar as the institutional order imposes constraints on persons affecting their lives and plays an important role in the reproduction of human misery[97]. Nevertheless, what is relevant for the topic of this dissertation is to understand the reason why other persons may bear

[96] «persons involved in upholding coercive social institutions have a shared moral responsibility to ensure that these institutions satisfy at least the universal core criterion of basic justice by fulfilling, insofar as reasonably possible, the human rights of the persons whose conduct they regulate» (Pogge, 2008, p. 55).

[97] In relation to our responsibility toward the poor, Pogge toughly argues that «by shaping and enforcing the social conditions that foreseeably and avoidably cause the monumental suffering of global poverty, we are harming the global poor—or, to put it more descriptively, we are active participants in the largest, though not the gravest, crime against humanity ever committed. Adolf Hitler and Joseph Stalin were vastly more evil than our political leaders, but in terms of killing and harming people they never came anywhere near causing 18 million deaths per year» (Pogge, 2005a, p. 33).

some responsibilities toward other human beings which are not their fellow countrymen and, accordingly, which are the duties they should be imposed upon them.

Pogge argues that the moral responsibility of persons, and, in turn of social institutions, avoiding disrespect of human rights, that is, the denial of secure access to their basic object, is a matter of negative duties, which are generally supposed to be more weighty than positive duties, such as the duty to assistance[98]. Negative duties correspond to duties not to harm another unduly which «impose specific minimal constraints […] on conduct that worsens the situation of others» (Pogge, 2008, p. 52). In compliance with the negative duty not to harm others unduly[99], in upholding social institutions and imposing constraints on individual and collective life, persons ought to avoid that these rules turn into the violation of the rights of some persons at the unjustified and unfair advantages of others. Thus, in order to preserve the 'fairness of the game', any coercive institutional order must ensure certain minimal respect of human rights.

2.4.c The limitations of the cosmopolitan view

To start with, one of the main criticisms to cosmopolitan ideas is that cosmopolitanism almost completely discharges justice from its not irrelevant political weight. In the wake of this observation, other limitations of this theory are the deficiency of cosmopolitanism to take into consideration the relevance of special duties linked to particular relations among persons, such as those related to the shared national identity and cultural attachment, as well as the weak practical feasibility of the reforms they put forward in order to realize the ideal fair global distribution of rights and duties which they strive for. The following discussion will widen different aspects of the criticisms just sketched out.

A broad criticism directed to cosmopolitanism, as a form of universalism, regards their implausible understanding of moral norms established once and for everyone and detached from the peculiar ties rising from the actual relations among persons (Miller,

[98] Rawls thinks that what we owe to burdened society is basically a right to assistance to relieve them from absolute deprivation of basic primary goods (Rawls, 1999, p. 106).
[99] For a detailed critical view on Pogge's negative duties towards the global poor see Pierik, 2013.

1992, pp. 288-289; MacIntyre, 1984) arguing for an excessively abstract and extra-demanding moral claim to the human agency without considering their personal motivations and subjective commitment. This criticism is reinforced by the inner cultural pluralism of political communities which leads to different conceptions of the good hardly reconcilable with a univocal comprehensive understanding of the moral norms which should rule human interactions. The general vision of the status of human beings as equal moral agents seems to be shared in principle by many statist scholars as well, which however criticize it to be too abstract and vague – for this, so widely shareable – without thus adding something relevant to the debate, for example, on the fair distribution of rights and duties, insofar as an all-inclusive term or label may not represent a worth contribution (Blake, 2013, pp. 35–37).

As for the assessment of the global scope of justice, cosmopolitanism tends to argue in favor of the unfairness of socio-economic inequalities grounding the demandingness of the claim to justice according to the amplitude of these inequalities itself, without however explaining the extent to which those inequalities ought to be assessed as unjust. Indeed, even though it is widely ascertained that the global order reinforces and reproduces pervasive inequalities in the distribution of basic goods at the global level, it is also true that cosmopolitans do not specify the empirical assessment according to which domestic inequalities can be attributable to the global order, and, in turn, the extent to which the latter is liable for inequalities at different levels.

In the wake of the just-mentioned criticism, other two relevant limitations of the cosmopolitan view of universal human rights can be drawn, that is their excessive focus on one category of fundamental rights, i.e. socio-economic rights, at the potential expense of civil liberties and political rights, and on moral rights underestimating the relevance of their legal adjudication and political justification.

As a matter of fact, in the assessment of human rights as a language in which a core criterion of global justice can be formulated, Pogge poses the main focus on a specific category of rights, i.e. socio-economic rights, defending them against those, in particular libertarians, who charge them to be just *manifesto rights*, and underlying how they are «currently, and by far, the most frequently unfulfilled human rights» (Pogge,

2008, p. 97) arguing for the fact that this under-fulfillment also plays a major role in explaining global deficits in the protection of civil and political human rights. However, his major focus on socio-economic rights, and issues as world poverty, unequal distribution of wealth, inequalities in the standard of living seems to underestimate the relevance of civil liberties and political rights as universal fundamental rights.

In regard to the distinction between moral and legal rights, Pogge emphasizes the universal entitlement of moral rights to each human being but does not give proper relevance to the enforcement of these moral rights as legal rights. The distance which he draws between moral and legal rights may have the merit to underline the equal universal entitlement of fundamental rights to each human being but does not take seriously the practical and feasible realization of these rights.

Another problematic aspect of the cosmopolitan account of universal fundamental rights regards their excessive reliance on the UDHR as a document which can potentially justify the global enforcement of universal human rights. Without denying the importance of the Universal Declaration of Human Rights as a benchmark for international action and purported evidence of the universal agreement on a basic list of fundamental rights, as Onora O'neill (2016, 2005, 2001; see also Beitz, 2009, p. 164; Moyn, 2012) helps to understand, relying on the UDHR for the global enforcement of fundamental rights may be misleading in at least two points. First of all, the UDHR takes as point of reference the state referring to a global order, as the Westphalian one which statists generally refer to, which takes nation-states as the primary agent of justice entitled to ensure fundamental rights and enforce their corresponding duties[100]. This leads to the problematic point that the universal rights listed in the UDHR are mainly statist centric and little space is left for the enforcement of universal fundamental rights beyond those which states entitle to their members. Indeed, a second limitation of the UDHR, besides being not binding for states, is that it does not specify how the rights listed ought to be realized, the agents entitled to enforce these rights and

[100] «The poor drafting of the Declaration obscures this hiatus: the text refers promiscuously to 'countries', 'member-states' and 'nations'. However, a careful reading makes it quite plain that obligations to secure universal rights are assigned to states, almost always to the state of which an individual is a citizen or member. Rights against states of which an individual is not a citizen or member, if any, are far less extensive» (O'neill, 2016, p. 161; see also O'neill, 2001).

the legal norms and institutional scheme which should make possible the enforcement of the corresponding duties which these rights entail. As a matter of fact, it is not specified how a person can concretely claim the realization of their universal fundamental rights against the states.

The last drawback of cosmopolitanism worth mentioning is the excessively meager justification of the corresponding obligations which make possible the realization of universal rights. In this regard, the cosmopolitan view of global justice looks problematic for the lack of justification of the egalitarian duties of justice peoples and persons should bear in order to fulfill the demanding claim of justice of the worse off. Indeed, while cosmopolitans put particular effort into explain the universality of human rights, understanding them as a valid criterion of universal basic justice, they do not give proper relevance to the justification of the corresponding obligations which they entail, thus jeopardizing their concrete realization. As a corollary, in the cosmopolitan theory, while sound effort is made to explain the universalism of fundamental human rights, there is also a lack of specification of the agency entitled to enforce these rights. For a cosmopolitan account of liberal socio-economic justice and rights, «the difficulty begins to show as soon as we ask who bears obligations to meet these rights and whether all human beings have the same obligations» (O'neill, 2016, p. 153). In their underestimation of the relevance of local commitment and political community in discharged duties of justice (Ypi, 2010), they fail to assess the agents entitled to make possible the realization of universal fundamental rights. Indeed, in contraposition to statism, some cosmopolitans may have celebrated the funeral of the state excessively in advance[101] in light of the recent political nationalist waves in many countries which, even though they cannot be considered as a disproval of the cosmopolitan argumentations, show however how the cosmopolitan ideal is socially opposed by a wide part of the humankind. Indeed, even though the cosmopolitan view is now predominant in the academia (Blake, 2016), it does not seem to be the same

[101] A noteworthy exception to this cosmopolitan attitude to disregard the moral and political relevance of the state is that of Lea Ypi who argues for a view of global justice, namely statist cosmopolitanism, which recognizes the normative relevance of the state and its crucial role in the realization of cosmopolitan reforms of global distributive equality (Ypi, 2012).

among many national citizens that, even in the light of the drawbacks of the globalization, still find the nationalistic idea more appealing.

Chapter III. Universal fundamental rights and duties as a *fair mean*

This core chapter seeks to answer the central research question: To what extent should fundamental rights and duties be implemented and enforced at different levels of justice? The chapter seeks to go beyond the main limitations of statist and cosmopolitan conceptions of global justice and universal fundamental rights and duties, which have been sketched out in the previous chapter. To this aim, the chapter draws a 'middle road' between statism and cosmopolitanism envisioning a *balanced approach* toward global justice which takes into account both its political and moral sides and a fulfillment of universal fundamental rights, along with the imposition of the corresponding duties, according to a *fair mean* between different categories of rights, such as socio-economic and civil and political rights and moral and legal rights, and duties, such as general and special duties and negative and positive duties. Accordingly, this chapter aims at investigating a formal and substantial *fair mean* of the objects of the different kinds of fundamental rights and duties as politically and morally constructed on the right to reciprocal and general justification and explaining how a *balanced approach* can be able to take together the entitlement of universal fundamental rights and duties to each human being with the ties and commitment rising from the particular relations human being owe one another.

To defend an understanding of universal fundamental rights and duties as a *fair mean* and a *balanced approach* toward global justice this chapter recalls some elements of the critical theory of political and social justice, the discursive moral and political constructivism and the right to reciprocal and general justification of Forst as well as the Aristotelian understanding of justice. Therefore, this chapter builds on the main findings of Forst's critical theory of social and political justice and Aristotle's conception of justice to sketch out a revised Aristotelian *fair mean* according to which the validity of claims of justice and the justifiability of the enforcement of the corresponding duties can be assessed. Accordingly, the contribution of this chapter lies in the attempt to

assess the scope of the global distribution of rights and duties, and thus of power (understood as the main currency of justice)[102], according to the level of the moral arbitrariness of inequalities, the relevance of the basic object of different categories of fundamental rights for a worthwhile life and the justification of the extent of the ground of justice on which the claim ought to be framed.

Taking all these elements into account, the further, and maybe the most relevant, challenge of this chapter is to prove that rights, and above all categories of rights, ought always to be implemented in relation to one another, thus, according to a common *fair mean*, and they ought to be understood as intrinsically related to the justification of their corresponding duties. In this regard, the *fair mean* seeks to emphasize the equal relevance of the basic objects of both fundamental civil and political rights and socio-economic rights, and their corresponding duties, and the need for the assessment of their implementation according to the measure of their moral and political justification. Meanwhile, founded on the just-mentioned *fair mean*, the *balanced approach* toward global justice and universal fundamental rights, and their corresponding duties, is supposed to overcome the main limitations of statism and cosmopolitanism being able to adapt to the thickening of the global relations among peoples and persons while avoiding giving rise to extra-demanding claim of global justice thus being sensible to the different contexts in which the claims of justice are framed.

3.1 A critical theory of social and political justice

First and foremost, it is worth pointing out that Forst supports the idea that the core meaning of justice must be found in its fundamental opposition to arbitrariness meant both as arbitrary rules by an individual or a group, or structures which reproduce privilege or social contingencies that are accepted as fate (Forst, 2012, p. 2). Thus, in this sense, the commitment of justice should not, at least not only, be conceived in strict moral terms, such as, for example, according to a principle of redress in order to compensate morally arbitrary inequalities, whose validity is not, by the way, disproved,

[102] As briefly touched upon in paragraph *2.2*, and as this dissertation will delve into in this chapter, the focus on power as the meta-good to be fairly distributed is apt for the investigation of the extent according to which global inequalities ought to be assessed as a matter of justice.

but rather should be understood as linked to political and social relations, and, in these terms, as a call to no longer be oppressed, or harassed or one's claims and basic right to justification ignored (Forst, 2012, p. 2). Sketching out the main elements of a constructivist theory of social and political justice, Forst argues that justice ought to be understood on the basis of a single right, the right to justification, according to which corresponding principles for the basic structure of the social order should be constructed[103]. The in-depth analysis of the basic moral right (and duty) to justification, on which principles of social justice are based, will be a matter of the next paragraph while here only an overall account of Forst's perspective of social justice will be delivered and discussed.

Hence, recognizing social justice as an essentially contested concept, Forst seeks to overcome the relativism surrounding it through the attempt to catch its firm core meaning. According to Forst, first of all, for social justice to be meaningfully applicable, a 'context of justice' must exist: a context of political and social relations of cooperation as well as conflict, which calls for a just order, the establishment of which the members owe one another (Forst, 2002). In order to speak about justice, interrelations and interactions, in the shape of cooperation as well as conflicts, among individual and collective agents must be in place insofar as they call for just(ifiable) rules and norms to govern their interrelations. According to this assumption, the quest for justice may become more and more legitimate at the global scale insofar as the interactions among individual and collective agents are getting tighter with the time passing by. It is important to point out this *recursive* element of Forst's conception of justice which will be endorsed by our *balanced approach* toward global justice as well.

Secondly, as it was anticipated before, «the core idea of a just order nevertheless consists in the idea that its rules and institutions of social life be free of all *forms of arbitrary rule or domination*» (Forst 2012, p. 189). In this regard, understanding this second requirement for justice in a broader sense, avoiding arbitrariness may refer not only to the even-handed requirement for social institutions, but also to their

[103] «this argument is based on the conviction that this is the best possible way to philosophically reconstruct the Kantian categorical imperative to respect other persons as "ends in themselves"»
(Forst, 2012, p. 2).

commitment to fighting against arbitrariness or domination, which would make justice a matter of fairness rather than of choice of the most powerful. For example, if inequalities in power exist, they must be reciprocally and generally justified by all the agents involved – that, as it will be discussed further on, must in turn be endowed with the proper means to justify themselves – otherwise they will be conceived as morally arbitrary and, thus, worth being compensated.

Moreover, Forst seeks to go beyond those – to his understanding, misleading – views on justice which look at it as a «largely empty shell, which can only be filled in with substantive values, values that specify the respects in which social institutions are to be free of arbitrariness» (Forst, 2012, p. 189). The most common values which are taken to be the basis for justice are freedom, equality, basic needs, and democracy. They are mainly criticized by Forst insofar as all of them, such as the notions of freedom and equality, need interpretation, and thus justification in claiming to be the basis of justice. Thus, rather than singling out the most proper principles of justice, Forst elaborates the assumptions according to which the question of justice can be considered as valid. Indeed, he understands justice as not, or at least not only, a matter of equal freedoms but rather of «being able to *mutually* and *generally* raise and accept claims; and to exclude altruism (with the acceptance of one-sided claims), one should say that justice concerns claims that cannot be reciprocally and generally rejected» (Forst, 2012, p. 194). Since justice relates to the interactions among individual and collective agents, its principles have to be constructed relationally and, thus, reciprocally and generally justified. Therefore, the highest and really basic principle of social justice which prevails normatively and criterially over all the other values is «the *principle of reciprocal and general justification*, according to which every claim to goods, rights, or freedoms must be grounded reciprocally and generally, whereby one side may not project its reasons onto the other, but must discursively justify them» (Forst, 2012, p. 194). The principle of reciprocal and general justification, along with the criteria of reciprocity and generality, can be defined as a higher-order principle, which goes beyond the classical contents of justice, establishing the criteria to evaluate the claim to such content. An in-depth explanation of what reciprocity and generality consist of will be delivered in the

next paragraphs, along with the analysis of the extent to which a *fair mean* of basic objects of fundamental rights can be retrieved from the very basic right to reciprocal and general justification.

In the explanation of social justice as a reflexive conception – which understands human beings not as the recipients of social and political justice but rather as authors and addressees of justice – the reciprocal and general justification must be understood as a reflexive practice of asking for other's justification of their actions (right to justification) and providing justification of one's own actions (duty to justification). Furthermore, in sketching out the central insight of his reflexive conception of social justice, Forst underlines that the first question of justice is the question of power (Forst, 2012, p. 195; see also Forst, 2001). As previously highlighted, according to Forst, the concept of justice consists in the absence of arbitrary rule within a social and political order. Therefore, justice does not primarily focus on the distribution of goods among those persons that share a context of justice, *qua* a context of relations as well as conflicts, but rather «on the relationship between the persons involved and their relative standing within a scheme of exercising power» (Forst, 2007, p. 260). Accordingly, not only is it relevant how goods (or, widely speaking, benefits and burdens, or rights and duties) are distributed but also, and perhaps above all, who organizes and controls the distribution and how it is carried out. Forst criticizes redistributive justice theorists, such as Pogge, insofar as they think about justice only from the side of the recipient and they are careless about the powerlessness of the participants[104]. That is to say that justice should not mainly focus on the distribution of basic goods but above all on the distribution of power. Thus, the fundamental equality is the *justificatory equality* of

[104] Just to provide a sketch of the comparison between Pogge's and Forst's conceptions of justice three main differences between them can be outlined. Firstly, while Pogge singles out the main minimal characters which a criterion of justice must accomplish, Forst outlines a higher-order principle which may make it possible to evaluate the validity of each claim of justice. In this regard, Pogge focuses more on the content of justice, while Forst refers more to the construction of its principles. Secondly, concerning the spatial dimension of justice, Pogge has a significantly universal understanding of justice, since he presupposes the universal criterion of justice to take priority over the most local ones while Forst endorses a contextual approach toward justice since he conceives the context as a *conditio sine qua non* for the existence of a ground of justice. Lastly, Pogge does not endorse a free-standing toward justice but openly opt for a specific common (paternalistic) measure whose conditions are outlined in order to sketch out a universal minimal criterion of justice worldwide. On the other hand, Forst understands social justice as constructed on the principle of reciprocal and general justification establishing the proviso for the justification of its content. For a deeper comparison between Forst's and Pogge's conceptions of global justice and universal fundamental rights see Coacci, 2021c.

individuals because the latter must be enabled to justify social relations and rules of justice in which they are (potentially) involved and the question of power is the first question of justice since power, understood as the effective *justificatory power* of individuals, is the highest good of justice and, hence, is the most important good through which an individual can justify norms and rules affecting her/him.

Accordingly, persons ought to be meant not as mere recipients of justice but rather as agents endowed with the proper instruments to exercise their right to justification. In this sense, a minimal equal distribution of goods, as the further paragraphs will outline, seems to be in any case essential since, without them, persons would not be able to use this highest good of justice, the *justificatory power*, which Forst hopes to be at their disposal.

3.2 The really basic right to reciprocal and general justification

Forst founds social and political justice on the very basic right (and duty) to equal justification. Therefore, norms of justice which determine the distribution of benefits and burdens and constrain interactions among persons are valid only inasmuch as they are reciprocally and generally justified. The basic moral right to justification can, thus, be conceived as the right on which all the other rights can be morally constructed and according to which they can be justifiably claimed. So conceived, the latter are rights that no one can with good reasons withhold from other persons (Forst, 2012, p. 5; see also Scanlon, 1998).

Before deepening the conception of the basic moral right to justification itself, a brief clarification on Forst's overall view on the human being is necessary. Combining the definition of human beings as endowed with reason (*animal rationale*), equipped with the unique capacity for language (*zon logon echon*), as social (*animal sociale*), political beings (*zoon politikon*) and as 'flawed beings' since they are finite and limited, Forst draws an image of the human beings as justificatory beings (Forst, 2012, p. 1). As justificatory beings «they not only have the ability to justify or take responsibility for their beliefs and actions by giving reasons to others, but in certain contexts they see this as a duty and expect that others will do the same. If we want to understand human

practices, we must conceive of them as practices bound up with justifications» (Forst, 2012, p. 1). The latter point is also the essence of the reflexive aspect of Forst's account of social and political justice which has been briefly touched upon in the previous paragraph. Thus, according to Forst, the intersubjective interactions require justification which can be understood as a demand for reasons, *qua* justification, on persons' practices and actions.

Accordingly, the justification of a practice can be seen in a double reflexive sense, that is, on the one side, as a duty to give justification to others of our decisions and actions when they are affected by them and, on the other side, as a right to ask for justification. Obviously, in those justificatory relations no unilateral arbitrariness or domination can be admitted as a valid reason of justification since in contrast with its main criteria of generality and reciprocity (which will be explained further on). Human beings, as participants in shaping the basic order of the society and addressees of their coercive norms, are, thus, understood democratically in their «dual role as authors and addressees of justifications» (Forst, 2012, p. 2). This status of human beings reflects their standing about one another as rights-holders and duty-bearers of justification insofar as they participate in a social order whose norms which are enforced upon them ought to be reciprocally and generally justified. Therefore, the further step is to understand the criteria of reciprocity and generality which shape the principle of justification and form the central dimension of the quest for justice. In Forst's theory of the equal basic right to reciprocal and general justification, the criteria of reciprocity and generality are explained as follow:

> Reciprocity means that no one may refuse the particular demands of others that one raises for oneself (reciprocity of content), and that no one may simply assume that others have the same values and interests as oneself or make recourse to "higher truths" that are not shared (reciprocity of reasons). Generality means that reasons for generally valid basic norms must be sharable by all those affected. […]. Principles and norms can claim to be valid only if they can be agreed to reciprocally (without demanding more from others than one is also willing to concede, and without projecting one's own interests and convictions on others) and generally (without excluding anyone concerned and their

needs and interests), that is, those principles and norms that […] no one can "reasonably" reject (Forst, 2012, pp. 6, 80).

Therefore, only those norms which are reciprocally and generally justifiable can be assessed as just and valid so long as they avoid the reasons of some persons to prevail upon those of others and include the reasons of all those affected. Moreover, what is important to understand is that reasons of persons are equally worth being heard and equally count in shaping social institutions insofar as they respect the reciprocity and generality criteria which, in this way, serve as a filter for claims and reasons that can be *reasonably rejected*. That is the reason why reciprocity and generality are proper principles to apply to intersubjective interactions, as well as to assess the justness of the rules governing them. Indeed, not only do these two criteria help provide everyone with the possibility to participate in shaping the rules of justice, and thus the fair distribution of burdens and benefits, in an equal position, but they also make it possible to distinguish between more or less justifiable arguments and to evaluate the 'reasonableness' of positions and claims when there is dissent (Forst, 2012, pp. 80, 81). The right (and the corresponding duty) to equal justification, is precisely shaped by these two criteria insofar as one cannot make their reasons and claims prevail on those of the others through the means of arbitrariness and domination or argue for the exclusion of persons affected, along with their needs and concerns, and one also cannot avoid abiding by norms reasonably widely shared since reciprocally and generally justified.

Further explaining the meaning of the right to justification, Forst states that «it is appropriate to call the right to justification (a) a moral right and (b) the basic right; for by itself it is not a specific, intersubjectively established and recognized human rights, but rather the basis of the justification of concrete rights» (Forst, 2012, p. 210). The right (and duty) to reciprocal and general justification is thus the right on which all the other rights (and duties) can be morally and politically constructed. Moral rights are the core of judicial or political rights, as moral constructivism is the core of political constructivism, and as, *mutatis mutandis*, moral justification is – in a normative-formal

sense – the core of political justification. Accordingly, the basic right to justification, from which all the other rights derive, is a universal moral right which is in no case possible to deny to a person since no one's right to justification, the basis of all rights of human beings, can be ignored. In this regard, Forst conveys that the moral constructivism, opposed to the political constructivism, shows that «moral persons, both in a given context and beyond it, must grant certain rights to one another, rights that they owe one another, in a moral sense» (Forst, 2012, p. 200). Even though Forst conceives moral constructivism as almost always related to political relations, that is relations of cooperation as well as conflict, he seems to leave space to claims of fundamental rights which can also overcome it. In the following paragraphs this dissertation will further delve into this point through the conceptualization of a *fair mean* and a *balanced approach* toward the scope of moral and political aspects of liberal socio-economic justice.

For a better understanding of the moral right to justification, the death penalty may be an illustrative, as well as straightforward, example to explain its paramount position. According to the right to justification, in an institutional order whose norms are reciprocally and generally agreed on by everyone, including the person sentenced to death, this person would apparently not see his/her right to justification disrespected[105]. However, not only may the right to life be a moral and legal right, constructed on the right to justification, but also a deep understanding of the right to justification may make it in no way possible to deny the right to life insofar as it would not accomplish the criterion of generality since it would imply the definitive exclusion of that person, along with its claims and objections, from the relations of justification.

The latter example aside, coming back to the investigation of the right to justification, Forst argues that, according to the principle of reciprocal and general justification, the right to justification can also be understood as «a right to adequate reasons for the norms of justice that are to be generally in force. Respect of this right is generally required in a deontological sense, which expresses the basic moral equality»

[105] This is to some extent similar to the reason why Jean-Jacques Rousseau is in favor of the death penalty considering it as a violation of the social contract perpetuated by the wrong-doers which refuse to obey norms relationally justified and enforced (1762/1947, Book II, Chapters 1-5).

(Forst, 2012, p. 195). A reformulation of the latter quote makes clear the Kantian roots of Forst's reasoning: there is a categorical imperative to respect human beings as moral equals and ends in themselves endowed with the autonomy to justify and to be compliant with the norms which are reasonably enforced upon them. Forst assesses the measure of the *reasonableness* of these coercive norms according to their reciprocal and general justifiability to the people upon whom these norms are coercively enforced. Accordingly, the validity of the above-mentioned reasons is evaluated according to the criteria of reciprocity and generality which are, thus, the ground on which reasons can be disqualified if they are not reciprocally and generally justifiable.

As a consequence, there is a basic right to equal justification which must be universally recognized to each human being and which, however, does not automatically presume strictly material equality *per se*, that is the enforcement of egalitarian redistributive norms to endow everyone with the same material goods. In any case, Forst admits that «fundamental justice is recursively and discursively determined with reference to the necessary conditions for fair opportunities for justification» (Forst, 2012, p. 197). That is, to say that persons in a context of justice must count as moral equals able to justify the norms enforced upon them, they ought to be correspondingly provided with the power, along with opportunities, goods, liberties, to exercise the right to justification. Indeed, if that is true that «victim of injustice is not primarily the person who lacks certain goods, but the one who does not "count" in the production and distribution of goods» (Forst, 2012, p. 2), it is also true that without certain basic goods human beings would not be able at all to exercise their very basic right to reciprocal and general justification (this is a crucial point to investigate the elements which constitute the *fair mean* among different rights and duties which must be universally equally entitled to each human being). Still, the latter should not be considered as a principle of distribution itself but rather the determination of the fairness of a potential distribution according to the higher-order principle of justification.

The right to justification can also be meant as a veto right, seemingly granted to each person, which is the entitlement to refuse norms, claims and actions which are not reciprocally and generally justifiable. However, the appeal to the veto itself must

observe the criteria of reciprocity and generality. The veto right is basically a «right to fight against being ignored in morally sensitive matters and the right to demand justification for decisions or norms that (allegedly) justify existing practices and institutions» (Forst, 2012, p. 197). Thus, thanks to the veto right, persons can question current norms insofar as they avoid considering their claims and concerns which, if reciprocally and generally justified, must be heard. Accordingly, basic rights rest upon a right to justification precisely because without it the personal objections to the current practices and norms, which are potentially denying a subject's right, may be ignored.

Before proceeding with the investigation of some critical aspects of Forst's understanding of social and political justice and the right to reciprocal and general justification, a clarification is required: differently from Pogge, Forst does not conceive a clear-cut distinction between moral and legal rights[106]. On the contrary, they are conceptualized in an intermingled way insofar as moral rights represent the core of legal rights as well as moral justification is the core of political justification. Moreover, differently from cosmopolitanism, which envisions moral human rights as the language in which a core universal criterion of justice must be formulated, and statism, which understands basic human rights as a particular minimal category of universal rights whose denial can give rise only to remedial relief, Forst understands human rights, *qua* fundamental rights, as moral and legal rights which can be morally and politically constructed on the very basic human rights to justification. According to Forst, human rights can be understood as «culturally sensitive as it is culturally neutral, a conception that proves to be interculturally non-rejectable, universally valid and applicable in particular cases» and «fundamental rights every human being can claim as a human being which presupposes […] a conception of the moral person who is the author and addressee of such claims» (Forst, 2012, pp. 204, 213). In short, according to Forst, human rights are emancipatory weapons against the domain of the oppressive regime

[106] «There is no unbridgeable difference between moral and juridical rights; insofar as juridical rights are justified as basic rights, they contain the core of moral rights, though these take particular forms. Juridical rights do not thereby become merely morally binding rights; but it turns out that the claim to the validity of basic rights is a claim of a special nature» (Forst, 2012, p. 197). Thus, the moral arguments are not only relevant, as in Pogge, for the equal entitlement of moral human rights to each human being, but also for the justification of the legal concretization and institutionalization of universal fundamental rights (Forst, 1994, p. 79).

and arbitrary rule, both of fate and of social structure (Forst, 2016), and, accordingly, they play a crucial role in the struggle for the recognition of persons' equal political status.

Hence, universal fundamental rights constructed on the right to justification are conceivable in the universal moral context, but their validity must be demonstrable in «particular political contexts in which persons demand certain rights as both moral persons and citizens» (Forst, 2012, p. 218). This contextualized universalism seems to admit the conceptualization of some universal fundamental rights but binds their validity to the potential existence and enforcement of these rights in a particular context, softening the universal power of these rights, however without drawing a line between their universal entitlement and their practical realization. Hence, the main advantage of Forst's conception of social justice relies on its capacity to be applied to different types of social relations and in different contexts according to the level of justifiability of the claims of justice insofar as they are morally constructed on the right to justification and related to a political ground of social relations.

An apt and clarifying example of the application of Forst's moral and political constructivism and the implementation of the right to justification – which is also able to introduce the limitations of his theory which will be sketched out in a while – may be that of climate change mainly caused by the excessive pollution of affluent countries and wealthy persons (Caney, 2005; Singer, 2004). Indeed, the latter agents use an amount of the common resource of the atmospheric capacity to absorb emissions much larger than persons living in poor countries[107] which, however, shoulder much of the burden related to climate change, such as massive desertification[108]. What makes it impossible for those persons to exercise their very basic right to ask for justification for

[107] Data from the World Bank show that in 2014 Qatar carbon dioxide emissions was 45.4 per person, the United States was 16 tons per person per year, Australia had 15.4 tons per capita and Italy had 5.3 tons per person while Ethiopia, Madagascar, Mali, Niger, Rwanda, South Sudan accounted for 0.1 tons per capita If we have a look at regional emissions per capita, the inequality gets even more evident. North America accounted for 16.4 tons per person, European Union for 6,4 tons per person while South Asia had 1.5 tons per capita and Sub-Saharan Africa 0.8 tons per person. Data from Carbon Dioxide Information Analysis Center, Environmental Sciences Division, Oak Ridge National Laboratory, Tennessee, United States (World Bank, 2014).

[108] For a comparative analysis of different principles of global environmental justice, i.e. the historical principle 'the polluter pays' and the time-slice egalitarian principle 'an equal share to everyone' focusing on the fair distribution of the common resource of the atmospheric capacity to absorb emissions see Coacci, 2021b.

the actions of persons which are responsible for unduly harming them? For how their claims for justice are fully justifiable since they are morally constructed on the very basic right to justification, it looks quite unfeasible to provide them with the power to enforce their claim, along with a proper structure for justification in which to frame it. Accordingly, other pertinent means, such as knowledge, basic standard of living, health required to make persons enjoy and exercise their very basic right to reciprocal and general justification – even, or, maybe, above all, when the context is a context of conflict rather than of cooperation – may be more easily provided to them. Hence, the 'empowerment' of these persons that do not fully count as agents of justification (Forst, 2012, p. 2) i.e. who are unable to participate in the creation and upholding of the institutions of production and distribution of goods, affecting to some extent their life, can be carried out only through an initial distribution of less 'basic' goods than power, to avoid their claims for justice remaining morally justifiable but practically unfeasible.

As anticipated above, even Forst's account of social and political justice, founded on the moral and political constructivism of fundamental rights and the right to reciprocal and general justification is not free of relevant critical points[109]. To the purpose of this research, two of them, to some extent intertwined, are the most noteworthy to be investigated, namely the *indeterminacy* of the moral and political fundamental rights, and the moral *extra-demandingness* of claim of justice at the global level if we take *power* as the main good/question of justice (Forst, 2012, p. 204), while two other criticisms, namely, the *timing* of the universal and reciprocal justification of the ownership of basic goods and the conflict between reciprocal and general justification in different societies are only sketched out being however left out.

The first problematic aspect of Forst's theory relates to the operational (moral and political) construction of fundamental rights grounded on the right to justification. Indeed, for how the argumentation on the justification of fundamental rights morally and politically constructed on the right to reciprocal and general justification shows evident advantages in relation to the potential wide shareability of this right from

[109] I am extremely glad and thankful to have had the opportunity, during the 2019 SIFP conference, to discuss some of these objections to Forst's theory directly with the author, Rainer Forst, whom I would like to thank.

different individuals and political communities, insofar as it does not imply substantive specification of the content of fundamental rights, this vagueness has also a drawback. In fact, to exercise the right to justification which shapes the norms and institutions ruling the fair distribution of rights and duties, a person ought to be endowed with some fundamental and inalienable rights (which even a justified basic order cannot suspend). The problem which arises is the impossibility for an agent to exercise the right to justification without determining the fundamental rights which a person ought to be endowed with in order to be able to formulate claims of justice. The basic right to life, to freedom of expression, to political participation, to a secure shelter, to education are just examples of the rights that ought to be recognized to individuals to enable them to elaborate valid, *qua* justifiable, claims of justice. Thus, these rights should be considered as 'constitutive elements' of the right to justification insofar as no justification would be possible without enjoying some basic fundamental rights.

The second problem deals with the feasibility and enforceability of the claims for justice (constructed on the moral and political right to justification). Taken as given Forst's insights that (1) the first question of justice is the question of power and (2) people who suffer strong domination and arbitrariness, at the domestic level as well as at the global one, have justified claims to justice, it follows that people may have morally and politically justifiable claims to justice but they may find it really difficult to realize them. Indeed, however strong (insofar as they are deeply justifiable) their claims are, if the realization of justice hinges, first and foremost, on the fair distribution of power, the practical implementation of their claims looks pretty chimerical, above all at the global level, as legal norms and institutions which can implement a (global) fair distribution of power, and, thus, realize these justifiable claims are far from being feasibly achieved. The above-mentioned example related to climate change is just one of the many cases in which solid global and international institutions which still do not exist would be required in order to make justifiable claims of global justice feasible.

In the attempt to overcome the limitations of statism and cosmopolitanism, the *fair mean* and the *balanced approach* sketched out in the next paragraphs will take into account these relevant criticisms of Forst's critical theory of social and political justice.

The first criticism that's worth mentioning but which the following paragraphs will not take into account is underlined by Stephan Gosepath in his noteworthy article *The global Scope of Justice* in regard to the difficulty to justify the ownership of the goods, which, according to Forst, ought to be redistributed if not justified. Indeed, in this contribution, Gosepath criticizes Forst's account of justification insofar as «if the owner of a good cannot give a universal and reciprocal justification for his or her claim of ownership that no concerned party can reasonably reject, then the good has to be redistributed. This allows for previous rights to possession as well as rights developed out of just exchange and trade. But these and other possible justifications have to be made against a background of a justified initial 'appropriation' of the goods and resources in question. Thus, the chain of justifications might become quite long, reaching far back into the past» (Gosepath, 2001, p. 142). Even though Gospetath's criticism seems to be well posed, questioning the plausibility of the application of the right to justification to assess the fairness of the distribution of basic goods, it seems to understand the right to reciprocal and general justification in an excessively narrow way, looking for a full justificatory explanation of all the ownership rather than framing the emancipatory question in complex and transforming relations of cooperation and conflicts in which the ownership ought to be more or less justified according to the thickening of these relations.

Another potential criticism which, however, will be left out as well, is how to deal with societies, which may equal Rawlsian burdened societies (1999, p. 106), which have enforced norms that are not reciprocally and generally justifiable, thus that are disqualifiable on the ground of reason, from an external look but which are to some extent reciprocally and generally accepted by the society of reference. A clear example of this problem is the obligation to wear the niqab or the burka in Muslim countries, which remains a topic that underlines the tension between different understanding of fundamental rights and still triggers sound debate between different theories of global justice and universal fundamental rights.

3.3 The Aristotelian conception of distributive justice

Before proceeding with the explanation of the Aristotelian conception of distributive justice, the *fair mean* of universal fundamental rights and duties and the *balanced approach* toward global justice which can cope with the main limitations of statism and cosmopolitanism, it is worth saying a few words on the ancient roots on the really basic concept of justice, which, when first appeared in the Ancient Greek, immediately triggered wide theoretical controversies. In Plato's masterpiece *The Republic*, in which an early theory of justice was set out, the sophist Thrasymachus challenges Socrates arguing that justice is «simply the interest of the strongest party» (Plato, 380BCE/1996, p. 15), i.e. merely whatever the powerful say it is (Forst, 2012, Preface). Yet, without admitting that a reasonable conceptualization of justice is possible outside the mere will of the strongest, it would make no sense to speak about different perspectives on social justice since the intersubjective relations, above all at the global level, would be left to the state of *homo homini lupus* (which, for some, such as Hobbes and Nagel, is not so distant from the current scenario of the global agents' relations). Thrasymachus may thus agree with the fact that the question of power is the first question of justice but would probably disagree with the argumentation that social and political justice must be conceived to contrast the arbitrary asymmetries of power inequalities in human interactions and social norms, that is, opposing Thrasymachus, perspicuously avoiding justice to be what the strongest wants it to be.

As underlined in the previous paragraph, in the same vein of Plato's reasoning, and at odds with Thrasymachus, Forst opts for a constructivist answer to the question of the 'firm ground' of justice, which, in this sense, is posed anew. Not only does Forst argue that «there is a reasonable justification for a conception of justice, but also that it goes back to a *single* root – that is, that the various aspects of justice in social and political contexts, and even beyond national borders, ultimately refer to a normative core: the one basic human right to justification» (Forst, 2012, preface).

In the attempt to bridge Forst's right to justification and the Aristotelian *fair mean*, which will be sketched out further on, the Aristotelian conceptualization of justice, mainly related to the distribution of honors and benefits according to the

merits[110], must be explained. The Aristotelian account of distributive justice will provide the basis to investigate how different categories of rights, precisely socio-economic and civil and political rights, and the corresponding duties, are related. Before proceeding, it is important to clarify that this paragraph only takes into account one of the three kinds of special (or particular) justice, that is distributive justice, distinguished from general (or complete) justice (Mckerlie, 2001) and which «has to do with the share of benefits individuals should receive and of burdens they should bear» (Johnson, 2011). Hence, the purpose here is not to provide a comprehensive understanding of Aristotelian conception of justice, but rather to give a first and, of course, not exhaustive, sketch on what distributive justice refers to in order to strive for a justification of a *fair mean* which consists of the basic objects of fundamental socio-economic and civil and political rights and which can help conceive a measure according to which these rights ought to be implemented:

> Justice is a kind of mean, but not in the same way as the other virtues, but because it relates to an intermediate amount, while injustice relates to the extremes. And justice is that in virtue of which the just man is said to be a doer, by choice, of that which is just, and one who will distribute either between himself and another or between two others not so as to give more of what is desirable to himself and less to his neighbour (and conversely with what is harmful), but so as to give what is equal in accordance with proportion; and similarly in distributing between two other persons. Injustice on the other hand is similarly related to the unjust, which is excess and defect, contrary to proportion, of the useful or hurtful. For which reason injustice is excess and defect, viz. because it is productive of excess and defect-in one's own case excess of what is in its own nature useful and defect of what is hurtful, while in the case of others it is as a whole like what it is in one's own case, but proportion may be violated in either direction. In the unjust act to have too little is to be unjustly treated; to have too much is to act unjustly (Aristotle, 350 BCE/1999, p. 81).

[110] «And the same equality will exist between the persons and between the things concerned; for as the latter the things concerned-are related, so are the former; if they are not equal, they will not have what is equal, but this is the origin of quarrels and complaints-when either equals have and are awarded unequal shares, or unequals equal shares. Further, this is plain from the fact that awards should be 'according to merit'; for all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence» (Aristotle, 350 BCE/1999, p. 79).

Basically, Aristotle defines justice as consisting of what is lawful and fair (Chroust, Osborn, 1942, pp. 129, 130). Keeping aside the understanding of justice as law-abiding, its second aspect, here taken into consideration, implies two main elements: equitable distribution and correction of the excess. These principles may be conceived as valid both for individuals and things, that is in the fairness of relations among individuals and distributed things. Therefore, according to Aristotle, justice is not merely a matter of everyone getting the same fixed amount of something but rather obtaining or giving what one respectively does or does not deserve. In order to evaluate the right proportion, a metric is required, which, in turn, needs a scale of values. Taking as example the distribution of fundamental freedoms and basic socio-economic opportunities[111] – as the things to be fairly distributed *ceteris paribus*, and potentially understood as the basic object of universal fundamental rights – the full equality of freedom for everyone to enjoy her own private property without any taxation admissible would be an injustice insofar as it would let wealthy people have many more, to some extent undeserved, socio-economic benefits than poor people. But, also, the opposite case ought to be considered unjust, that is strict equality of socio-economic opportunities, depriving everyone of everything making it available to all would not be just insofar as it would strongly disregard equal distribution of fundamental freedoms. Rather, a progressive taxation which entails higher tax for the better off and low tax for the worse off to properly compensate the difference in socio-economic opportunities may be conceived as just since it is a substantial kind of *fair mean* (which, however, do not exclude the possibility to be formulated in formal terms). Still, the determination of the proportionally equal distribution and the correction of excesses and defects are related to the relevance of the things distributed and the metrics according to which to evaluate the just mean. What makes the *fair mean* universally justifiable and reasonably shareable by all is an open question, on which the following reasoning seeks to shed light.

The previous example refers to the potential conflict between the fulfillment of the right to private property, through the recognition and protection of the freedom to

[111] For an empirical analysis of the current global inequalities in civil liberties and political rights see paragraph *2.2*.

enjoy one's own private property, vis-à-vis the fulfillment of socio-economic rights, through the equal distribution of socio-economic opportunities which require some sort of taxation. The above-mentioned progressive taxation may be a policy pursuing that *kind of mean* to which Aristotle refers and according to which the balance between the fulfillment of different (sometimes conflicting) fundamental rights can be established. Investigating deeply and in detail this precise intermediate amount is something which would go beyond the aim of this research, which is also not related to the main purpose of this dissertation. Rather, a more interesting point is the attempt to provide a sketch of how a *fair mean* of universal fundamental rights and duties can be drawn, which is the specific task of the following paragraph. Before proceeding, it is worth stressing again the parallelism established in this dissertation between the way justice is understood in Aristotle's theory and in the following paragraphs, through the re-actualization of the Aristotelian *fair mean*. As Aristotle, we associate «justice with "reciprocity in accordance with a proportion"» (Johnson, 2011, p. 67) however besides considering an exchange as just when the things exchanged are in proportion to the merits, desert, or contributions of the parties to the exchange we understand social norms regulating agents' relations as just insofar as they fulfill a *fair mean* of the basic objects of universal fundamental rights.

3.4 The *fair mean* of universal fundamental rights

Combining the Aristotelian understanding of justice with the critical theory of political and social justice and the moral and political constructivist conception of fundamental rights of Rainer Forst it is possible to sketch out a formal and substantial account of a *fair mean* of universal fundamental rights morally and politically constructed on the really basic rights to reciprocal and general justification. Not only does this really basic right help justify the claim to 'concrete' rights but it is also useful – and this is what is of interest for this dissertation – to justify the implementation of different interrelated fundamental rights and the enforcement of the corresponding duties they entail by establishing to what extent a right has priority to be better fulfilled in case of conflict among different fundamental rights. Recognizing the main

commitment of justice to fighting against arbitrariness and the need for a context of justice**,** i.e. a context of political and/or social relations of cooperation as well as conflict, in order to make the concept of social justice meaningfully applicable, it is relevant to note how the conception of social justice we are trying to sketch out in this chapter is able to take together its moral and political aspects.

As a matter of fact, while cosmopolitanism focuses on its moral aspect, highlighting the under-fulfillment of moral human rights, above all positive and socio-economic rights, for example, highlighting the urgency of ending global poverty, without however properly taking into consideration the context in which these rights must be framed and the excessive demandingness of a global order which can ensure secure access to the objects of these rights, statism focuses on its political aspect, underlining the respect of the legal rights, above all negative and liberal rights of states to preserve their sovereignty, lacking however to take into account the grave under-fulfillment of universal fundamental rights of human beings as such.

The search for a *fair mean* of the basic objects of universal fundamental rights, which will be deeper investigated further on, can represent a viable solution to take together the moral urgency of the overall secure access to the basic objects of moral fundamental rights, while assessing the size of the ground of justice in which the global claim to justice of different agents can be framed thus providing a sketch on the extent to which the fulfillment of a fundamental right takes priority over another.

As the following paragraph will describe more in depth, the innovative *balanced approach* toward justice, constructed on the *fair mean* of universal fundamental rights and duties, seeks to defend the idea that higher the moral relevance of the claim and the wider the context of justice are, the more the claim ought to be assessed as morally and politically justifiable and the duties ought to be justifiably enforced. In addition, this approach tries also to explain how grave under-fulfillment of secure access to the *fair mean* of the basic objects of universal fundamental rights can call for a justifiable extension of the ground of justice, and the means through which the claim can be expressed, with the justifiable imposition of the corresponding duties on others. For now, it is relevant to briefly specify that these means can also be understood as the basic

objects of universal fundamental rights and, accordingly, the stronger their deprivation is, the greater are the moral claim to them and the justification of the duties which must be imposed on others to ensure a minimal secure access to them. Therefore, besides the recognition of each human being as an end in itself, it is crucial to concretely endow them with fundamental liberties and socio-economic opportunities, along with the adequate (justificatory) power, which function as essential means for each human beings to be fully participant in the processes of approval of coercive norms which are enforced upon them, along with the justification of the relations more or less thick which intercourse among them and of resolution of (global) challenge which actually or potentially affect them. Basic right to life, to freedom of expression, to political participation, to a secure shelter, to education are just examples of the rights that ought to be recognized to individuals to enable them to elaborate valid, *qua* justifiable, claims of justice.

Obviously, in order to make clear the alternative that this dissertation seeks to outline, it is crucial to sketch out a conceptualization of the repeatedly mentioned *fair mean*. Therefore, a *fair mean* of the basic objects of universal rights and duties can be understood as those reciprocally and generally justifiable universal fundamental rights and, accordingly, all those reciprocally and generally justifiable fundamental duties which these rights entail. Furthermore, the measure of the justifiability of these universal fundamental rights and duties can be assessed in relation to the level of arbitrariness and domination the claimant suffers, that is, the moral aspect of justice, along with the extent of the context in which the claim ought to be framed, that is, the political aspect of justice. In an attempt to concretely define what precisely this *fair mean* consists of, we may say that it corresponds to basic freedoms and fundamental socio-economic opportunities which everyone would consider essential for a worthwhile life and which are assessed as fundamental to justify the relations of conflict and cooperation among different agents at different level of justice, besides formally representing the basic fundamental common objects of civil and political rights and socio-economic rights.

Therefore, the main originality of the *fair mean* of universal fundamental rights which is here sketched out, lies on the reconsideration of civil and political and socio-economic rights, thus, of universal fundamental rights in general, according to the level of arbitrariness suffered by the claimant and the extent of the context of justice in which to frame the claim along with the recognized relevance of the enjoyment of the object of the right for a worthwhile life and the reasonable justification of the duties the counterpart ought to bear. As a consequence, it is necessary to admit the relativity of the overall enjoyment of different universal fundamental rights which, however, ought to be founded on a solid threshold. Indeed, rights are always granted to some extent and, accordingly, it can be said that also their universal scope may be recognized 'to some extent'. In this sense, it is possible to state that rights are absolute in their core object and relative in their correlated (interconnected or conflicting) protection. The greatest *vulnus* of this standing is the *measure* according to which the relevance of the object of a right ought to be conceived. The debate is wide and heated[112] and involves different accounts of fundamental rights and the aim of this dissertation is not so ambitious to claim for a definitive redeeming solution. Rather, the attempt is to introduce an alternative interpretation of rights which may be helpful to provide another approach to deal with (different categories of) fundamental rights and, above all, their implementation at global level.

Relying on the differentiation between moral and legal rights, the measure for their equal fulfillment is identified in the equal relevance of the core object of (moral) rights. Thus, the universality of those rights ought to be related to the relevance of their objects, which can be reciprocally and generally determined. Therefore, the more basic a right is, the greater its universal power is, the stronger the justification of its corresponding duties is. Accordingly, those which lack specific basic goods, consisting of the object of the *fair mean*, must be recognized as a justifiable claim to these goods the extent to which (1) they are denied to reciprocally and generally justify the coercive norms which enforce the distribution of these basic goods (2) others claim the

[112] Covering various disciplines (such as philosophy, political science, law) along with different fields of the same discipline (such as moral, political and legal philosophy).

enjoyment of these specific basic goods for themselves while they maintain relations which (3) deprive participants belonging to that system of relations from these goods.

In order to develop the discussion of the relations among different universal fundamental rights, it is possible to recall the above-mentioned controversial and opposed categories of rights, that is civil and political rights and socio-economic rights, which are the conflicting categories of rights *par excellence*. To name a few, among civil and political rights there are the right to life, the right to liberty, the right to private property, the right to political participation, the right to free expression and movement, the right to freedom of association, the right not to be tortured (OHCHR, 1966a) while among socio-economic rights there are the right to work, the right to social security, the right to an adequate standard of living, the right to education, the right to health, the right to the enjoyment of the highest attainable standard of physical and mental health (OHCHR, 1966b). Not only are there contrasts between rights belonging to different categories, such as the right to private property and the right to education as previously discussed, but there are also relevant contrasts between rights belonging to the same category, for example the right to life vis-à-vis liberty rights, as paragraph *3.6* will widely illustrate. The *fair mean* among different universal fundamental rights provides a valid solution to these controversies among categories and kinds of rights insofar as it shifts the focus on the moral relevance of the secure access to the really core object of a right, that is on the extent to which different rights ought to be synergistically fulfilled without leaving any of these fundamental rights behind.

There are also cases in which the fulfillment of a fundamental right, such as the right to education, functions as a catalyst for the wider protection of many other rights, such as the right to participation and self-realization, to name a few. However, in other cases the fulfillment of a fundamental right, say the right to education, to take the same example, leads to the under-fulfillment of other rights, such as the right to private poverty. This simple example, which reformulates one sketched out in the previous paragraph, aims at showing the need to further the investigation of the specific relations which intercourse among different kinds of rights, an overwhelming task which has been widely left unaddressed in the literature and of which this dissertation has just

drafted the main presupposition. As a matter of fact, the covid-19 pandemic has shown that the latter point is not only a matter of mere theoretical speculation but has also crucial practical implications. Indeed, the contrast between the protection of the liberty rights versus the right to life, along with the right to health, is the main problem which underpins the justness of the policy measure to fight against covid-19 pandemic. Still, this is the central topic of paragraph *3.6* which will try to make another small contribution on the relation between contrasting rights delving into this specific actual case.

After the above-mentioned considerations, an investigation of the right *measure* according to which the moral relevance of the object of a right ought to be conceived can be further developed trying to empirically express with numbers the hypothesis that the reduction of the unequal fulfillment of universal fundamental rights at global level would lead to a better overall protection of these rights since the value of the secure access to the basic object of a right must be recognized to be higher than its wider fulfillment. Accordingly, we may state that the correlation between civil and political rights and socio-economic rights is direct when it is balanced but becomes indirect when it is imbalanced. Thus, the fulfillment of civil and political rights may foster the protection of socio-economic rights insofar as socio-economic rights are not extensively under-fulfilled. When civil and political rights are 60% fulfilled and socio-economic rights are 30% fulfilled the overall fulfillment of rights is deemed to decrease since the growth of political rights will cause a reduction in the fulfillment of socio-economic rights. Thus, the greater the difference in the protection between the fulfillment of both categories is, the greater the gap will become between their fulfillment (as a consequence of the imbalance between them). Accordingly, a balanced protection of rights fosters the protection of both categories. A situation of 60:30 may turn into 70:15 (as a situation of 30:60 may turn into 15:70) while a situation of 45:45 may evolve into a 60:60 as an effect of the reciprocal positive effect of their balanced fulfillment. Furthermore, the closer each category is to a *critical threshold*, the more the other category is in danger. Thus, a relation of 80:10 may cause a decrease of the first category because of a *screwing effect* due to the excessive fulfillment of a category

without fulfilling the other. That is the main reason why it can be said that rights are a matter of a *fair mean*.

The conceptualization of a basic solid threshold, such as the above-mentioned ratio of 45:45, of universal rights or justice goods is generally linked to a sufficientarian approach toward justice which is commonly defended by different statist scholars, such as Miller (2007) and Blake (2001). However, as noted by the cosmopolitan scholar Lea Ypi, in such an interconnected and interdependent world it is empirically arduous to ensure a sufficientarian threshold without imposing comparative norms of liberal socio-economic justice (Ypi, 2012, pp. 115-120) inasmuch as absolute deprivation is almost always related to relative deprivation. In this regard, the *fair mean* of fundamental rights may also be understood as a basic threshold 'in motion' which is shaped by the moral relevance of the secure access to the basic object of the *fair mean* and the thickening of the ground of (global) justice. To illustrate, as already previously touched upon, the more morally relevant the object of the *fair mean* of fundamental rights of which someone is deprived and the thicker are the interconnection and interdependence of peoples and persons are, the greater the justification of the claim to the threshold of the *fair mean* of universal fundamental rights will be. The peculiar 'mobile' character of this threshold makes it adapt to the widening of the contexts of justice and the moral relevance of the *fair mean* of universal fundamental rights so that when the relations of cooperation as well as conflict intensify and the moral relevance of the object of the *fair mean* increases, the threshold is consequently raised.

Therefore, one of the innovative points this research seeks to unfold corresponds to a new approach, which can be defined as a *balanced approach*, toward global justice which understands universal fundamental rights *inalienable* in their core object but *relative* in scope. Accepting the universality of different categories of fundamental rights, it is impossible to deny that an absolute fulfillment of all of them is a chimera[113]. The main issue at stake here is that no system of rights can avoid potential conflicts rising in the attempt to fulfill different fundamental rights due to the inner interrelation

[113] Even the absolute fulfillment of one right may be assessed as a chimaera (Pogge 2008, p. 180; see also Corradetti, 2010).

as well as potential tension among them[114]. Denying the inner interrelation among different rights would be equal to embracing a fundamentalism of rights which may turn into a disproportionate fulfillment of some rights at the expense of the secure access to the basic object of others. Accordingly, the proposal outlined in this chapter is a balanced and proportionate fulfillment of rights in accordance with their core object, which may potentially be represented by the Aristotelian *fair mean*. That is to say that the best overall enjoyment of universal fundamental rights can be ensured by admitting that rights can only be fulfilled to some extent since they are intrinsically related to one to another. Thus, this weighted fulfillment of rights ought to be conceived related to the basic object of a right and the justification of the corresponding duties, avoiding that an (over)fulfillment of a right would permit other rights to be left behind excessively. How this *balanced approach* can overcome the main limitations of the mainstream theories of global justice examined in the previous paragraph will be one of the central matters of the next paragraph.

3.5 A *balanced approach* to global justice and universal fundamental rights

As we have touched upon in the previous chapter, the mainstream theories of global justice, that is statism and cosmopolitanism, fail to catch the core meaning of the concept of justice as a *fair mean.* Indeed, both theories demonstrate an imbalance toward a specific aspect of justice. Before delving into the way this *balanced approach* toward the scope of justice can overcome their limitations, a brief recall of their problematic aspects is worth making. On the one hand, statism discharges justice from its moral side thus denying the relevance of moral arbitrariness of liberty and socio-economic inequalities occurring at the global level, absolutizes the particular associativist duties among fellow countrymen lacking to take into account other forms of relations, and endorses an extremely thin conception of basic human rights which gives in no case rise to claim to comparative norms of justice at the global level. On the other hand, cosmopolitanism overestimates the moral side of justice striving for extra-

[114] If the potential conflict rising among universal fundamental rights must not be denied, even the opposite possibility ought not to be denied, i.e. the potential mutual reinforcing of different rights see Landman, 2005, p. 6; For a conception of rights as indivisible and mutually reinforcing see Dunne, Wheeler, 1999; Donnelly, 1999; Boyle, 1995; World Conference on Human Rights, 1993. For a theory of relative universality of human rights see Donnelly, 2007.

demanding claims to global justice disregarding their practical feasibility, defends an account of moral human rights which underestimate the relevance of their legal adjudication and recursive justification, and emphasizes the general duties we owe toward other human beings as such without giving proper relevance to the particular duties linked to our membership to local political communities.

The *fair mean* of fundamental rights and duties leads to a *balanced approach* toward the scope of justice which seeks to adapt to different levels at which principles of egalitarian justice apply, to give proper relevance to different categories of fundamental rights and to provide a justification of their corresponding duties, without thus endorsing neither a monist nor a dualist approach toward justice. Accordingly, this *balanced approach* seeks to reconcile the tension between the moral and political conceptions of justice and its domestic and global scopes defending an understanding of the application of the principles of liberal socio-economic justice according to the level of the moral arbitrariness affecting the enjoyment of the *fair mean* of the objects of universal fundamental rights and the width of the context of justice shaped by relations of cooperation and conflict. In this regard, the *measure* of the application of the principles of egalitarian justice is shaped by the level of moral arbitrariness of the lack of access to the *fair mean* of the object of fundamental rights and the extent of the relations of cooperation as well as conflict in which the claim to justice must me framed. Accordingly, the scope of the claim to justice is as justifiably demanding as the moral arbitrariness of the deprivation to the basic object of the claim, the thickness of the context in which the claim can be grounded and the reciprocal and general justification of the object of the claim as a fundamental good for a worthwhile life and to properly justify the intercurrent relations among the persons and peoples in their dual role of rights-holders and duty-bearers. It follows that, persons cannot call for, and should not abide, norms which deprive others of a basic good of justice which they consider as fundamental for themselves.

At first glance, this *balanced approach* toward global justice and fundamental rights can be subjected to criticism of excessive relativism, insofar as it seems to apparently put in doubt the absolutism of universal fundamental rights. However, the

relativism of their implementation can secure a better fulfillment of them since, as touched upon in the previous paragraph, takes into account the interrelation, as well as the potential inevitable contrast, among different universal fundamental rights and admits the fulfillment of fundamental rights in different ways and in various context, maintaining as absolute the core *fair mean* of the main objects of fundamental rights. While a tireless effort has been spent to defend a category of rights, or a specific right, vis-à-vis other rights, this conception argues for the fact that all universal fundamental rights, that is both civil and political rights and socio-economic rights equally matter, in both the domestic and global contexts, and the crucial and increasingly actual issue, widely unaddressed by the literature from both political science and international relations studies to moral and political philosophy (and for sure it needs to be considerably more in-depth investigated than this dissertation has done) is how to ensure a balance fulfillment of those justifiable claims to justice, that is to basic objects of universal fundamental rights, according to the extent of their moral urgency.

To cover the above-mentioned gap in the literature, the advantage of the *balanced approach* toward the scope of the principles of justice, in comparison to the mainstream theories of global justice, is twofold. On the one hand, it is *multilevel* insofar as it does not 'absolutize' the global or the national levels, along with the global order and nation-state, as the only context of justice but it takes into account different forms of moral arbitrariness and domination and, above all, the fact that they can occur *to some extent* at different levels and in different contexts. On the other hand, it is *resilient* insofar as it is able to adapt to the transformation of different contexts of justice, such as the global one – which, as Forst (2012, p. 227) admits, is a relevant context of justice – in which relations of cooperation and conflict seem to be currently widening.

This *balanced approach* can also say something about the tension between different kinds of duties: such as associativist special duties and cosmopolitan general duties, and negative and positive duties.

Regarding the first traditionally opposed couple of duties, the *balanced approach* toward global justice leads to a dialectic relation between general and special duties which allows people to discharge special duties related to particular relations while

abiding to cosmopolitan general duties owed to human beings as such. More precisely, one must abide by cosmopolitan general duties according to the extent of the moral arbitrariness of the deprivation of the secure access to the *fair mean* of universal fundamental rights which they would raise for themselves while fulfilling more demanding special duties related to ties and commitment which rise from particular relations.

As for the contraposition between negative and positive duties if it is true that the formers are generally understood as less burdensome than the latter[115], insofar as negative duties are duties not to do while positive duties are duties to do, it is also true that the enforcement of a universal (reciprocal and general) duty to ensure secure access to the *fair mean* of universal fundamental rights can be less weighty than the imposition of duties for a wider fulfillment of these rights. Indeed, the distinction between negative and positive duties become empirically blurred when it comes to the legal enforcement of duties related to the protection of different rights (Pasquali, 2016; Pino, 2016) and we may better understand the imposition of negative and positive duties as more or less justifiable in relation to the moral relevance of the corresponding universal fundamental rights which entail them. Thus, we owe to the global worse off a duty to ensure them secure access to the *fair mean* of the basic objects of universal fundamental rights not due to the amplitude of global burdensome inequalities as such but according to the extent of the moral arbitrariness of these inequalities and the extent of the relations which intercourse among the agents involved. Between the Pogge's extra-demanding global duty we owe toward the global poor, coming to sensationally comparing our negligence to Hitler's, Mao's, Stalin's crime (Pogge, 2005a, p. 33, 2008, p. 104), and the weak duty of assistance we owe to the global worse off to relieve them from

[115] According to Goodin, positive duties are stronger at the national level than at the global level while negative duties are stronger at the global level than at the national level since «far from simply creating new negative duties among compatriots, that special relationship seems sometimes to have the effect of cancelling (or at least weakening or mitigating) some of the negative duties that people owe to others in general. […]. Digging deeper, we find that there may be a way to explain why special relationships have this curious tendency to strengthen positive duties while weaking negative ones» (Goodin, 1988, p. 269). Moreover, he also understands general duties as sometimes more justifiably demanding toward non-compatriots comparing to our fellow citizens since «at least in some respects, we are obliged to be more scrupulous – not less – in our treatment of nonnationals that we are in our treatment of our own compatriots. Some of our general duties to those beyond our borders are at least sometimes more compelling, morally speaking, than at least some of our special duties to our fellow citizens» (Goodin, 1988, p. 263).

temporary grave burden we can envision a duty, generally understood as a duty to fulfill universal fundamental rights, which we owe toward other human being as such and which is as strong as the overall violation of universal fundamental rights, understood as under-fulfillment of secure access to the basic object of both basic civil and political and socio-economic rights.

In the assessment of the scope of justice this approach goes a bit further than Forst's assessment of global unfair inequalities. According to Forst, to measure the level of injustice, understood as unequal distribution of power, it is necessary to empirically assess how power is exercised in different contexts of justice and the same analysis must be carried out at the global level since «to what extent the world as a whole is a context of justice, that is, a context characterized by conflicting claims that call for adjudication in light of principles of justice» (Forst, 2001, p. 161). Power is, hence, understood here as the meta-good of justice with the reflexive meaning of power to enforce distributive norms of global justice which are reciprocally and generally justifiable and power persons and peoples ought to be endowed with to make them able to raise demands of justice. However, the focus on power carries a clear problem of practical access to this highest good of justice.

Thus, a potential solution to the above-mentioned problems of the feasibility and enforceability of Forst's account of the justifiable claims to justice – according to which people may have morally and politically justifiable claims to justice but they may find particularly difficult to realize them since power is a good of justice as valid as it is tough to be globally 'distributed'[116] – is the widening of the context of justice according to the moral relevance of the global (reciprocally and generally justifiable) claim to justice. That is, the more the claim is morally relevant, thus reciprocal and generally justifiable, the more the context of justice ought to be enlarged[117]. This reasoning, already touched upon in the previous paragraph, leads to a second-best choice. Since it

[116] The enforcement of the global justifiable claim to power of those rights-holders which suffer a deep under-protection of their universal fundamental rights may be compared to the Lockean appeal to the Heaven, to the extent to which it shares also the problem of the practical enforcement of the claim, since there is not yet such a global order which can ensure a fair redistribution of power at the global level to meet these justifiable claims.

[117] Even if the context of justice does not exist, one must consider the possibility of having to set up its main elements, such as the enforcement of minimal negative and positive duties at the global level, along with the *quasi*-legal actions of secondary agents of justice, such as the International Peoples' Tribunal (see paragraph *4.3*).

is not feasible to provide these people suffering grave under-fulfillment of universal fundamental rights and, thus, presenting greatly justifiable claim to justice, with the highest good of justice, that is justificatory power, a valid surrogate is providing these people with more basic means, *qua* fundamental object of universal rights, in order to formulate their demanding claims to (major) justice. That is to say that, if greater (global) justice is not possible to be in the usual way we use to think about it, that is justice as a question of power, we must strive to pursue more minimal level of justice, *qua* global fair distribution of universal fundamental rights and duties, which would bring about the conditions to make liberal socio-economic justice advance at the global level. To sum up, in order to reach global justice, rather than crossing the path of the temporarily increasing global injustice, as Nagel (1995, p. 147) suggests, we should relieve those situations of systematic under-fulfillment of universal fundamental rights and enforce the corresponding minimal duties. This process would make global justice progress step-by-step through (small) improvement in the fairness of the global distribution of rights and duties ensuring the secure access to the basic good of justice, which, as repeatedly underlined, corresponds to the basic objects of universal fundamental rights, and striving to force the duty-bearers to comply with their obligations.

Further developing the above-mentioned example about climate change, we may suppose the existence of an International Court of Environmental Justice which recognizes the power of starving people suffering from grave desertification to adjudicate their right to a healthy environment against those nation-states which are mostly responsible for the degradation of their environment. It is quite implausible that these people would be able to access the power to claim their right to a healthy environment without other basic goods, *qua* objects of fundamental rights, which can be envisioned in the *fair mean* previously sketched out. Thus, the goods of justice which people cannot be deprived of correspond to the *fair mean* of the basic objects of universal fundamental rights and are precisely those goods which make them able to exercise their power to contribute to the upholding of the norms which are coercively enforced upon them. However, the problematic point of how people can be endowed

with these basic goods to exercise the *justificatory power* without incurring a paternalistic and unilateral system of distribution remains open. A partial response to this issue is the enforcement of a distribution which ensures people the secure access to the basic objects of universal fundamental rights (reciprocally and generally justifiable) leaving them free to choose their own preferable way to enjoy these rights.

The enforcement of fair principles of distribution of rights and duties is thus twofold: freeing persons from the causes, such as the arbitrary domination of a tyrant or an unfair international order imposed upon them, which deny them relevant goods of justice, and providing them with secure access to the *fair mean* which makes them able to justify both national and international norms and orders.

To sum up, this *balanced approach* toward global justice seeks to envision the *locus* of justice not only in the relations among fellow citizens or in the global order but rather in the different forms of domestic and global relations in which peoples and persons are involved**.** This leads to an approach to global justice which neither describes a chimerical scheme of fair distribution or an ideal point to reach by way of the motto *fiat iustitia et pereat mundus*, nor leaves the global justifiable claim to justice unaddressed and neglects relations of conflict or cooperation to be relevant relations of justice but rather focuses on how liberal socio-economic justice can improve over time and adapt itself to new instances, such as the fragmentation of power at the global level, which call for apt and global practices of protection of universal fundamental rights to maintain everyone' secure access to the *fair mean* of the objects of fundamental rights.

As previously underlined, this *balanced approach* can also be assessed as a resilient understanding of justice which, on the one hand, does not outline excessively ideal, and often unrealizable, conceptions of justice but takes into account the concrete relations in which the claim of justice must be framed and, on the other hand, does not bend on the actual distribution of rights and duties but is able to support steps toward the fight against morally arbitrary inequalities, and, thus, the grave under-fulfillment of universal fundamental rights. An approach which, thus, leads the application of principles of justice to be able to adapt to the transformation of the global relations of

cooperation and conflict and, thus, to the development of the different contexts of (in)justice.

The way this balanced approach overcomes the main limitations of statism and cosmopolitanism is, thus, clear and straightforward. While, on the one hand, cosmopolitanism endorses an excessively moral, normative and ideal attitude of justice defending an account of global justice detached from the social and political context and, on the other hand, statism is bent to an extremely political, positive and descriptive understanding of justice arguing for the impossibility of a global justice without taking into account the growing global interdependence and interconnection, this *balanced approach* toward justice seeks to assess the extent both of the moral relevance of the claim to justice, along with universal fundamental rights, and of the ground of justice, that is a context of relations of cooperation and conflict, in which the claim can be feasibly enforced. To this aim, the focus is posed on the relation between the justifiability of the claim expressed, and, thus, its reciprocal and general moral urgency to be enforced, and the context in which the claim can be practically framed. The higher the moral relevance of the claim and the wider the context of justice, the more the claim is morally and politically justifiable. However, in the case of a thin context of justice, and a highly justifiable claim for justice, such as the example, analyzed in paragraph 3.2, about the burden shouldered by peoples suffering from desertification caused by human-driven climate change, the moral urgency of the claim calls for a justifiable extension of the scope of distributive norms of global justice, and the means through which the claim can be expressed, with the justifiable imposition of duties on others.

In a nutshell, statism and cosmopolitanism potentially 'betray' justice in its very own essence, that is being a *kind of mean*, even though from opposite directions insofar as they respectively overestimate its political and moral aspect. Accordingly, the excessively demanding understanding of justice, either of its moral aspect in the case of Cosmopolitanism or of its political aspect in the case of statism, leads also to practical problems in the progress of justice at the global level. Indeed, if a plan to end poverty at the global level would entail negligible burden to affluent countries it is also true that this prediction does not take into account the effort to set up the legal system to ensure a

lasting secure access to food, which can also be understood as the object of a fundamental right and a kind of adjudication of the right to an adequate standard of living before a court, statists throw the baby out with the bathwater, neglecting that global hunger is a matter of justice. However, the third option can be represented by the *balance approach* toward justice which looks at the civic global effort, such as that of the NGOs, to provide the global poor with food and an adequate standard of living as a small but relevant step in the path of realizing global justice. Indeed, even though this action cannot be included in the classical form of enforcing justice, understood as the imposition of coercive distributive norms of redistribution, it can however represent small means through which the secure access to the object of a fundamental rights is better ensured. That is precisely the reason why the focus should be directed to the object of universal fundamental rights rather than fundamental or human rights *per se*. In this way it is also possible to make the content of human rights more sharable. Indeed, someone may not agree to ensure everyone the right to housing, right to food, right to clean water, right to an adequate standard of living (maybe also because these basic needs are framed in terms of rights) but they might lead to agree on the objects of these rights, for example in regard of the possibility for everyone to have the minimal means of subsistence in order to survive.

As chapter IV will show more in depth, this *balanced approach* toward justice can also be the basis to assess the role of agents of global justice, at least in regard to two matters. On the one hand, the role of agents of global justice, above all secondary agents of justice such as transnational corporations (TNCs) and non-governmental organizations (NGOs), can be understood in their dual positive and normative aspects, that is their actual influence in the distribution of relevant good of justice, *qua* objects of universal fundamental rights, and in their potential role in fostering global justice stimulating the secure access to the objects of universal fundamental rights. On the other hand, the effort of secondary global agents in striving for more justice can be meant as a further relevant step in the improvement of the global fulfillment of fundamental rights, something that would not be admitted by those which endorse a mainly institutional understanding of social justice.

3.6 The process of balancing fundamental rights in the institutional response to the covid-19 pandemic: the right to life vis-à-vis liberty-rights

The disruptively practical implication of the search for a *fair mean* between different categories of fundamental rights has been highlighted by the policy response of the public authorities and decision-makers to covid-19 pandemic and the consequent public demonstrations which contested covid-19 policy measures. By way of illustration, throughout the world, examples of this phenomenon, in their more or less extreme forms of expression, are anti-vaccine demonstrations or, in Italy, since July 2021, protests against the *green pass*[118] considered as a discriminative policy toward a specific category of people, like the despotic practices of authoritarian countries (Agamben, Cacciari, 2021). In both cases, it is recurrent the invocation of the defense of personal liberties, which, following their reasoning, ought to be understood as the fundamental objects of unalienable rights of which no-one can for any reason be deprived.

In fact, the covid-19 pandemic which hit the entire world in 2020 has put a strain on our economic, political and social systems and has had a relevant impact on our lives for different years, along with reshaping social, philosophical and political paradigms which have been consolidating over decades. Thus, it is unlikely to be hugely surprising that the effects of this ground-breaking event have been at the center of the scientific debate, from the international scientific cooperation to cope with the pandemic and find a vaccine and cure for the virus to philosophical, political and economic analysis, both critical and empirical, of the measures implemented by national governments and international institutions to fight against and to contain the pandemic (John, 2021; Scherbina, 2021a).

Indeed, the policy responses to covid-19 have triggered a wide debate on the most adequate solutions and measures to cope with the pandemic, fairly distributing collective benefits and burdens (Barry, Lazar, 2020) and ensuring the best overall

[118] The certificate which shows that a person has been vaccinated and whose field of application, from entering to the university to accessing to the workplace, is widening more and more.

protection of fundamental rights. The debate has quickly experienced a polarization[119], among both political leaders and academic experts. One the one side, there are those who have been to different extent against lockdown policies insofar as they limit basic liberties and thus unfairly violate fundamental liberty-rights. These lockdown opposers also criticize the use of the state of exception as a normal paradigm of decision-making process and the limitations of fundamental liberties in the name of the public health and security (Agamben, 2020), in some cases coming to accuse the current national-States to gradually turn into the Hobbesian *Leviathan*[120] (Oliver, 2020). On the other side, there are the apologists of the lockdown, which consider the institutional measures against the pandemic as just insofar as they are carried out to contrast an emergency and, not rarely, recalling the precautionary and health recommendations of hard scientists (Dupré, 2020). These lockdown supporters state that the public limitations of fundamental liberties is fair insofar as it was (temporarily) implemented in the name of the protection of the paramount right to life[121]. Few lockdown defenders have also argued that, in US, a longer lockdown, along with tighter restrictions, would have had a general positive impact in the light of an allegedly empirical cost-benefit assessment (Scherbina, 2020b).

Furthermore, in the above-mentioned contraposition it is possible to catch a glimpse of some categories from political philosophy, speculating on the fact that

[119] In its more politicized version, the debate uses to be scarcely summarized in the opposed views: Pro-lockdown against the Anti-lockdown. As Selley (2021) underlines, this contraposition emerging from the pandemic, or more precisely from the policies to contrast it, has been watching «people turn against each other's rights based on their own preferences».

[120] Even if, at first glance, the comparison looks persuasive, insofar as lockdown measures has been adopted in order to secure people's right to life at the expense of the fulfillment of other individual rights, in the same vein as Hobbes conceived the transferability of all rights to the Sovereign in the name of the protection of the paramount right to life, the association must be assessed as inconsistent, since too daring and inaccurate. Indeed, this argumentation endorses different over-simplifications, for example neglecting that, differently from Hobbesian absolute state, the current states are still subjected to the rule of law and the democratic processes along with the fact that policy measures tackling the pandemic have been adopted on a temporary basis (missing, thus, the absolute feature of the Hobbesian process of legislation).

[121] As simple, straightforward, capacious as, at first glance, the right to life may appear, it is impossible to deny that it is actually to some extent amorphous and indefinite (O'neill, 2016, pp. 5, 220) Indeed, its conceptualization carries not a few philosophical, political and legal controversies, for example in the case of the legalisation of abortion and on the field of the adequate specification of its corresponding duties, and the excessively concise description of the right to life in the major Charts and Conventions, such as art. 3 of the UDHR, does not help resolve this dispute. For the purpose of this paragraph, however, the right to life will be meant in its basic definition, as reported in art. 6 of the *International Covenant on Civil and Political Rights* (OHCHR, 1966a): «every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life». In this sense, the right to life is meant in its main twofold aspects, as negative and positive protection of life according to which no one, including public institutions, can try to end your life and human life ought to be protected by any means, above all by means of law.

libertarians, liberty-rights supporters, and some neo-Lockean theorists would probably share anti-lockdown ideas while communitarians, socio-economic rights supporters and neo-Hobbesian theorists would probably endorse pro-lockdown positions. In addition, it is interesting to note that, besides our personal standing on this issue, the opposite sides have been widely resorting to the language of inalienable rights to support their claims, thus respectively framing them in terms of protection of their fundamental liberties or the right to life and the right to health. Indeed, both positions can be easily 'translated' into the language of inalienable fundamental rights, with the opposite views justifying their positions on the more (not rarely, absolute) weight of a category of rights, or a specific right, comparing to the others.

At the risk of being disliked by both the above-mentioned sides, rather than siding with a specific position on this complex and wide debate – above all because a coherent standing on this matter in the light of the previous reasoning on universal fundamental rights would necessarily be in the middle, defending the secure access to the *fair mean* of the basic objects of both categories of rights – this paragraph seeks to make its own contribution analyzing the 'delicate public exercise of justice' in finding the *fair mean* among different but equally fundamental rights, in this case precisely the balance fulfillment of the right to life vis-à-vis liberty-rights. To this aim, the following inductive reasoning tries to infer some relevant points on the equal fulfillment of universal fundamental rights from the real experience of the pandemic and the different reactions of the public institutions and the private citizens while not excluding the possibility of finding a partial confirmation of the main argumentations elaborated in the previous paragraphs.

First of all, the disruptive fact of the pandemic, and, above all, the containment measures against the pandemic restricting various liberties, along with the protests against these measures, brought out the inner potential contrast between rights which are justifiably and legitimately considered as equally fundamental[122]. Secondly, in the

[122] Just looking at few Charts and Conventions on fundamental rights and national Constitutions, and in the light of the reasoning about moral and legal rights carried out throughout this dissertation, it is possible to state that the right to life and liberty rights, such as the right to free movement, are considered as fundamental also from the moral, political and legal points of view.

wake of the first point, the spread hunger and the fierce criticism against either the restrictions to free movement or the excessive lack of containment measures partially linked to the common attitude to look at fundamental rights in an ‘absolute’ way, or more precisely to wave the concept of fundamental rights to claim for an absolute protection of a specific weighty moral concern (which corresponds, or is matched to, the object of a fundamental right). Accordingly, the fulfillment of rights should be better understood as in relation one another rather than in absolute terms. Thirdly, the more extreme the claims of one side or another have been, the deeper the violation of the fundamental rights defended by the opposite side appears, it is clear that the best overall protection of fundamental rights can be carried out only through a ‘surgical’ exercise to search for the *fair mean* among these contrasting fundamental rights. Fourthly, the restriction of personal liberties, due to containment measure to fight against the pandemic, has shown that while the definition of the object of fundamental appear straightforward, such as, in this case, liberty and life, the specification of its perimeter of protection and the relations with other fundamental rights are far from being clear. In this case, the active protection of the right to life involves the deep under-fulfillment of other fundamental rights, that is liberty-rights. Moreover, something which complicates even more the picture is that the right to life, understood in its broader sense of human flourishing, may also include the freedom of association and freedom of movement as essential elements of the wider fulfillment of this right. Accordingly, once again we can notice that the only way to equally fulfill different fundamental rights is to find a balance among different, and, in this case, deeply contrasting, weighty moral need to ensure the secure access to their basic object. Finally, the above-mentioned argumentations highlight a partially empirical confirmation of the relativeness of the equal fulfillment of universal fundamental rights, which, accordingly, ought to be carried out in relation to one another and according to a *fair mean* of their core objects.

Therefore, from the previous analysis it becomes clear that each side has sound reasons to defend the fundamental rights that have allegedly been violated, or under-fulfilled, claiming that a specific absolute object of fundamental rights, such as liberty of movement or the life, ought to take priority over all the other claims. Posing the

debate on the protection of rights in absolute terms is often more attractive, above all in the public speech, and, for this, apparently more convincing, however it leaves out a crucial aspect which has been repeated different times in the previous paragraphs but which is worth to be mentioned again here showing its practical implications, that is the fact that rights can be fulfilled only to some extent and, accordingly, the implementation of a right ought to be carried out in balance with the protection of other fundamental rights.

Accordingly, what lacks in the reasoning of both sides – something that, has been already previously widely underlined – is the *measure*, that is the assessment of justice, understood as distribution of benefits and burdens, to some extent and the effort to balance the fulfillment of different fundamental rights. This example also partially demonstrates that the equal fulfillment of different, and even contrasting, fundamental rights should not be a matter of mere legal adjudication, that is the judicial enforcement of rights according to different constitutional principles, such as that of proportionality (see paragraph *4.4*), but deserves a broader reasoning also in regard to the nature and the scope of different fundamental rights, along with their relations and their (correlated) weighing.

As underlined before, a corollary of the adequate solution to the covid-19 pandemic is the need for a transnational and global synergy to fight against the pandemic (Druml, 2020), as we have already seen in the field of the scientific research for the discovery of the covid-19 vaccine and as we are supposed to do with the distribution of the vaccines worldwide. Indeed, various experts, above all from hard sciences, has underlined the fact that even in the presence of high percentages of vaccination in developed countries, the pandemic will not be defeated if the massive vaccination is not also carried out in the rest of the world, above all in those countries without proper means to implement an effective and efficient vaccination campaign[123].

[123] It is noteworthy to note that after two years of the outbreak of the pandemic and one year after the beginning of the vaccination campaign, high-income countries show high rate of vaccination while low-income countries still lag behind the rest of the world. The correlation between the wealth of a country and the rate of population vaccinated is confirmed by data and figures. To illustrate, 75% of the 5.56 billion doses administered globally so far, that is September 2021, are concentrated in just ten countries, which are part of the high-income ones (De Luca, 2021). In addition, only 1.9% of people in low-income countries have received at least one dose (Ritchi et al., 2021).

To sum up, this paragraph tried to briefly shed light on the intricated contrast between the right to life vis-à-vis liberty rights – a challenge which the lockdown, as part of the containment measures and the policy response to covid-19, has highlighted in all its actual relevance along with its theoretical problematic – following theoretical analysis of the relation between different fundamental rights broadly investigated in the previous paragraphs and developing an attempt to untangle the problem of the overall fulfillment of different contrasting rights in a specific extremely actual study case. Accordingly, the balanced fulfillment of universal fundamental rights, far from being a matter of mere theoretical speculations, has shown to have relevant concrete and social implications.

As a matter of fact, during this emergency period it has happened at least once to almost all of us, above all in daily talk, to wonder: What side is right? What category of fundamental rights has priority over the other? The wisest may think that these questions are wrongly placed, and rather than looking for the rights which take priority over others, we should drop this manichean distinction and we would better to focus on the right balance between different, and, in this case, deeply conflicting, universal fundamental rights that can be drawn. The last step, now far from daily talk but of interest for the academic enquiry on universal fundamental rights, would be to understand that the search of a *fair mean* among different universal fundamental rights is not only a matter of practical implementation of fundamental rights but should deserve a major attention from theoretical and normative studies, above all in regard to the relations of conflict and mutual strengthening which intercourse between different universal fundamental rights. The last chapter will discuss how agents of global justice ought to be understood in order to practically carry out this balanced fulfillment at the global level. Indeed, the agents involved in the complex process of ensuring the secure access to the *fair mean* of universal fundamental rights and make justice progress at different levels and in different spheres of human relations – which have been recently deeply and transversally affected by the covid-19 pandemic, as discussed in this paragraph – will be the main topic of the following last chapter.

Chapter IV. The agents of global justice

The previous chapters have outlined the historical roots of the concept of universal fundamental rights, the contemporary theories of global justice, and an innovative account of distribution of rights and duties at the global level potentially able to overcome the limitations of these theories. In the first chapter this dissertation probed how the theoretical conceptualization of the notion of fundamental rights in the modern era was biased by the justification of the peculiar interests of western countries while Kant's contribution and, even more, contemporary theories on universal fundamental rights have shown that universal fundamental rights can potentially be the expression of concerns shared, or at least shareable, by peoples and persons belonging to different philosophical, political, legal cultures and backgrounds. In the second chapter the analysis of the mainstream theories of global justice has highlighted an inner tension between the moral and political aspects of justice, and, more broadly, between the moral desirability and the practical feasibility of a claim for justice, and between different categories of universal fundamental rights, i.e. civil and political rights and socio-economic rights. In the third chapter, the attempt to overcome the limitations of the mainstream theories of global justice has led to the draft of a *fair mean* of universal fundamental rights and a balanced understanding of (global) justice which are not rigidly established once and for all but rather are able to adapt to the transformation of different contexts in which the claims ought to be framed and to the extent to which the claim of secure access to the object of fundamental rights and the imposition of the corresponding duties can be justified. The inner tension between different conceptions of global justice and universal fundamental rights and duties ought to be borne in mind since it is essential for the investigation of the agents of global justice insofar as they will be assessed according to their actual and potential role in affecting the distribution of rights and duties at the global level.

To start with, this chapter examines how (global) justice ought to be enforced at different levels and the account of the agents entitled to pursue this task according to statism and cosmopolitanism. Besides, the main global actors are analyzed, in their dual

role as actual and potential agents of global justice, with a peculiar attention to those agents which are effectively affecting the secure access to the object of fundamental rights (actual aspect) and those agencies striving for a greater fulfillment of fundamental rights at the global level (potential aspect). To provide a first sketch on the agents of global justice and their different role, while humans are considered the main basic subjects of global justice, in the current international system, international actors are often not individual but group agents, such as national community (Eskelinen, Chattarjee, 2011, p. 426). Indeed, even though humans are generally understood as relevant agents of justice in their role of rights-holders, states are usually meant to be the most crucial agent in the enforcement of the actual international distribution of rights and duties in their territory. To conclude with, this chapter focuses on specific potential agents of justice, such as the Permanent Peoples' tribunal[124], that currently have few real powers to implement universal fundamental rights and enforce their corresponding duties at the global level but that may represent the ground to establish new practice to foster the pursuit of global justice, and, accordingly, a fairer distribution of fundamental rights and duties at the global level. Moreover, among the other agents, such as states, global institutions and civil society, the final part of this chapter provides a sketch on the role of the Constitutional Courts as relevant agents to foster the international dissemination of valid practices of legal adjudication of fundamental rights.

4.1 The liability of different agents of global justice

In the second chapter, this dissertation has already partially touched upon the problem of the responsibility to fight against grave inequalities in basic liberties and fundamental socio-economic opportunities at the global level, from both an empirical and a normative point of view and critically analyzing the standing of the major theories of global justice on this matter. Indeed, both statism and cosmopolitanism believe that the gruesome facts of inequality at different levels related to lack of democracy and enjoyment of fundamental socio-economic opportunities and basic liberties must be

[124] Hereinafter referred to as PPT.

seen as disaster from a more broadly humanitarian point of view (Nagel, 2005, p. 118; Pogge, 2008). However, they do not agree on whether these global inequalities ought to be assessed as a matter of justice beyond the national borders, that is whether there are global responsibilities for the inequalities in liberties and socio-economic opportunities which people and persons suffer.

Statism argues for the fact that robust egalitarian distributive norms apply only among citizens of a common state appealing to the 'associative duties' that citizens owe one another in virtue of their shared national identity (Miller, 2007; Nagel, 2005). Whereas only states have the monopoly of coercive power to enforce egalitarian distributive norms, principles of comparative justice can only be enforced at the national level. Accordingly, claims of justice beyond the national context ought to be assessed as empty demands, insofar as they are not enforceable. Thus, according to statism, concerns of justice apply only within the national borders and peoples and persons do not bear responsibility for global inequalities but only for those at national level. Not only does statism ignore the relevance of transversal global challenges, such as climate change, global pandemic, international migrations – which make to some extent some persons and peoples causally responsible for the burden shouldered by other persons and peoples (and which, in turn, directly affect national citizens themselves) – which call for apt global solutions, but they also seem to avoid giving proper relevance to the actual change in the global political and economic system and the empirical evidence of global private and public agents which pervasively impact on the distribution of essential goods of justice and, accordingly, on the enjoyment of universal fundamental rights. For this, the capacity of nation-states to protect the fundamental rights of their citizens is empirically weakening and it is plausible to speculate that this trend will not reverse in the future. Whether international public agents are just secondary institutions – whose power is attributable to the states (Freeman, 2006) – or a crucial part of an existing global public political culture which shapes a ‘global public reason’ (Cohen, 2006–7) is a matter of debate. However, it is undeniable that some non-state actors are endowed with enough power to outweigh the authority of sovereign states (as paragraph *4.3.b* will more in-depth investigate in the case of European Transnational Companies

operating in Latin America). The fact that private multinational firms such as Apple have a net worth almost equal to Italy, a member state of G8, and they can counter the execution of the decision of a national judge, is indicative of the actual influence of global non-state agents on the implementation of universal rights at the domestic level. If statists really care about the actual fair enforcement of the domestic distribution of fundamental duties and rights, they should take into account the different forces which can factually jeopardize that distribution and, accordingly, which can impact on the enjoyment of universal fundamental rights of the fellow countrymen which shape a political community.

As touched upon in the previous paragraph, according to cosmopolitanism, there are principles of justice regulating the fairness of global distribution of fundamental rights and duties and, for example for Pogge, global justice should be conceived in terms of an institutional cosmopolitanism based on universal human rights. Accordingly, cosmopolitan thinkers affirm that the global order, along with peoples and persons upholding it, ought to be considered as responsible for the unfair distribution of rights and duties at the global level insofar as it contributes to replicating and reaffirming the global inequalities. As the cosmopolitan scholar Pogge argues, «persons share responsibility for official disrespect of human rights within any coercive institutional order they are involved in upholding» (Pogge, 2008, p. 70). Thus, people are responsible not only for the under-fulfillment of fundamental rights at the national level but also, and in certain cases to a greater extent, for those at the global one. However, the cosmopolitan reforms of global redistribution which they propose are affected by a weak feasibility (Pogge, 2008; Moellendorf, 2016), and in some cases, they may even endanger global, according to them unfair, inequalities, particularly in wealth, resources and health. For example, in order to eradicate systemic poverty, and allegedly enforce a more just global institutional order, Pogge's most relevant political proposal to fight against the unequal distribution of natural resources and the related wealth is the Global Resource Dividend (GDR). According to the GDR, «states can be required to share a small part of the value of any resources they decide to use or sell» (Pogge, 2008, p. 203) in order to compensate people suffering from extreme poverty

related to radical inequality which is reinforced by the globalized economic system and an institutional order uphold by wealthy states (Pogge, 1994; 1992). Even though, at first glance, this argument appears to be persuasive, it has attracted sound criticisms related to the feasibility and efficacy of this reform, because of, for example, the so-called 'resource curse' (Nili, 2011, p. 639) which refers to those countries, relatively poor in terms of wealth and often run by dictators, which are, however, plenty of natural resources (Armstrong, 2020).

The other criticism of the above-mentioned theories, that is the excessive focus on only one category of universal fundamental rights, seems to mirror the current imbalanced global order which underestimates the inner connection between different rights privileging the fulfillment of one right at the expense of the secure access to the basic object of others. Taking into consideration one of the most pervasive, and most studied, international institutions, the World Trade Organization, it is immediately clear that this organization privileged the fulfillment of the right to trade with few concerns, for example, about the protection of the basic right to adequate standards of work. It may be objected that this aim is not part of the main task of this institution. However, it is also true that it would be in the capability of the institution to impose constraints on states to force them to respect at least minimum standards of work and, from the view of the equal moral agency of human beings and the secure access to the *fair mean* of the basic objects of universal fundamental rights at the global level, it ought to be considered as an obligation. This example can also be considered as a valid answer to the common argumentation of statist scholars that denies a global and international responsibility for national inequalities and under-fulfillment of fundamental rights at the national level due to their alleged lack of coercion or pervasiveness (Miller, 2007; Nagel, 2005; Blake, 2016, 2013) and a more modest and feasible proposal, in compliance with a *balanced approach* toward global justice, comparing to the most ideal ones of many cosmopolitan scholar, such as the global resource dividend (Pogge, 1994, 1992).

4.2 Actual and potential role of rising agents of global justice

As it has been repeatedly underlined, statist scholars think that only the state is responsible for the enforcement of robust distributive norms of justice while cosmopolitan thinkers believe that even the global order, along with those upholding it, is responsible for the global inequality in the enjoyment of basic liberties and fundamental socio-economic opportunities. Therefore, even though the role of the state as the main agent entitled to implement fundamental rights cannot be denied, according to their almost exclusive monopoly of coercive power, it is also relevant to take into account the potential of those other agents which are rising at the global level. For this reason, this paragraph, in the wake of the *raison d'être* meanwhile does not deny the actual role of the state as one of the (main) agents of justice, seeks to assess the potential of other agents which may increase their role in affecting, at different levels and to varying degree, the access to the *fair mean* of basic objects of universal fundamental rights. The main aim here is to develop a dialectical analysis of the actual and potential role of the agents of global justice which is able to adapt to the transformation of the current international global order and to the strengthening of the relations of power among peoples and persons at the global level in compliance with the main elements of the *balance approach* sketched out in the previous chapter.

In order to take seriously the analysis of the agents of global justice, it is essential to underline the actual distribution of power and the potential of those agents which may affect it since the first question of justice is the question of (the justification) power. Indeed, as Forst underlines, justice should not only focus on «the distribution of goods, but on the justice of the 'basic structure' of relations of political and economic power, that is, relations of government, of production, and of distribution» (Forst, 2012, p. 258). Accordingly, if it is true that the states are the main agents which can enforce the norms and laws to ensure a fair distribution of rights and duties, it is also true that there are other agents, such as private organizations and public international institutions, which are able to affect the actual distribution of goods, corresponding to essential means for the implementation of universal fundamental rights, and, in some cases, more and more the constitutive power of more or less public agents, from nation-states to

international institutions (Cohen, 2006-2007). Taking into account the role of these private organizations, such as transnational corporations, which more or less directly affect the global distribution of relevant goods, the following paragraphs will mainly focus on those civic and legal agents which have an increasing role in striving for global justice, i.e. the civil society, the PPT and the Constitutional Courts.

4.3 The global civic agency

In the light of the recent development of the international relations in different fields, such as, among the others, the economic, political and cultural ones, and the sharp and fast strengthening of the global interdependence and interconnection, it is possible to notice a correspondent growth of various mobilizations which unite people regardless of their citizenship and whose claims for justice overcome the national borders. This phenomenon has been authoritatively described by Amartya Sen in the book *The Idea of Justice* in which he highlights the increasing influence of the global civil society, in the form of cross-border activism or philanthropy, and stresses out the contribution of this considerable mobilization of resources and transversal human effort to fight against the suffering of the worse off worldwide (Sen, 2009). Sen also underlines how, in the contemporary era, with increased mobility and always more powerful means of communication, people tend to have multiple affiliations and thus belong to different communities defined by cultural, political, scientific, professional affinity, all of which cut across national borders. Those people are showing to be able to organize themselves to some extent autonomously to address global cross-cutting challenges such as climate change, pandemic, extreme poverty, and, thus, to be able to envision themselves not only as citizen of the world but also as potential agents of global justice striving for a greater protection of fundamental rights at the global level.

The potential of this global civil society to perform as a relevant agent of global justice is also described by Ypi's concepts of the avant-garde political agency and theory of statist cosmopolitanism, which tries to reconcile the normative relevance of the nation-states with the growing scope of international and global institutions in the

pursuit of more (global) justice sketching out the possibility of understanding national community as a fertile ground for the raising of claims for cosmopolitan reforms.

The concept of avant-garde (cosmopolitan) political agents is conceived by Lea Ypi as referring to «those citizens, civil associations, and political actors relevant to our dialectical understanding of the relationship between principles and agency in the context of global justice debates» (Ypi, 2012, p. 155). Thus, the cosmopolitan avant-gardes are understood as those agents which are able to sketch out normative proposals and concrete actions to foster the implementation of fundamental rights at the global level and to outline political initiatives for the reform of the function and the purpose of existing institutions which shape the global order.

The Permanent Peoples' Tribunal (PPT), into which the following paragraph will delve, shows how people with different backgrounds and culture can effectively agree on the condemnation of specific cases of severe and systematic violation of peoples' and persons' fundamental rights. Indeed, the PPT can be considered for all intents and purposes as an example of avant-garde political agency, striving for the advancement of global justice and, precisely, a more participatory, fairer international law (Byrnes, Simm, 2018, p. 5).

4.3.a The case of the Permanent Peoples' tribunal

Before delving into the description of the main features of the PPT it is essential to clarify three preliminary points with regard to the conception of 'peoples' adopted by the PPT, the presence of other domestic peoples' tribunals and the compliance of the PPT with the international law. Firstly, the recurring term of peoples, even in the complete name of the PPT, is meant here and by the PPT as comprehensive of peoples, *qua* national community, and persons, *qua* human beings, in addition to the fact that the PPT involves a constellation[125] of private and public agents including international institutions, multinational firms, NGOs and any other relevant agents involved in the breach of fundamental rights. Secondly, the PPT functions as a point of reference for the special Peoples' Tribunals which are established for specific cases (as the one it will

[125] «Generally, peoples' tribunals arraign individual states, international organisations, individual corporations or a combination of these» (Byrnes, Simm, 2018, p. 17).

be analyzed in paragraph *4.3.b*) and which are taken into account in this paragraph. Indeed, there are a multitude of local peoples' tribunal of different nature, form and dimension which however cannot be reconducted to the PPT and which, for this, are not considered here. Thirdly, in its functioning, from the hearings to the verdicts, the PPT works in all the main matters as a real Tribunal of international law sticking on the rules of a due process, even though includes a majority of non-lawyers as judges and components of the jury[126] and assesses the adequacy of existing international law, institutions or structures with broader understanding of universal fundamental rights[127]. Further on, the main sources of law according to which the PPT takes its decisions and establishes its verdicts will be investigated more in depth. As a side further point, it is worth noting that, in his decision-making process, the PPT includes a cross-fertilization[128] of action and analysis which makes its work more than a mere academic exercise, but rather a genuine effort to contribute with its experience to a common endeavour of social, environmental and labor movements to strengthen the affirmation of peoples' fundamental rights in the light of the challenges of the current economic and financial globalization (PPT, 2006, p. 5).

About its roots, the PPT was established in Bologna as a direct successor of other people's tribunal established *ad* hoc as specific condemnation of grave and wide violation of fundamental rights, that is the Russell Tribunal on Vietnam (1966-67) and Latin America (1763-1766). To provide a first really basic idea of the object of this paragraph, the PPT can be understood as

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[126] «Some peoples' tribunals hew closely to a traditional court model, with legally trained members as judges and formal legal presentations and findings focusing on the positive law. Others adopt different, less legalistic formats in relation to the composition of the tribunal, the terminology used to describe the various actors, the conduct of the proceedings and the nature and scope of their findings and recommendations. Peoples' tribunals generally differ from other courts or tribunals by including a majority of non-lawyers as judges and jury» (Byrnes, Simm, 2018, p. 17).

[127] «It is this emphasis on law, international law in particular, and a deliberative process of evaluation of evidence in the light of law that distinguishes these tribunals, for example, from a speech at a public rally denouncing violations of international law by states, or a political show trial. The difference lies in the extent to which the forms and procedure of a legal proceeding are observed, as well as in the cogency of the analysis and reasoning that is adopted, although not all tribunals designated as peoples' tribunals aspire to or achieve this» (Byrnes, Simm, 2018, p. 13).

[128] A link can be established with the paragraph *4.4* even though here the term cross-fertilization is meant in a broader sense than the more specific legal meaning the *cross-judicial fertilization* takes in that paragraph, as legal communication and contamination of practices among Constitutional Courts.

a civil society initiative establishing a forum for a body of eminent persons and/or experts to consider allegations of violations of specific standards of international law (and possibly also other bodies of law such as national law, indigenous law or 'peoples' law') in the light of documentary and other forms of evidence presented to them in formal proceedings (Byrnes, Simm, 2018, p. 14).

While its founder, Lelio Basso, describes the *raison d'être* of the PPT as follows:

The dictates of public conscience can become a recognized source of law and a tribunal emanating directly from the conscience of the people reflects an idea that is bound to grow. It is claimed that institutions derive their power from the people, but actually these two have moved further and further apart and only a major public initiative can try to build a bridge between the people and power (PPT, 2015).

Therefore, the role of the PPT is not the strictly legal adjudication of fundamental rights of persons and peoples[129], but rather the expression of a transversal civic condemnation of a specific violation of peoples' fundamental rights. As a matter of fact, Lelio Bassi describes the tribunal as «a permanent institution that could become an instrument and platform to give recognition, visibility and a voice to the peoples suffering violations of their fundamental rights» (PPT, 2015). In this regard, the tribunal is a clear example of what a cosmopolitan political agency is in their essential role of

[129] The legal transposition of this grave under-fulfillment can be envisioned in the global condemnation by International Courts and global institutions of the so-called *gross-violation*, that is serious and generalized violations of this essential core of fundamental rights. This category uses to include those particularly inhuman and brutal government practices, such as *apartheid*, the total or partial destruction of an ethnic, racial or religious group (*genocide*), torture, inhuman and degrading treatment, collective expulsions and the forced abandonment of one's living environment, the disappearance of political prisoners, and the like. All States agree on the opposition of such practices to international *jus cogens* and the International Court of Justice has ruled, albeit incidentally (Conforti, 2010, p. 203). However, as Liwanga (2015, pp. 80, 81) notices, «the terms "gross," "grave," "flagrant," "serious," or "massive" are used interchangeably and even cumulatively by international legal documents and *quasi*-judicial bodies. There is no unanimously accepted definition of "gross violations" of human rights, which consist of the violations of civil rights, political rights, and socio-economic rights. And, the seriousness of violations is assessed on the basis of several factors, including: the type of violated rights and the character of the violation, the quantity of victims, the repeated occurrence of the violation and its planning, and the failure of the government to appropriate measures to prevent and punish the violation». Accordingly, it is important to notice that the above-mentioned *gross violation* has thicker and more legal understanding in comparison to the under-fulfillment of universal fundamental rights widely used in this dissertation refers to a broad understanding of the violation of human rights and comprehends more cases of under-protection of universal fundamental rights, which would be excluded from the category of *gross violation*. Another related interesting direction of investigation, which however cannot be crossed here, is the comparison, in fostering the protection of universal fundamental rights, between the role of 'judicial' agents of global justice, such as the International Criminal Court and the International Court of justice, which impose penalties for serious violations of human rights, such as genocide, war crimes, crimes against humanity and the aggression of one state against another (Tedesco, 2009, p. 4) and the role of civic and *quasi*-legal and political agents of global justice, such as the PPT, which establishes non-binding judgment, more similar to civil society condemn, on particular violation of fundamental rights.

struggling for the expansion of the means by which global justice can be pursued. Accordingly, the PPT ought not to be assessed as a relevant agent of global justice for its role in the real enforcement of international norms for a greater enjoyment of universal fundamental rights, since its decisions cannot be coercively enforced, but rather a piece of symbolic evidence that people from different affiliation, culture, religion, tradition and legal and political background can find a common standing toward evident and systematic (global) injustices. Thus, the cultural and social pluralism which characterizes the PPT demonstrates that a consensus around universal fundamental rights, or more precisely a world-wide agreement to find common ways to claim for greater fulfillment of them, is possible. On this subject, the PPT is different from the International Tribunals such as the Iraqi Special Tribunal, the International Criminal Tribunal for the Fromer Yugoslavia, and alike (Bantekas, 2005). Indeed, this is due to the fact that not only the decisions of the latter are legally binding but above all because these Special Tribunals are the expression of the will of a specific (military) coalition of just a part of the world (often against another)[130], while the PPT enjoys a wider international representation being composed by experts from all over the world[131].

Moreover, an International Peoples' Tribunal can also be understood as «a process initiated by civil society that involves the presentation to a body of eminent persons of evidence and arguments that seek to establish whether a state, international organisation, corporations or, less frequently, specified individuals have committed breaches of international law or of another body of law or norms. It may evaluate the adequacy of existing international law, institutions or structures with broader notions of law or justice including 'peoples' law'» (Byrnes, Simm, 2018, pp. 3, 4). From this insight into the PPT it is possible to infer, as a brief description of the formation and the functioning of an International Peoples' Tribunal, that the latter is shaped by both experts and people from the civil society and includes a formal and complex formally judicial procedure to reach a sentence on the potential violation of fundamental rights.

[130] This is exactly the reason why experts such as Zolo (2006b) state that at the international law is just the justice of the winners at the expense of the losers

[131] «Peoples' tribunals are normally composed of persons from different countries and expert in (international) law or other fields, who have been selected for the particular tribunal by the organisers or drawn from a standing list» (Byrnes, Simm, 2018, p. 17).

These decisions are taken in the light of the international law and the compliance of the current legal international order shaped by the body of the positive law of nations, the law of peoples, along with, thus, fundamental rights listed in those International Charts, such as the UDHR, which are not legally binding. In this sense, the role of an International Peoples' Tribunal is relevant inasmuch as it draws a picture of legal procedures of enforcement of fundamental rights thus leading the way of the enlargement of the scope of the global institutional order.

To sum up, «despite all the criticism of the lack of legitimacy of peoples' tribunals, they continue to offer a valuable means of social activism for those whose rights have been violated and who, despite the proliferation of formal institutions and mechanisms for redress, still frequently fail to achieve recognition of and redress for violations of their rights» (Byrnes, Simm, 2018, p. 7). Far from being legally binding decisions, the sentences of the PPT can be understood as the juridically oriented activism and civically political effort to foster the reduction the under-fulfillment of fundamental rights at the global level. The following paragraph will delve into this matter, analyzing the fields in which the PPT operate and how its sentences provide a sketch on the better fulfillment of specific rights, the imposition of the corresponding duties and the agents involved. These agents are: the rights-holders that experience the violation of their rights, the duty-bearers that fail in discharging their duties, the right-violators which are directly responsible for these violations and all the people which takes part in the hearings and sessions of the tribunal as judges, eyewitnesses or advisors.

4.3.b Few *quasi*-legal efforts to enforce fundamental rights in the global processes

In assessing the civic and *quasi*-legal phenomenon of the PPT, this research focuses on the fulfillment of the specific rights violated, the people suffering the violation, enforcement of the duties failed to be performed and the peoples supposed to bear them. Indeed, the attention must not only be directed to the under-fulfillment of universal fundamental rights and the rights-holders that suffer the lack of secure access to the *fair mean* of the objects of universal fundamental rights but also to the

condemnation of those agents that bring about and perpetuate these violations being responsible for the conditions which cause the under-fulfillment of rights.

Accordingly, for the development of the main topic of this dissertation, two main points can be inferred from this. Firstly, the only attention on the violation of fundamental rights and the victim of this violation may undermine the strength of the claim to fundamental rights, insofar as it can potentially void their enforcement. That is the reason why, peoples are understood by the PPT as «subjects and holders of rights and not just as victims of breaches unpunished by an international law that has abdicated its role as an effective instrument for promoting and protecting the self-determination and dignity of peoples» (Byrnes, Simm, 2018, p. 6). Moreover, the (not only moral) condemnation of the agents which are responsible for this violation and which are clearly detected provides a more complete 'picture' of the specific injustice, makes more practically feasible the improvement of the fulfillment of fundamental rights of the rights-holders, as author of justifiable claims to more justice. Secondly, this practice toward the enforcement of fundamental rights underlines both the gravity of the under-fulfillment of fundamental rights and the crucial relevance of the corresponding duties in correcting this violation and ensuring a greater fulfillment of fundamental rights.

With relation to a broader understanding of global justice, another important task recognized to the PPT is to «correct the historical record and ensure justice and reparation to survivors and the families of victims» (Byrnes, Simm, 2018, p. 1). Thus, since the verdicts of the specific International Tribunals are not binding, the decisions of the PPT may take the form more of a 'moral suasion' to national authorities rather than a real imposition of the correction of the wrongs and the legal compensation for the violation of fundamental rights.

In general, the PPT's action against international violation of fundamental rights and, thus, for a further progress of global justice, is directed to those events which represents the gravest under-fulfillment of universal fundamental rights, thus subtending that a measure of level of assessment of the moral relevance of the claims to specific fundamental rights of is ingrained in each practice of protection of fundamental rights

(and this dissertation tries to defend the idea that it should characterize also the theoretical understanding of the relations among different rights). As for the amount of the cases of violations of fundamental rights and international law, the PPT has held more than forty hearings, along with sessions and verdicts[132], since its establishment in 1979 (Byrnes, Simm, 2018, p. 13). These processes, which formally follows the structure of a trial court[133] without however having the same binding force, have mainly been directed to the following categories:

> • Violations by a state of the rights of citizens or residents of that state, including violations of the rights of peoples within that state • The use of force by a state against another state or people in another state – these tend to involve both examination of *jus ad bellum* (legality of the use of force) issues as well as *jus in bello* (international humanitarian law) issues • Claims of the denial of the right to self-determination • 'Historical' or thematic issues • The treatment by regions or groups of states of particular groups of peoples • The interaction between state law and the violations of the rights of persons by 'private' individuals (including corporations) and the responsibility of business, especially transnational corporations, in the violation of human rights • The role of international organisations, especially international financial institutions, in the regulation of the international and national economic and social systems • Challenges to the fairness or justness of particular bodies of established international law (in particular those relating to protection of intellectual property) (Byrnes, Simm, 2018, pp.16, 17)

By way of illustration, this research retrieves the peculiar case of *The European Union and Transnational Corporations in Latin America: Policies, Instruments and Actors Complicit in Violations of the Peoples' Rights,* which can be considered as part of the category related to the violation of fundamental rights of persons by private agent, including transnational corporation. As a matter of fact, this case is of marked relevance for the aim of this dissertation since it regards a multitude of agents affecting the secure access to the object of fundamental rights of the persons and peoples

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[132] all the final verdicts or judgments of the PPT's sessions can be found on PPT's website. <http://tribunalepermanentedeipopoli.fondazionebasso.it/category/sessioni-e-sentenze-it/>

[133] «The tribunal presents a reasoned set of findings based on its evaluation of that material. The process is thus a formal deliberation characterised by the public presentation of material and the delivery of reasoned conclusions by the adjudicative or evaluating body, whose members are sometimes termed 'judges', at other times 'jurors'» (Byrnes, Simm, 2018, p. 14).

involved. In a nutshell, this judgement is about various cases of persistent of systematic breach of fundamental rights of local peoples carried out by European transnational corporations (TNCs) in Latin America with the direct or indirect endorsement of local, European, and international authorities[134]. Therefore, the main goal of the tribunal was to analyzes the conduct of European TNCs and their practices of violations of fundament rights and to identify the consequences and shared legal responsibilities arising from EU policies supporting European transnational corporations. Besides questioning the legitimacy of the operations of European TNCs for their systematic violations of universal fundamental rights, this Tribunal has also developed proposals for regulation and control of corporations[135] to raise their accountability regarding their responsibility in the protection, respect and fulfillment of the fundamental rights of local peoples.

The cases covered several areas of TNCs' activities and their impact on natural resources, labor standards, public services with particular emphasis on water provision, sewage and electricity, the role of global finance and the role of TNCs active in financial services in Latin America, the food chain and agricultural diversity, the oil and gas industry (PPT, 2006, p. 3). A concrete example of practices of violations of fundamental rights taken into account by the hearings and sessions of this Tribunal are the action of Spanish company Unión Fenosa with the Salvajina Dam in the Cauca (Colombia) and in the River Anchicaya, Cauca Valley, with the destruction of biodiversity and the contamination of the water, the operations of the British mining company Majaz, in the North of Piura, in Peru with the destruction of biodiversity and the contamination of the water and the behavior of Spanish oil company Repsol, causing serious damage to the ecosystems of various regions of Colombia, Ecuador,

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[134] «All these cases demonstrate that a regime of widespread permissiveness, unlawfulness and impunity exists and is manifested, in the behaviour of European TNCs in Latin America. This regime is fostered by the institutional policies of the multilateral development banks (Inter-American Development Bank, World Bank, European Investment Bank), the international financial institutions, such as the International Monetary Fund, and regional institutions such as the EU and its various institutions. In particular, the PPT has confirmed the tolerant and even complicit attitude of the EU, which directly serves to promote the interests of its TNCs as the main actors in its economic expansion in terms of international competitiveness» (PPT, 2010, p. 13).

[135] «These proposed regulations aim to establish a system where corporations are made accountable, do not hold more power than states, can no longer define for themselves their responsibilities and where their profits are not being prioritised over the well-being of the people, the environment and the planet» (PPT, 2010, p. 5).

Bolivia and Argentina (PPT, 2006, p. 8). The process started with the acceptance of the petition of the Enlazando Alternativas Bi-Regional Network for an investigation into how the policies of TNCs and the specific role of the European Union (EU) in its relations with Latin American and Caribbean countries gave rise to violations of universal fundamental rights and the peoples' right to self-determination (PPT, 2010, p. 7). While hearings and sessions of the Tribunal showed «overwhelming evidence concerning European TNCs abuses of human, social, cultural and workers' rights» (PPT, 2006, p. 3) the final verdict of the Tribunal confirms the grave systematic violations of fundamental rights in Latin America perpetuated by European TNCs with the more or less tacit assent of the international institutions[136] and South American and European head of government. As reported in the description of the procedure followed by this tribunal, a side noteworthy fact to be underlined is that the sessions received contributions also from experts, which played the peculiar role of *amici curiae,* literally 'friends of the court', that, even though they are not involved in the case, voluntarily advices the court providing useful information and legal opinions on this matter.

In order to discuss these cases in the light of the main purpose of this research, some crucial points must be highlighted in regard to the definition of the rights-holders, that experienced a breach of their fundamental rights, along with the corresponding rights-violators and duty-bearers, the fundamental rights which have been under-fulfilled and how this systematic violation has been enforced.

The rights-violators correspond to around fifty transnational companies, among which there are famous brands such as Benetton, Nestlé, Shell, to name a few, mainly from Europe and belonging to different business sectors[137] causing harm to local peoples, the rights-holders, in the spheres of labor relations, environment, transgenic seeds, People's health, corruption, financial system (PPT, 2008, pp. 5-7). Moreover, it is important to underline that the primary agents of (global) justice – that is national

[136] «This architecture of impunity is constituted by the WTO Agreements, Bilateral Free Trade and Investment Agreements, the International Monetary Fund (IMF) and the World Bank (WB) together with TNCs' investment and exploration contracts and the decisions of dispute settlement processes» (PPT, 2010, p. 5).

[137] «In total the Tribunal considered 21 cases of transnational companies from 12 sectors (mining, oil, the logging and pharmaceutical industries, telecommunications, agro-foods, the iron and steel industry, electricity, water, agro-chemicals, banking and financial instruments, and genetically modified seeds) operating in Latin American countries» (PPT, 2008, p. 5).

authorities and international institutions, deputed to enforce the corresponding obligations that fundamental rights entitle – fail to perform their main task, since they have not ensured the protection of fundamental rights in Latin America and are not forcing European TNCs to avoid violations of fundamental rights[138]. Accordingly, the rights-holders, in the person of the local peoples, see their fundamental rights violated, but differently than European peoples to which these TNCs belong, they have no legal means to enforce these fundamental rights but appeal to civic initiatives such as the PPT (besides a potential Lockean moral *appeal to the heaven*). As for the violations of fundamental rights, the Tribunal established that relevant under-fulfillment of universal fundamental rights occurred in these cases regards violations to the right to access essential services[139], the right to land[140], the right to food sovereignty, safety and security[141], labor rights[142], indigenous peoples' rights[143], environmental rights[144], civil and political rights[145].

It is unlikely to be hugely surprising that European TNCs are generally obliged to ensure a secure access to the basic objects of the latter rights to a greater extent in European countries, guaranteeing higher standards of labor security, environmental

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[138] «In current approaches to TNCs, responsibilities and obligations are omitted and left to the good will of corporations. So far, the TNCs with the complicity of governments have successfully resisted any binding international code that includes obligations» (PPT, 2010, p. 5).

[139] «Water has been transformed into a commodity rather than a common resource. Pricing and distribution policies implemented by TNCs with the support of International Financial Institutions deprive broad sections of population (mostly the poor) from the enjoyment of this fundamental human right. Electricity privatisation and liberalization has similar results» (PPT, 2006, p. 3).

[140] «The expansion of monocultural plantations for export (notably for soy and wood pulp) is destroying small-scale farmers' livelihoods, while preventing fair and equitable access to land» (PPT, 2006, p. 4).

[141] «Industrial scale production of food for export, and the privatisation of biodiversity and seeds, driven by imbalanced international trade regimes and corporate interests, is destroying the capacity of Latin American countries to realize these rights» (PPT, 2006, p. 4).

[142] «So-called labour "flexibility", the push for high returns for private investment, the need to produce cheap goods for global markets, together with the repression of Latin American trade unions, undermine core labour standards. Furthermore, TNCs use cheap suppliers of labour in order to keep costs low, thereby expanding an already huge informal sector» (PPT, 2006, p. 4).

[143] «EU TNCs and Latin American governments collaborate in invading and exploiting indigenous peoples' lands without their prior informed consent or participation, thereby violating their cultural identity and fundamental rights» (PPT, 2006, p. 4).

[144] «Negligence and abuse by EU TNCs of fragile ecosystems in hotspots of biodiversity and wildlife, as well as key bioregions for climate stabilization augmented by deforestation for economic reasons, contamination of water, infrastructure expansion, result into a substantial ecological debt and contradict EU public commitments for sustainable development. Irresponsible exploitation of natural resources by European TNCs such as oil and gas result in widespread ecological impacts both at a local and ultimately global level» (PPT, 2006, p. 4).

[145] «EU TNCs can proceed undisturbed thanks to the complicity and cooperation of local and national governments. All this can occur in spite of popular dissent since those same governments do not hesitate to repress dissent and often crackdown on environmental, social and labour movements» (PPT, 2006, p. 4).

protection and financial sustainability than in other countries such as those of Latin America. This leads to the crucial contradiction, and, more pertinently, the external responsibility of nation-states and pervasive international organizations, such as the European Union. Indeed, the latter maintain the secure access to universal fundamental rights internally while do not do the same externally being responsible for the under-fulfillment of the *fair mean* of fundamental rights of peoples not belonging to their political communities.

4.4 An example of 'internationalization' of institutional practices: the *cross-judicial fertilization*

This paragraph analyzes the *cross-judicial fertilization* as an international practice which can improve the legal adjudication of rights both at the national and global level. To this aim, this paragraph examines the role of the network of Constitutional Courts as a potential agent of global justice and the principles, which are the object of *cross-judicial fertilization*, according to which the adjudication of different rights is carried out. Indeed, the legal adjudication of fundamental rights is considered essential, even though not the only means, to the realization of fundamental rights. Furthermore, this paragraph examines different schemes in the application of the principle of proportionality by Constitutional Courts and the *cross-judicial fertilization* as an embryonal phenomenon which can increase common institutional practices of legal adjudication of fundamental rights at the global level. Indeed, even though Constitutional Courts take decisions according to their national Constitutions, the constitutional adjudication always implies judicial techniques aimed at finding a balance among constitutionally relevant goods, such as fundamental rights. Hence, the main arguments investigated in this paragraph are the different balance of competing rights through the application of the principle of proportionality, the assessment of the resulting overall fulfillment of rights and the analysis of the *cross-judicial fertilization* as an example of global practice related to the search of the most sophisticated overall implementation of universal fundamental rights.

4.4.a The phenomenon of the cross-judicial fertilization

Constitutional Courts are those institutions which must check the compliance of national laws and, in some cases, judges' verdicts, with the rules, principles and fundamental rights enucleated in the Constitutional Charts. For this reason, Constitutional Courts can be considered as the highest national authorities to ensure the overall respect and legal adjudication of fundamental rights and sometimes the creation of new fundamental rights[146]. This paragraph analyzes the phenomenon of legal communication and partial 'contamination' among different Constitutional Courts, the *cross-judicial fertilization*.

The *cross-judicial fertilization* refers to the circulation of argumentations and techniques among Supreme and Constitutional Courts concerning the interpretation of fundamental rights clauses by foreign precedents (Autorino, 2014) and the constitutional adjudication by Supreme and Constitutional Courts in deciding constitutional cases. Thus, this phenomenon describes that peculiar and relatively recent practice of Justices and judges which cite foreign case law, and it may lead to a, more or less aware, trans-judicial dialogue. Since the practice of citing foreign judicial decisions is, as just said, deeply recent, no universal agreement has been reached on its specific definition, and that is the reason why the practice of *cross-judicial fertilization* can also take the names of cross-jurisdictional exchange, transnational judicial dialogue, trans-judicial dialogue, judicial engagement, constitutional convergence, or trans-judicial deliberation (Lee, 2015, p. 127). This phenomenon can also represent a potential link between jurisdictions belonging to different legal traditions, such as Common Law and Civil law, and, to some extent, a reciprocal contamination which can help justices to enrich their methods for the legal adjudication of constitutional fundamental rights.

It is worth highlighting that this embryonal phenomenon of global spread of principles and methods of legal adjudication has been enabled by the contemporary and

[146] For example, in US, the Supreme Courts have gradually decriminalized the homosexuality thus partially enlarging the perimeter of LGBT rights at the federal level. For example, in the *Obergefell v Hodges* case (2015), the Supreme Court ruled that the fundamental right to marry is guaranteed to same sex couples by both the Due Process Clause and the Equal Protection Clause, thus giving an impulse to the wider recognition of LGBT rights. Obviously, the recognition of new fundamental rights by the Constitutional Courts while exercising judicial review deeply depends on the legal system of each specific nation-state, and, more specifically, on the extent of the power recognized to the Constitutional Court in recognizing new entitlements not clearly made explicit in the Constitution.

unprecedented means that make it possible to establish a systematic communication beyond the national borders. As one of the leading experts on *cross-judicial fertilization*, Anne-Marie Slaughter underlines that the recent transformation of international relations leads us to completely rethink how we view the political world (Slaughter, 2004) of which the phenomenon of the *cross-judicial fertilization* is just an example. According to Slaughter, this practice is spreading so fast and so widely that we can come to speak about a global community of Courts and an emerging global jurisprudence: «Constitutional courts are citing each other's precedents on issues ranging from free speech to privacy rights to the death penalty […]. They cite each other not as precedent, but as persuasive authority. […]. The result, at least in some areas such as the death penalty and privacy rights, is an emerging global jurisprudence» (Slaughter, 2003, p. 193). Indeed, beside established international and global organizations, financial regulators, NGOs, legislators, police investigators which exchange information and coordinate activities across national borders making up a complex global web of governance network (Slaughter, 2004), there are national and international judges and justices which communicate, compare different methods of legal adjudication and, accordingly, can also work closely together to enforce international agreements and to work on different techniques of realization of fundamental rights more effectively than ever before. Moreover, in the wake of Slaughter, the former Canadian constitutional court justice Claire L'Heureux-Dubé (1998) noted that unlike past legal borrowings across borders, judges are now engaged not in passive reception of foreign decisions, but in active and ongoing dialogue, while the scholar Ferrarese (2009) speaks about a judicial dialogue to describe the growing practices of judges and justice referring to judgments and methods of foreign Courts. On the contrary, there are also scholars (Law, Chang, 2011, p. 534) who criticize the overestimation of the practice of *cross-judicial fertilization* arguing that since the phenomenon lacks mutual learning and open communication there is not such a global constitutional dialogue to which Ferrarese refers. As a matter of fact, empirically speaking, statistics shows the actual number of mutual citations among different Constitutional Courts is considerably low.

However, even though the number of references to foreign constitutional decisions and Court's judgments is not high, few interesting cases of *cross-judicial fertilization* can be noted. For example, Section 39 of the South African Constitution approved in 1996 outlines an invitation to the Constitutional Court of South Africa to take into consideration foreign law in deciding cases of constitutional adjudication of the fundamental rights listed in the South African Constitution. Furthermore, in this section there is also a solicitation to refer to the foreign jurisprudence to find the right balance between different constitutional fundamental rights and the most adapt legal interpretation of the Constitutional principles, also in the light of the fact that South African Constitution is relatively young.

Even though a group of constitutional judges exchanging opinions which makes possible the phenomenon of *cross-judicial fertilization* may not be a group as established as others such as the G8 or other global or international institutions it is still relevant for the global circulation of practices of legal adjudication of fundamental rights. Moreover, considerable factors suggest that this new-born phenomenon is inevitably destined to grow fast in the close future and to become an important part of the new global order (Antje, Liste, 2014, p. 267).

4.4.b The principles of legal adjudication of fundamental rights

In the pursuit of the best way to guarantee the constitutional adjudication of fundamental rights, applying legal methods and constitutional principles, the Constitutional Courts are always obliged to find the best balance between different, and not rarely, competing rights. As the former President of the Italian Constitutional Court, Marta Cartabia, declared during an interview in 2020 «The limit is always inherent in the concept of law and right. […]. The rights of the person are never absolute because the absolute right becomes a tyrant. […] a right must always be affirmed taking into account the rights of other people and also the general interests of the whole community» (Cartabia, 2020). Cartabia reaffirms that the absolute conception of fundamental rights is a chimera, an argument which has been widely investigated in the second and third chapters.

Hence, regardless of the consideration of universal fundamental rights as moral rights or legal rights, constitutional rights ought to be always implemented in a balanced way. Accordingly, the legal adjudication of fundamental rights is always a question of balancing different rights and the Constitutional Courts are the authorities that supervise this work which is supposed to be mainly carried out by the legislator. Indeed, Cartabia defines the Constitutionalism as «the art of establishing limits» and underlines the need to balance different claims which are all relevant but potentially in contrast: «this crucial task belongs to the legislator, the Constitutional Court must check that this balancing is proportionate» (Cartabia, 2020). In this regard, Cartabia draws attention to the always actual examples of the right to work against the right to healthy environment and the right to expression against the respect of the dignity of each human being (and, before, the morals, see also paragraph *2.1*).

The balancing among different fundamental rights is the essence of the work of the Constitutional Courts and this is shared in different ways by all the constitutions of the contemporary liberal democracies. Hence, even though national Constitutions enshrine different fundamental rights and the prerogatives of the Constitutional Courts may differ, the need to search for a balance among fundamental rights is a cross-cutting need and, accordingly, the main reason which leads them to communicate and, thus, to share practices and methods.

4.4.c The spread of the interpretation of the principle of proportionality through the *cross-judicial fertilization*

As underlined in the previous sub-paragraphs, Constitutional and Supreme Courts play a crucial role in the enjoyment of the universal fundamental rights since they are entitled to ensure the best legal adjudication possible. Hence, the Constitutional and Supreme Courts directly affect the enjoyment of fundamental rights by people and the other actors operating in their national territory and, to some extent beyond the national borders. Indeed, Constitutional and Supreme Courts play a crucial role in the distribution of relevant constitutional goods, which can be considered as the objects of

fundamental rights, even limiting the exercise of power which is sometimes considered as the main currency of justice (Forst, 2012, p. 258).

The compelling description of the role of the Constitutional and Supreme Courts sketched out by the former Italian Justice Cartabia in the previous sub-paragraph shows how proportionality is at the core of the reasoning and decision-making process of the Courts. Indeed, regardless of the specific content of the Constitution, all Constitutional and Supreme Courts aim at checking that the acts of the legislators respect the right proportion among different instances interpreting and actualizing the principles and the fundamental rights recognized in the national Constitutions (Barak, 2012). The circulation among these Courts of mechanisms and methods to carry out this task enforcing a fair distribution of the most relevant constitutional goods and imposing limitations in the exercise of constitutive power is one of the practices which make possible, or at least thinkable, the reciprocal contamination of the constitutional jurisprudences. Therefore, the mutual exchange of opinions and practices among justices and judges beyond the national borders to ensure the best overall enjoyment of universal fundamental rights at the national level can also represent the basis to foster the development of forms of transnational adjudication of fundamental rights and, with all due respect to statist scholars, the creation of institutions to carry out this role (the Permanent Peoples' tribunal can be seen as an informal example of them).

Accordingly, for the purpose of this dissertation, the phenomenon of *cross-judicial fertilization* ought to be considered as important in the spread of a cross-cutting understanding of universal fundamental rights insofar as it is a demonstration of the fact that even high institutions belonging to different legal systems and traditions can find common techniques for a greater enforcement of universal fundamental rights.

Conclusion

As we have seen in the first part of this dissertation, the long-debated concept of universal rights is rooted in western cultures. This fact *per se* does not make universal fundamental rights impossible to be widely shareable but can lead to an issue of universal shareability when they are understood as bent to a particular conception of fundamental rights underpinned by exclusive cultural values[147]. However, besides the Kantian conceptualization of an *ius cosmopoliticum* – which establishes a universal right to hospitality and an equal right to a place on Earth, which belongs to the human being as a citizen of the world – other noteworthy theoretical attempts and political, legal and civic efforts have been made to strengthen the universalization of fundamental rights in the contemporary era. Gadamer's fusion of different horizons, Ferrajoli's non-cognitivistic theory and deductive construction of fundamental rights, Rorty's soft universalism based on the relative openness of cultures (Calder, 2006), Taylor's unforced consensus on fundamental rights, Forst's universal right to reciprocal and general justification and moral and political constructivism of fundamental rights, along with the proclamation of the UDHR and its world-wide use to claim for fundamental rights, Permanent Peoples' Tribunal's *quasi*-legal effort to widen the adjudication of fundamental rights and the *cross-judicial fertilization* among justices and judges, are just a few different examples of this trend of universalization. As a matter of fact, universal fundamental rights, often claimed in the most spread language of human rights, have also shown to be able to be attractive for people belonging to non-western cultures who invoke them to express their claim to justice (Moyn, 2012). Thus, universal fundamental rights have gradually obtained broader consensus, *omnium gentium* in Bobbio's reasoning, as a common language of global norms of coexistence and as a discursive legal practice. Indeed, not only has the majority of the nation-states

[147] Even Kantian account of universal fundamental rights is not free of criticism of excluding some categories from the universal entitlement of fundamental rights, such as women, and, in a first time, non-western people. However, rather than dropping his fundamental contribution to the theory of universal rights, we should just understand that the process of the 'greater' universalization of fundamental rights is ongoing and transforming, and not even linear, as the paragraph *2.2* on the current empirical unequal enjoyment of different fundamental rights has shown. Accordingly, this research has tried to draw new viable directions to pursue the aim of the effective widening of the category of rights-holders and the potential shareability of universal fundamental rights.

adopted legal systems based on the rule of law, the protection of fundamental rights and the enforcement of their corresponding duties but different peoples and persons throughout the world have increasingly used the concept of universal fundamental rights to denounce the burdensome deprivation of fundamental goods of justice which can also be understood as the basic objects of rights, objects which are universally recognized as belonging to each human being. Indeed, «rights talk does fulfill an essential practical function in politics, when movements need to attract emphasis and support on the issues they claim as morally or materially necessary» (Barbisan, 2018, p. 35). These claims do not only call for temporary external remedial relief of occasional deprivation of basic objects of fundamental rights but rather strive for the correction of domestic and global systematic under-fulfillment of universal fundamental rights, whose core object has shown to be able to be accepted by diverging conceptions of a worthwhile life and are essential to express justifiable claims to justice. As Charles Taylor puts it,

> «different groups, countries, religious communities, civilizations, while holding incompatible fundamental views on theology, metaphysics, human nature, etc., would come to an agreement on certain norms that ought to govern human behaviour. Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms, while disagreeing on why they were the right norms. And we would be content to live in this consensus, undisturbed by the differences of profound underlying belief» (Taylor,1999, p. 1).

The scope of this common vision[148] seems to widen in the current era, insofar as more peoples and persons call for a greater fulfillment of their universal fundamental rights not only for themselves but – as the avant-garde political agents have shown to do with global cross-cutting challenges undermining the secure access to the basic object of fundamental rights – for other peoples and persons suffering from the systematic violation of their universal fundamental rights.

Already more than two centuries ago, Immanuel Kant underlined that «the intercourse, more or less close, which has been everywhere steadily increasing between

[148] For the analysis of the conditions of an unforced consensus on fundamental rights, founded on Rawlsian concept of *overlapping consensus*, see Taylor, 2006; Rawls, 1993.

the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it» (Kant, 1795/1903, p. 142). At that time, and increasingly more as the time passes, the rising global interconnection and interdependence have created a kind of universal common feeling according to which a violation of a universal fundamental right in a part of the world was to some extent perceived by all the inhabitants of the globe. However, as we have partially seen in this dissertation, there are many issues regarding how to globally ensure peoples and persons secure access to the *fair mean* of the basic objects of universal fundamental rights.

For the latter reason, the question of global inequalities, and more specifically the problem of the application of principles of liberal socio-economic justice at the global level, and the corresponding fair global distribution of rights and duties among peoples and persons, is catching more and more attention triggering heated debates not only in the academia but also in politics and economics, even though with different connotations. Even one of the most influential statist scholars, Thomas Nagel, admits that the burdensome inequality occurring in the globalized world economy and global democracy is a tragedy from a more broadly humanitarian point of view (Nagel, 2005, p. 118) without, however, recognizing – as the cosmopolitan scholar Moellendorf (2016) does – the application of egalitarian principles of liberal socio-economic justice regulating the distribution of the goods and powers produced by the global economy in order to fight against these global burdensome inequalities. In addition, Nagel also admits that peoples, *qua* sovereignties, are constrained internally by the moral equality of persons while universal human rights are the source of the constraints on the external exercise of sovereign power (Nagel, 2005, pp. 135, 136). However, only ensuring persons secure access to the *fair mean* of these universal human rights and enforcing justifiable duties to public and private agents, including states and transnational corporations, as actors directly responsible for the systematic under-fulfillment of universal fundamental rights, it is possible to take the moral equality of persons and universal human rights seriously along with making global justice gradually progress.

While the *pars destruens* of this dissertation, that is chapter II, conducts a rigorous investigation of the limitations of the main theories of global justice, the *pars construens*, mainly described in chapter III and part of chapter IV, seeks to overcome these limitations sketching a comprehensive alternative which can represent a sound theory to be preferred to those criticized, in addition to a new groundbreaking perspective on universal fundamental rights and global justice whose further investigation and application may ensure an greater overall fulfillment of fundamental rights and a gradual progress of liberal socio-economic justice at different levels. Indeed, the originality of this research lies on the overcoming of the main theories of global justice through the conceptualization of a *fair mean* of universal fundamental rights which recognizes equal universal power to both categories of, on the one hand, civil and political rights and, on the other hand, socio-economic rights and through the elaboration of a *balance approach* toward liberal socio-economic rights which links the moral relevance of a claim to basic goods of justice, understood as the objects of the just mentioned categories of fundamental rights, with the expanding extent of the ground of justice in which they must be framed. This *balanced approach* goes even beyond Forst's understanding of global justice envisioning more essential goods of justice than the *justificatory power* – which is, according to Forst, the highest good of justice but also the most difficult to be distributed, above all at the global level – the solution for the satisfaction of morally demanding, since reciprocally and generally justifiable, claims to global justice.

By way of illustration, this dissertation analyzes the justifiably demanding claims of those people that are shouldering the most pervasive deprivation of the basic object of fundamental rights due to the human driven climate change mainly caused by affluent countries and people(s), that should justifiably accomplish the corresponding duties to relieve the former people from the grave under-fulfillment of their rights. These demanding claims are deeply justifiable, insofar as affluent peoples are directly responsible for the desertification which makes the global poor lack secure access to basic objects of fundamental rights. However, at the same time, these claims lack a ground of justice in which they can be framed, and which, accordingly, should be set

up. Besides this case, in order to practically test the main findings of this innovative approach this dissertation has also taken into account other empirical cases in which the breach of different fundamental rights occurred trying to carry out a brief assessment of the extent to which each right must be fulfilled. Three other relevant cases will be recalled here in order to better probe the conclusions of this research.

The first case regards the impact of the fulfillment of a fundamental but demanding right, that is the right to education, in relation to other fundamental rights. This case demonstrates that a specific right can function as a catalyst for the wider protection of numerous other fundamental rights, such as the right to participation and self-realization, to name a few. However, it also necessarily leads to the partial erosion of the perimeter of other fundamental rights, in this case the right to private property, highlighting the fact that the absolute fulfillment of a right is a chimera.

The second case, perhaps the most actual one, refers to the delicate process of balancing the fulfillment of both fundamental right to life vis-à-vis basic liberty rights during the covid-19 pandemic. This case points out that the contrast between the fulfillment of different rights is sometimes deep and unavoidable[149], as well as widely underassessed. Accordingly, the secure access to the basic object of a fundamental right, such as life, can be deeply in contrast with the enjoyment of other fundamental rights, and the only morally desirable and practically viable solution is finding a *fair mean* among these equally fundamental rights.

The third case corresponds to the grave and systematic violations of several fundamental rights of peoples from South America carried out by European TNCs with the compliance of local governments, international institutions and foreign states. This interesting case shows how the power of private agents is growing in the global arena and how public agents, in this case European states and the EU, ensure a great fulfillment of fundamental rights internally but often lack discharging their duties of respect of fundamental rights externally. In addition, this case also highlights the crucial role of civic agents, such as the Permanent Peoples' Tribunal, to denounce these

[149] The fact that during the period of the covid-19 pandemic «people turn against each other's rights based on their own preferences» (Selley, 2021) is just a social piece of evidence of this assumption.

violations and make rights-holders express their justifiable claim to the basic objects of fundamental rights.

Delving into other relevant contributions of this research, the original approach sketched out in this dissertation, which recalls the ancient roots of the concept of justice, that is the so-called *balanced approach* toward global justice and universal fundamental rights and duties, can be useful for a better understanding of the relations among different categories of rights at the global level and can help clarify the extent to which the global context is becoming a relevant context of justice. This novel account of the scope of global justice is founded on the *fair mean* previously touched upon consisting in the core objects of universal fundamental rights and duties and which takes into consideration the existence of concrete political and social relations of cooperation as well as conflict for assessing the meaningful applicability of demands of justice and the feasibility of the claim to this *fair mean*. This account of global justice may represent a potential solution for the tension between the moral and political conceptions of justice framing the justifiable request for justice at the proper and reasonable level and being able to adapt itself to the transformation and development of the different contexts of justice. With this regard, this *balanced approach* defends an understanding of the application of the principles of liberal socio-economic justice according to the level of the moral arbitrariness affecting the enjoyment of the *fair mean* of the objects of universal fundamental rights and the extent of the context of justice shaped by relations of cooperation and conflict. Accordingly, the *measure* of the application of comparative principles of egalitarian justice is shaped by the level of moral arbitrariness of the lack of access to the *fair mean* of the object of fundamental rights and the extent of the relations of cooperation as well as conflict in which the claim to justice must me framed.

From the latter reasoning it follows that the *fair mean* of the basic objects of different categories of universal fundamental rights can be envisioned as those rights whose basic object is considered as essential for the justification of the norms which are coercively enforced upon peoples and persons. The same argument is valid for the justification of the current global institutions whose scope is enlarging and must be

expanded according to the thickening of the global interaction which shape the contexts of justice. Not crossing this path would mean to give up on the increase of what Miller's call the tragic fact of the 'justice gap' (Miller, 2013, p. 179) which, slightly revised, can be defined as the mismatch between what persons can justifiably claim as a matter of justice, i.e. a matter of secure access to the *fair mean* of the basic object of their universal fundamental rights, and the enforcement of the corresponding obligations upon agents which deeply affect the distribution of the basic objects of universal fundamental rights, thus being responsible for the grave under-fulfillment of universal fundamental rights at the global level. Accordingly, we may assist the gradual erosion of the perimeter of the fulfillment of universal fundamental rights to the extent to which the fast expansion of the global relations will not be accompanied by an equal strengthening of the norms of egalitarian justice aimed at redressing the growing global arbitrary inequalities, that is the unequal distribution of the objects of fundamental rights, flourishing in the global arena.

The conceptualization of the *fair mean* can also be understood as a solid threshold of the basic object of fundamental rights[150] whose entitlement ought to be recognized to each human being and which is a *measure* of the moral relevance of the global claim to justice. Ensuring the secure access to a *fair mean* of universal fundamental rights can also be partially understood in terms of a solid sufficiency threshold of universal fundamental rights (Solis, 2013, p. 4). However, as seen in paragraph *2.3.a* and *3.4*, it is empirically arduous to implement a sufficientarian threshold without imposing comparative norms of liberal socio-economic justice (Ypi, 2012, pp. 115-120) and thus the higher the lack of secure access to this sufficientarian threshold, the more justifiable the claim to global egalitarian norms of justice in order to enjoy the above-mentioned *fair mean*.

[150] Our understanding of universal fundamental rights gets close to the conception of basic rights sketched out by Henry Shue, according to which, «a moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats» (Shue, 1980, p. 13). While it is not necessary that every moral right have all three features, every basic right must (Payne, 2008). «enjoyment of them is essential to the enjoyment of all other rights», thus for a basic right to exist «any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating» (Shue, 1980, p. 19). While non-basic rights may be sacrificed for basic rights, the latter may not be sacrificed for non-basic rights, for that would be self-defeating. If basic rights are denied, then no other rights can be enjoyed (Payne, 2008). Thus, Shue claims that «basic rights are everyone's minimum reasonable demands upon the rest of humanity» (Shue, 1980, p. 19).

A peculiar attention is also reserved to the justification of the duties which the *fair mean* of universal fundamental rights entails on other both private and public agents, also in order to counter the founded criticism according to which right-based approach too often disregards the obligations which they imply and the agents entitled to discharge them (O'neill, 2016, p. 220). The analysis carried out in this dissertation shows that the higher the under-fulfillment of a universal fundamental right, the more negligible the entitlement of the corresponding duty, regardless of the fact that it is a positive or negative duty, to ensure secure access to its basic object. Thus, the secure access to the *fair mean* of universal fundamental rights can be ensured through the imposition of minimal duties, and accordingly, the graver the under-fulfillment of a fundamental right is, the higher the justifiability of their corresponding duties ought to be. In short, the extent of the (reciprocal and general) justifiability of the duties must be measured according to the moral relevance of the corresponding claims which call for its imposition.

Moreover, the *fair mean* of universal fundamental rights and duties and the *balanced approach* toward global justice can also inspire the effort of the agents of global justice, being them private or public ones, in a straightforward way. Indeed, their role in fostering global justice and the protection of universal fundamental rights increases according to the growth of the global relations among individual and the growth of the moral relevance of specific claim for justice. This task is at the center of the effort of the Permanent Peoples' Tribunal which focuses on the condemnation of grave violations of fundamental rights. Moreover, the *balanced approach* has shown to be apt also for the analysis of the actual and potential role of both well-established and relatively new agents affecting the global distribution of the main goods of justice, the implementation of fundamental rights and the enforcement of their corresponding duties. Accordingly, the avant-garde cosmopolitan agency demonstrates that national states are not at odds with global claims of justice but rather can represent a valid environment in which they can be framed. In the same vein, the experience of the Permanent Peoples' Tribunal is an interesting practical example of how people from different backgrounds and cultures can agree on the condemnation of severe and

systematic violations of peoples' fundamental rights. Furthermore, the phenomenon of the *cross-judicial fertilization* proves that, even in the judicial spheres, it is possible to envision common reasoning on the best mechanisms for the legal adjudication of fundamental rights among institutions which belong to different legal traditions and political cultures.

To sum up, the systematization of the criticisms to the main theories of global justice can contribute to the debate on global justice and the universal fundamental rights and duties fostering the apologists of these theories to improve their weakest parts. Meanwhile the innovative proposals developed in this research – that is the *fair mean* of different universal fundamental rights and duties, the *balanced approach* toward global justice, the analysis of the extent to which different contexts of relations ground claims to justice, according to their moral urgency, and the Permanent Peoples' Tribunal and Constitutional Courts as agents of global justice – can unfold new directions to be explored and become the object of further inquiries for not only moral and political philosophers but also for experts of international relations and world politics.

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