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“Universal Duty and Global Justice” (provisional version)

You who live secure
 In your warm houses,
 Who return at evening to find
 Hot food and friendly faces.
 Consider if this is a man
 Who labors in the mud
 Who knows no peace
 Who fights for a crust of bread
 Who dies for a yes or a no.

(exergo from *If This Is a Man*, by Primo Levi)

1. The world we live in is characterized by a huge disparity in wealth and power. By most accounts, the progressive liberalization of international trade and the economic globalization contribute to an increase over time of the distance between the rich and the poor of the globe. International statistics would seem to confirm this all but disquieting datum: we know that nearly 20% of the world population lives with less than a dollar a day, and 45% with less than two. In the meantime, as the mounting globalization processes are not only economic but also cultural and political, they are gradually giving rise to a wider worldwide community, reducing the influence of the states in the existence of each one of us. It is also unquestionable that even the various states feature huge income and power difference. Just as in the case of individuals, there are rich and poor states, weak and strong states. Even in consequence of the increased participation in the global community, this engenders moral and political problems that defy any easy solution. Quite a few of us, granting that there is an excessive inequality at a worldwide level among the peoples and among the states, would also uphold that such an inequality is unjust¹. To say that an injustice

¹ The excessive inequality among individuals within states (with the dwindling of the middle class) and among states may turn into a problem for economic efficiency and democracy as such. The latest book by Joseph Stiglitz, *Making Globalization Work*, Norton, 2006, handles this type of problems quite convincingly, starting from the presupposition that the mere recourse to the market is of no avail to solve them.

of this type does exist, is tantamount to saying that - at a global level - the most important economic goods fail to be distributed among individuals and states in a morally acceptable manner. This seems even more outrageous when extreme poverty leads many human beings to their death or makes it impossible for them to lead a dignified life. Premises of this type give rise to a widespread demand for greater justice at the global level.²

In any event, after this initial common course, the roads branch out in separate directions. According to a few, inequality should be handled, and hopefully reduced, from the point of view of the relations among individuals. In this view, which may be defined *cosmopolitanism*, injustice relates to the relations among the individual persons who inhabit the globe³. As a consequence of this thesis, we are required to give our personal support to the fight against poverty and inequality, and also to step in without delay in order to create new institutions, or strengthen existing ones, that may succeed in redressing this injustice and causing the living conditions of all individual persons of the world to be more similar. Instead, according to others, to reason at a global level in terms of relations among individuals is misleading and dangerous. In this second view, which may be defined *statism*⁴, there are historically different peoples and states whose presence may not be neglected if we are really to talk about the world where we actually live.⁵ To counter what they believe to be a bad cosmopolitan utopia,

² In this article, by global justice I only mean what is usually called “distributive justice”, although acknowledging that there are other cases of global justice, for instance commutative justice - that depends on the fairness of international economic trade - or retributive justice - that may result from an attempt to redress previous injustices, as in the case of colonialism. As regards this subject, see Philippe Van Parijs, “Global Distributive Justice”, forthcoming in *Blackwell Companion to Political Philosophy*, and Charles Jones, *Global Justice (Defending Cosmopolitanism)*, Oxford University Press, 1999.

³ My definition of cosmopolitanism is tailored for the sake of the argument. Of course, I take for granted that there can be different forms of cosmopolitanism: see Catherine Lu, “The One and Many Faces of Cosmopolitanism”, *Journal of Political Philosophy*, 8/2, 2000, p.35-59. Here, I am here interested in cosmopolitanism about justice, see; Charles Beitz, “International Liberalism and Distributive Justice: A Survey of Recent Thought”, *World Politics*, 51, 1999, p. 269-96 and Kok Chor Tan, *Justice without Borders*, Cambridge University Press 2004. Even if there are different forms of cosmopolitanism, I think that it is plausible to assume that all forms of liberal cosmopolitanism share the individualistic presupposition according to which individuals are “the ultimate unit of moral concern” as said by Thomas Pogge, *World Poverty and Human Rights*, Polity Press 2002, p.169. See also, Charles Beitz, “Cosmopolitanism and Global Justice”, *The Journal of Ethics*, 2005, 9, p. 17.

⁴ As for cosmopolitanism also this definition of statism is idiosyncratic: it must be clearly understood that here “statism” is not the same as the classical statism of the advocates of the so-called “political realism”, such as Morgenthau, Waltz and others (see Hans Morgenthau, *Politics Among Nations*, McGraw-Hill, New York, 1985; Kenneth Waltz, *The Theory of International Politics*, McGraw-Hill, Boston, 1979).

⁵ It goes without saying that the distinction between cosmopolitanism and statism is not only interesting from the point of view of political philosophy and political science. Indeed, it has a significant tradition within the context of international law and the interpretation of its main sources. If, for instance, we take the UN Charter, we may see that it has a general statist approach, starting from Article 2 that forcedly defends the territorial integrity of states from the interference of others. On the other hand, the entire

the statist propose a minimalist view of global justice. A view where that fairer world we are reasonably entitled to seek is not a world of persons who are more directly equal, but indeed a world of states and peoples where each one behaves in a reasonably fair manner in order to attain a more egalitarian society⁶.

The advocates of cosmopolitanism usually believe in the potentials of a global distributive justice theory and in the full attainment of human rights. In other words, they bet on the potentials of “strong global justice”⁷. Instead, the advocates of statism have no trust in global justice, although often accepting the soundness of some human rights and the existence of humanitarian reasons to support the least advantaged in the globe. As a whole, this article is devoted to a critical analysis of the arguments of both the former and the latter. As we are going to see, I uphold the thesis that there is the possibility of a third course - more realistic than the thesis endorsed by the cosmopolitans and more utopian than the thesis espoused by the statist.

However, this thesis - that, as such, lacks in my opinion any special originality – rests on a further and, usually, more neglected consideration. When we deal with these themes, we mix up the two most emblematic types of arguments furthering greater social justice in the world. On the one hand, there are global distributive justice theories that, speaking in a rough and ready fashion, extend the paradigms of the domestic social justice to the global case. These theories focus on relative inequality, according to which the worst-offs of the planet are affected by an impervious (the exit from it is difficult), pervasive and avoidable inequality that is comparable with domestic inequality⁸. On the other hand, there are the approaches based on

discipline on the so-called humanitarian law and human rights is largely inspired by cosmopolitanism. It is to be hoped that the theoretical debate might also influence the interpretation of the texts of international law, even though – I am saying it again – in this article I am only going to deal with distributive justice.

⁶ This conception is called by Beitz, “Cosmopolitanism and Global Justice” cit., “the morality of states”, whose main theorem is that within the international realm the morality of the individuals is transformed in the morality of the states.

The distinction I draw between cosmopolitanism and statism could be thought of as originated by a different social ontology, like Phillip Pettit says –speaking of Rawls- in his “Rawls’s Peoples”, in Rex Martin and David A. Reidy (eds), *Rawls’ Law of Peoples, A Realistic Utopia?*, Backwell, Oxford 2006 pp 38-56.

⁷ Within the cosmopolitan point of view, there can be stronger and weaker forms of cosmopolitanism (see David Miller, *Citizenship and National Identity*, Polity Press, Cambridge 2000, p.174).

⁸ I use “relative inequality” to differentiate it from the expression “radical inequality” by Thomas Nagel, “Poverty and Food: Why Charity is not Enough”, in Peter Brown and Henry Shue (eds.) *Food Policy: the Responsibility of the United States in the Life and Death Choices*, The Free Press, New York 1977. The reformulation of inequality as impervious, pervasive and avoidable is Thomas Pogge’s, “Real World Justice”, *Journal of Ethics*, 2005, 9, p. 37.

the soundness and effectiveness of socio-economic human rights. Usually these approaches are “sufficientist”, in the sense that they try to take care of absolute poverty rather than that of relative inequality, and for this very reason do not compare global inequality with domestic inequality.⁹ The failure to differentiate these two courses gives rise to considerable confusion and, in my opinion, engenders substantial theoretical difficulties with respect to the issue. It is also relevant to take in due consideration the fact that the theory and the practice of human rights have not only an ethical-political meaning but also an institutional and legal one.

We could uphold that, as a rule, cosmopolitans subscribe to the global distributive justice model, reducing the socio-economic rights to a corollary of their theorems on justice. Statists, instead, always as a rule, fully reject the idea of global distributive justice and, sometimes, even the possibility that the socio-economic human rights might have considerable soundness and effectiveness. In short, this third option of mine recognizes that, in this historical time, a comprehensive ideal of global distributive justice - founded on the domestic distributive justice model - is not yet theoretically justifiable, although it entails a lower degree of skepticism than the statist thesis about its progressive establishment. However, my thesis dwells above all on the fact that a broad and convinced interpretation of socio-economic rights may do much to lessen social injustice in today’s globalized world, being sufficientist in the way above defined, starting from a reduction of extreme poverty and, over time, enabling peoples to decide their fate. It may be affirmed that this thesis, moving our attention from relative inequality to radical deprivations, is based on a more modest ideal than global equality, an ideal inspired to “weak global distributive justice”.

In my opinion, this intermediate option meets another requirement of some significance, at least for a political theorist with a liberal background. Cosmopolitans have a propensity for a radical moralization of international politics, whose institutions are considered at the service of their favorite moral ideals. Statists, on the contrary, tend to cut to a minimum the space of morals in international politics. I believe that, for a liberal, both positions should prove scarcely convincing. This is the reason why I have called this third position of mine – based on a weak ideal of global justice and being neither moralistic nor skeptical- ‘liberal conception’.

⁹ The word “sufficientist” has been suggested to me by Kok Chor Tan. The idea to distinguish domestic and global justice according to their comparative nature ((principles of global justice are non comparative, whereas principles of domestic justice are comparative) is David Miller’s, in his “The Limits of Cosmopolitan Justice”, in David R. Mapel and Terry Nardin (eds.), *International Society*, Princeton University Press 1998, p.171.

This article purposes to present the liberal conception dwelling on the distinction, to be dealt with below, between an institutional argument and an anti-monistic argument, being this distinction taken from the statist view. The latter will be presented in Section 2 in one of its latest versions, formulated by Thomas Nagel - following John Rawls' track - with the name of 'political conception'.¹⁰ I then try to separate, in the second part of Section 2, two meanings of anti-monism, labeled here as anti-monism 1 and anti-monism 2, where anti-monism 1 is strictly connected with the institutional argument and anti-monism 2 is relatively independent from it. Nagel-Rawls political conception is subsequently examined, starting from a plausible cosmopolitan criticism. Here, I will uphold that often this criticism fails to keep adequately into account the need to draw a suitable distinction between the institutional argument and the twofold anti-monistic argument I mentioned before. Beginning from a critique of the institutional argument, in Section 3 I will sustain the possibility of making progress in the direction of global justice starting from the political conception, even though an idea of global distributive justice may not yet be consistently defended. Then, beginning from a critique of anti-monism 2, in Section 4 I will uphold the main thesis within my liberal conception: there are "basic rights", that is to say human rights that are fundamental for survival and subsistence, which can create obligations and do not violate Rawls' anti-monism. These rights – based, as we are going to see, on what I call a "universal duty of justice" – represent a sort of moral threshold for the human community. The article closes with Section 5, where the liberal conception is developed within the fabric of the socio-economic human rights to provide it with an institutional background. Besides, this final Section provides a further qualification of the ambit and limits of the liberal conception with respect to some alternatives and objections.

In this paper, I would like to pursue two different but joint targets. On the one side, I want to raise some problems within the universe defined by a Rawlsian model of global distributive justice. On the other side, my claim pretends to illuminate some more general features of the question of global justice. As previously pointed out, I intend to present in this article a third type of thesis -defined as "liberal conception"- that is likely to steer clear of the most evident problems incurred by cosmopolitanism and statism. The liberal conception aims at differentiating a general theory of global distributive justice from a defense of fundamental human rights to survival and subsistence. The liberal conception maintains that a strong view of

¹⁰ Thomas Nagel, "The Problem of Global Justice", *Philosophy and Public Affairs*, 33, 2 (2005), 113-147.

global justice is not defensible in a theoretically undisputable manner. In this case, statist are at least partly right, even though I believe that further steps may be taken in this direction with respect to what Nagel calls a political conception. Instead, the fundamental rights to survival and subsistence of all human beings may be theoretically defended in a convincing manner within the context of a weak view of distributive justice. It goes without saying that the full existence of these rights gives rise to equivalent duties that, having basic human rights not only a moral but also an institutional and a legal nature. In this respect, the liberal conception differs to a considerable extent from a mere humanitarian appeal.

2. The statist position, as here considered, is presented by Thomas Nagel who, in an article published in *Philosophy & Public Affairs*, asserts the problematic nature of “global justice”¹¹. In this article, by “global justice” Nagel means distributive global justice, leaving aside other problems of justice that are not related to the great economic inequality that nowadays characterizes the state of the globe. According to Nagel, this type of justice is not possible outside what is traditionally meant by the state. This is the reason why it is not wrong to view him as having a “strong statist” position, as J. Cohen and Sabel do.¹² Nagel, to be clear, does not present in this article a renewed version of political realism¹³. On the contrary, for there is a normative level of international relations, and the humanitarian-type duties of solidarity among persons and groups that are not citizens of the same state may not be ruled out. However, in his opinion, these duties may not depend on a distributive justice theory extended from the domestic to the global case. For instance, it would be misleading to try to apply to the world something like Rawls’ difference principle.¹⁴ At the most, global commitments will have a humanitarian character and will look more like

¹¹ *ibidem*

¹² See, Joshua Cohen and Charles Sabel, in *Philosophy & Public Affairs*, “Extra Rempublicam Nulla Justitia?” March 2006 - Vol. 34 Issue 2 pp 147-75

¹³ see Note 4

¹⁴ The Difference Principle is a Rawlsian principle according to which every society is required to organize its institutions in such a way as to improve the condition of those among its citizens who are worst off. While the thesis upholds that every society is required to do so internally, there would be no such obligation at a global level. As regards this subject, see Samuel Freeman, “Distributive Justice and *The Law of Peoples*”, in Rex Martin and David A. Meady (eds.), *Rawls’s Law of Peoples: A Realistic Utopia?*, Blackwell, 2006, pp 243-60, and “The Law of Peoples, Social Cooperation, Human Rights and Distributive Justice”, *Social Philosophy & Policy*, 23/1, 2006, p.29.

alms and charity than justice.¹⁵

Nagel's mentors are Hobbes and Rawls. In fact, according to Nagel, Hobbes upholds that there is no justice without full sovereignty, and the latter would be missing in the case of global justice. On the other hand, always according to Nagel, Rawls' ideal of global justice is nothing but the ideal of a world populated as much as possible by states that are roughly just. In both cases, for Hobbes just as for Rawls, the genuinely political nature of distributive justice would prevent its extensibility outside and beyond the "domestic community". Calling upon Nagel to speak on the matter:

"If Hobbes is right, the idea of global justice without to world government is a chimera. If Rawls is right, perhaps there can be something that might be called justice or injustice in the relations between states, but it bears only on a distant relation to the evaluation of societies themselves as just or unjust: for the most part, the ideal of a just world for Rawls would be the ideal of internally just states" (article cited above, p. 116).

For Hobbes, this conclusion depends – as we are well aware of – on the rational and self-interested motivations of the individuals. Hobbesian individuals are not willing to assign part of their benefits to the others on their own accord. Without the coercive power of the state, the motivations of the individuals could not be forced to fall in line with the principles of a theory of global justice. However, through the article, Nagel proves much less Hobbesian than would be expected based on his initial statements, given that he ends up accepting the idea that there is a certain normativity within the context of international relations. For Nagel, the global civil society is not a desert where no moral motive takes root.

Just on account of this reason, the most interesting aspect of his thesis is where he affirms the impossibility of a theory of global distributive justice starting from Rawls' paradigm¹⁶. Hence, his thesis is of direct interest to those who follow the developments of this paradigm, since Nagel firmly objects to those cosmopolitan Rawlsians (such as Beitz, Pogge, Richards, and Kok Chor-Tan) that indeed pretend to extend the Rawlsian theory of

¹⁵ If, in this article, Nagel is clear about his propensity for statism, it cannot be said as much about his way of viewing humanitarian-type duties. See this article, p. 118.

¹⁶ In fact, Rawls neatly separates what he calls "three levels of justice", namely "local justice", "domestic justice" and "global justice". With the consequence that principles suitable for domestic justice are not exportable in the other two domains. See Rawls' *Justice as Fairness: A Restatement*, Harvard University Press 2001 pp 11-12.

justice to international relations.¹⁷ The proposed reading of the Rawlsian theory – that subsequently proves impossible as a theory of global justice – is called by Nagel the “political conception”¹⁸, and, indeed, its first and foremost characteristic resides in the thesis according to which the distributive justice duties may not be applied on a global scale. The nature of this impossibility is plainly political. From Rawls’ point of view, persuasively interpreted by Nagel, the states are not merely institutional instruments whose supposed purpose is to attain goals other than those that are properly political, even if we begin from the most noble among these goals, such as greater fairness in the distribution of the world resources. The cooperative constraints linked to such institutions as the state create among fellow citizens, but only among them, “associative” obligations¹⁹. Indeed, as such, these obligations may not be extended to those who do not belong to the association and, therefore, beyond the state there is no justice. This thesis has an overbearing evidence of its own, if we read the nature of the political obligation in a simplified perspective of the social contract view. Obviously, a social contract, just like any other contract, only binds its signatories - in the case at hand its ideal signatories - which are, *rebus sic stantibus*, the members of the domestic community. It is only among them that those constraints that warrant possible obligations of justice would apply.

However, Rawls’ political conception - as reread by Nagel - offers two different arguments for its professed impossibility to extend the obligations of justice beyond the state. I consider it important to draw a neat distinction between these two arguments on which the impossibility theorem of the political conception is based. I will call the first argument, which is somehow the most striking but also the most trivial one, the institutional argument, while I will call the second argument, which seems instead somehow less clear but perhaps more profound, the anti-monistic argument. In Nagel’s view, these two arguments add up and strengthen the aforementioned impossibility theorem.²⁰

¹⁷ As regards this issue, see also Samuel Freeman, *op. cit.*

¹⁸ Rawls forced out the term “political conception” for the first time in his “Justice as Fairness: Political not Metaphysical”, *Philosophy & Public Affairs* 14, Summer 1985, 223-252. This idea is central in his later *Political Liberalism*, Columbia University Press 1993 (1996).

¹⁹ The expression “associative obligations” is Ronald Dworkin’s, *Law’s Empire*, Harvard University Press, pp 195-205

²⁰ A profound critique of the institutional argument interpreted a la Nagel may be found in Thomas Pogge, *World Poverty and Human Rights*, Polity Press, 2002. Instead, a critique of the anti-monistic argument may be found in Kok-Chor Tan, *Toleration, Diversity and Global Justice*, The Pennsylvania University Press, 2000. It should be stated at once that these two books precede the article by Nagel I am referring to and, therefore, rather than criticizing it, they voice different opinions and, at times, opposing views. Besides, owing to reasons that will soon become clear to the reader, given that I have emphasized here the

The institutional argument is essentially based on the non-existence at a global level of a “basic structure” such as there is at the state level. In fact, if something similar were to exist already, this would entail also the existence of those associative obligations whose actual deficit makes global distributive justice impossible. In Nagel’s view, today’s world is witnessing the industrious and significant presence of many international institutions, and it is unquestionable that the interdependence between nations is much stronger now than before, for instance in the days of Hobbes. This fact implies lower skepticism about the existence of a global civil society and the presence of normative constraints at a worldwide level. Still, this civil society *in nuce* is not comparable with the civil society within the state and the associative-type constraints on which, in Nagel’ view, the obligations of justice should depend, are for the moment inexistent.

I would like to highlight the specific nature of Nagel’s interpretation on this point²¹. In his opinion, the difference between state basic structure and global basic structure is not merely quantitative. In short, it is not a question of the state having powers and authority that, for the time being, the global community does not have. Indeed, it is something deeper, the nature of which has typically something to do with the idea of liberal-democracy, as it has evolved from Rousseau and Kant up to our times. In fact, only the state succeeds in causing the authors of the laws and those subject to the law to coincide in its citizens. Besides, says Nagel following the classics of liberal-democracy, only the citizens who are the authors of their laws may succeed in creating among themselves those associative constraints on which the obligations of justice depend.²²

The anti-monistic argument permits two interpretations. The first is based on the scope of the argument, whereas the second on its content. Anti-

distinction between the institutional argument and the anti-monistic argument, the reasons against one or the other often overlap in both Pogge and Tan.

²¹ Here Nagel has a similar albeit different claim from Michale Blake (“Distributive Justice, State Coercion and Autonomy”, *Philosophy and Public Affairs*, 2001, 30/3), and more generally from the argument according to which the institutional side of the statist position depends on the mere fact of coercion and its justification. This distinction is nicely clarified by Kok Chor Tan, “The Boundary of Justice and the Justice of Boundaries; Defending Global Egalitarianism”, *Canadian Journal of Law and Jurisprudence*, vol.XIX, No. 2, July 2006, pp 319-344.

²² This is also Ronald Dworkin’s thesis in *Law’s Empire*, Harvard University Press, 1986. According to Jurgen Habermas, this thesis could be bypassed given the actual context that makes the correspondence between nation and constitution old fashioned. The correspondence between nation and constitution – always for Habermas- depended on the revolutionary nature of first liberal constitutions and from the idea that sovereignty must be indivisible. Now, being both these aspects not so relevant any more, we can hope in a global constitutionalization of international law. See J.Habermas, “A Political Constitution for the Pluralist World Society”, in his *Between Naturalism and Religion* (Polity Press forthcoming).

monism 1 has to do mainly with the domestic-international distinction and is therefore more connected with the institutional argument. As formulated by Nagel, it states that Rawls' principles of justice do not apply to individuals but to institutions, and, given the difference between domestic and international institutions, they do not apply either between states or between members of different polities. Because, as Nagel firmly maintains:

“these are different cases or types of relations, and the principles that govern them have to be arrived at separately”²³

That's why, principles of global justice cannot be reached simply by extending the principles that govern domestic justice. Here, the term “monism” depends on what is the fundamental moral unit. Cosmopolitans are monist, in these terms, because they believe there is one and just one moral unit to be considered, namely individuals. On the contrary, statistes a la Nagel-Rawls cannot accept this form of monism, because –given that principles of justice apply to institutions and not directly to individuals– according to them the fundamental moral units must be institutions. And of course they maintain that domestic institutions are different from global ones. This is the reason for which anti-monism 1 philosophically rejects the individualistic moral consistency defended by cosmopolitans.

Anti-monism 2 has instead to do with the classical anti-perfectionism that is typical of a Rawlsian reading of liberalism²⁴. According to Liam Murphy, Rawls' entire political philosophy is characterized by an intense dualism, that corresponds to what I call here anti-monism 2.²⁵ The intent of anti-monism 2 consists in keeping personal conduct definitely apart from institutional vision, supporting a neat division of labor between commitment on behalf of just institutions on one side and individual conduct on the other side. In other words, anti-monism 2 is based on a principle according to which there may be no continuity between personal or group conceptions (of the good) and public visions (of justice). As a result, public institutions may not be instrumentally turned to advantage to goals that correspond to the values of individuals or groups, even if these values and goals are the

²³ Op cit p. 254

²⁴ Partially reviewed by Rawls in the essay on “Basic Structure as Subject”, now in *Political Liberalism*, Harvard University Press, 1996 (second edition), but previously published in 1978. Actually, this form of Rawlsian anti-monism has been noted and criticized by Liam Murphy, “Institutions and Demands of Justice”, *Philosophy and Public Affairs*, vol.27, n.4 (Autumn 1998), pp 251-291.

²⁵ Actually Murphy points to a certain dualism in Rawls, rather than anti-monism. His article criticizes Rawls' dualism in the name of a greater consistency between personal commitment and just institutions. I accept here Nagel's suggestion, according to which the term ‘anti-monism’ works better than the term ‘dualism’, since Rawls is supposedly an advocate of a pluralist rather than a dualistic view.

noblest, as surely is a greater equality of primary goods in the world.

Now, on this basis, it is easier to understand Rawls' criticism of the cosmopolitan conceptions in *The Law of Peoples*²⁶. Cosmopolitan conceptions deal with the relations of equality among individuals, while for Rawls what matters more moves at an institutional level. Here, it is anti-monism 1 that straightforwardly blocks any cosmopolitan vision. From another point of view, however it is anti-monism 2 and the pluralist soul of Rawlsian liberalism, which prevents a conception of global justice from being taken in earnest. In fact, Rawls takes off from the assumption that major institutions are somehow freestanding, that is to say independent from the conceptions of the good. Any attempt to adapt them to a specific view of the world would mean to betray their eminently public nature²⁷. But it is exactly this what cosmopolitans try to do, if we follow a Rawlsian perspective, when they pretend to normatively model global justice independently from the actual situation of the world institutions. For them, in this account, the ethical obscures the political. That's why any political conception –inspired to anti-monism 2- should reject consequentially cosmopolitanism.

Summarizing my reading of Nagel, his political conception cannot accept the idea of global distributive justice owing to these two arguments (the institutional and the anti-monistic) that may be added together but, nonetheless, differ to a significant extent one from the other. According to the first one, legislative autonomy and cooperative constraints correspond at the domestic level (and such a correspondence is missing in the global community). According to the second one, the fundamental moral units, from the point of view of social justice, are not individuals but institutions (anti-monism 1), and public obligations cannot originate from comprehensive moral visions that fail to consider the fact of pluralism and the independence of institutions from comprehensive visions (anti-monism 2).

If this analysis is persuasive enough, it should not be surprising that one can attack the political conception, and its impossibility theorem on global justice, in two thoroughly different ways (I am not going to differentiate between Rawls and Nagel's theses, even though they are not identical).

²⁶ Harvard University Press 1999. Rawls famously writes: "The ultimate concern of a cosmopolitan view is the well being of individuals and not the justice of societies...What is important to the Law of Peoples is the justice and stability for the right reasons of liberal and decent societies" (pp 119-20).

²⁷ As regards this issue, see Samuel Freeman, *op. cit.*, p. 41.

The first type of criticism maintains that the interdependence among nations and the growth of international institutions in the last years are sufficient evidence to enable us to view the strong statism -that is supposedly the basis of Nagel's thesis- as being obsolete. While these existing international relations considered as a whole are not the foundation of such a basic structure as the state, they take concrete form in a sort of global quasi-order that is partially institutionalized and certainly effective²⁸.

The second type of criticism dwells – not always spelling it out properly - on anti-monism. On one side, it is possible to attack anti-monism 1 as a mere by-product of a successful criticism to the institutional argument. After all, if something analogous to the domestic basic structure could exist at the global level, then to conceive individuals as fundamental moral units in the perspective of global justice would not be a scandal. Here, the argument is clearly parasitic on the institutional thesis²⁹.

It is more difficult and unusual instead to go through a criticism of anti-monism 2. What counts here is to defend the substance of whatsoever thesis on justice against a kind of fetishism of the rules that would seem to characterize Rawlsian liberalism³⁰. This target can take the form of a proposal for more continuity between personal and institutional morality. As Murphy puts it, opting for monism against Rawls' supposed anti-monism:

“What monism rejects, then, is that there could be a plausible fundamental normative principle for the evaluation of legal and other institutions that does not apply in the realm of personal conduct”³¹

The simplified form of the monist thesis in matter of global justice has been known to scholars for over thirty years, since the publication of Peter Singer's famous article on the relations between North and South of the world.³² It should be noted that, in a different manner, this thesis is also supported by those cosmopolitans - from Beitz³³ to Kok Chor Tan³⁴ - that

²⁸ See Cohen and Sabel op cit

²⁹ ibidem

³⁰ The point is nicely put down by Murphy (p cit, p. 280), according to whom contrary to dualism and anti-monism 2, that limit our moral worries to the institutional framework, “...monism tell people to do what they can to bring about an improvement directly”.

³¹ op cit p.254

³² See Peter Singer, “Famine, Affluence and Morality”, *Philosophy & Public Affairs* 1, 1972, 229-243. According to this thesis, starting off from a utilitarian background and allowing the existence of a certain decreasing marginal utility of basic commodities, greater equalitarism in the world certainly amounts to greater justice. Such a thesis has a highly revisionist content: famine in the world is a scandal and we need to make every possible direct effort and create in the shortest possible time new institutions, if there are none today, in order to solve the huge moral problem it engenders.

³³ Charles Beitz, *Political Theory and International Relations*, Princeton University Press, 1979.

mean to apply Rawls' second principle of justice (the difference principle) to global justice or that, somehow or other, predicate the international extension of a comprehensive liberalism (in this case, set up against political liberalism).

The two arguments that give rise to the liberal thesis, namely the institutional and the anti-monistic argument, fail to have the same relevance in my eyes. In fact, I suspect that the polemics between cosmopolitans and statisticians cannot be decided at the level of the institutional argument. As we shall see in Section 3, I don't think that on this point either cosmopolitans or statisticians can close their own argument. Moreover, given that anti-monism 1 is strongly connected to the institutional thesis one is keen to defend, I think that it is particularly interesting to see whether it is possible to defend global justice via principles that can bypass anti-monism 2. In Section 4, I will endeavor to present a sketch of an original theoretical vision that is likely to get over anti-monism 2 in the fundamental human rights prospect.

3. Without doubt, the main argument used by the statisticians to counter the cosmopolitan conception is that the global basic structure is not comparable with the domestic basic structure.³⁵ If we follow, as we have previously done, the core issue of the political conception – as introduced by Nagel – this difference is not merely quantitative. In other words, it is not only a question of the supposed existence at a global level of a series of relations and institutions that are not yet sufficient to warrant a cooperation that is likely to create the bases for actual associative obligations³⁶. It is rather a question of a qualitative difference. The domestic basic structure corresponds to a genuine political society, while the global basic structure – to the partial extent that it exists – does not correspond to a genuine political society. The statist thesis, according to which in the global case and in the domestic case we witness two entirely different types of cooperation, relies on this qualitative difference. For instance, what is missing in the global case is that type of reciprocity that ensures cooperation in the domestic

³⁴ *Op. cit.*

³⁵ As for this differentialist thesis, see David Miller, "Justice and Global Inequality", in Hurrell and Woods eds., *Inequality, Globalization and World Politics*, Oxford University Press, 1999.

³⁶ This is a further reason that makes the so called empirical objection to the political conception (its description of reality being supposed to be false) very difficult. For this objection, see Charles Beitz, "Justice and International Relations", in *Philosophy & Public Affairs*, vol.4, n.4, 1975, pp 360-389. More recently the same objection has been rediscussed by David Miller, in Martin and Reidy (eds) cit. pp. 191-205. In particular, at page 195 Miller writes "The empirical claim is the most intractable...for political philosophers at least".

case. Hence, the adoption of principles of global distributive justice would somehow mean that the central idea of cooperation as a source of distributive obligations is not taken seriously enough.³⁷ If we are to put it in Rawlsian terms, even the difference principle is not a politically neutral tool. Rather, it is a model of political institution the application of which proves meaningless where the presuppositions that allow the political nature of that institution are inexistent.

Now, in order to appreciate the statist criticism of cosmopolitanism, we need to understand each other on one point. In the political conception ‘in the Nagel-Rawls’ style’, the distributive justice is not an end in itself. What has been previously pointed out in respect of the difference principle applies to the very idea of distributive justice. Distributive justice itself - always in the (Rawlsian) political conception – serves a political purpose, and this is another reason why I believe that Nagel talks about a “political conception”. This political purpose consists in the attempt to enable all fellow citizens to be reasonably free and equal. Distributive justice serves this very purpose. In fact, it is believed that an excessive income or status difference does not allow actual freedom and equality and, therefore, is likely to distort the political relations among fellow citizens within their political community. Obviously, the corollary of this reasoning is that, being there nothing like a worldwide state - a state that, for the time being cannot even be surmised -, the same type of political argument does not apply at a global level. This is why the maximum ideal of distributive justice within the political conception is to assume a world populated by states that are internally relatively just. Evidently, this is quite different from any cosmopolitan project of global justice.

Now, one may legitimately wonder why, at a global level, the statist rule out the possibility that there might be something comparable to the domestic basic structure. Considering Rawls in *The Law of Peoples*, it may be appreciated that, in his opinion, the bearing structure of the international society is made up of the society of peoples. For the statist, however, this is fully different from the basic structure of the domestic society. As previously pointed out, the chief difference between the two levels would seem to be the relation between authority and citizens. What applies within the political community is Kantian autonomy, according to which the citizens are the authors of the laws that may be coercively imposed on

³⁷ This thesis is accurately developed by Samuel Freeman, *op. cit.*

them, while something similar is not conjecturable for the time being at a global level. Indeed, this ability to create a political community, typical of the domestic basic structure, would cause the entry into the society of peoples - in Rawls' internationalist model - to take place at the level of 'decency', meaning a lower level than that required for participation in a domestic liberal society.

If we take into account a cosmopolitan critique of the statist, for instance the recent ones by J. Cohen and Sabel and the preceding ones by Pogge, it may be noted that they actually deal mainly with this issue. According to them, it is not true that, given the increased weight of international relations and institutions, at the global level we lack that correspondence between authors of laws and persons compelled to respect them, that Nagel's statism deems indispensable to create genuine obligations of distributive justice. Such rules as those enacted by IMF, WTO and ILO, for instance, create constraints on the policies a state may implement, and are effective over different state territories. In any event, those rules are enacted directly in the name and on behalf of the citizens of the state that must accept them and, even if there is the possibility that the citizens of that state find them wrong or unjust, that does not seem to go against the idea that, even in this case, there is a sort of co-authorship, however *sui generis* it may be. Indeed, Cohen and Sabel insist, the very fact that citizens are permitted to protest against these rules shows that they feel to be fellow participants.

In order to refute this partial co-authorship hypothesis, it may be objected that the protests of those citizens, suffering the consequences of rules laid down by international organizations that they fail to share, are not made against an international authority but against their own state that is requested to ratify and, in any event, to incorporate them. The fact is that, in the final analysis, in case of disagreement - at least in democratic regimes - the very citizens have to pronounce, through their vote, on the advisability of adopting or keeping them. I frankly think that such a controversy is not at all easy to solve. On the one hand, there is no doubt that the national state acts as an intermediary between international organizations and citizens. On the other, it seems more and more likely that the rules enacted by international organizations are being coercively imposed on the citizens of individual states.

There are two major objections raised by Nagel to the fact that something similar may have a fully political meaning: one based on the voluntariness of the agreements and one based on their arbitrariness.

According to the first one, the international agreements are similar to the commitments undertaken by voluntary and occasional associations³⁸. They do imply individual and collective obligations, but only in specific occasions and for limited purposes. This is why, within the context of the political conception, no obligations of justice may derive from them. The second objection is based on the arbitrariness of this type of relations. It does not differ too much from the former, as the contingent nature of international relations do not allow thinking about the existence of any continuing cooperation and reciprocity on which actual duties of distributive justice would depend.

Cosmopolitans counter these objections rejecting this way of conceiving international relations. In this version, the discontinuity and occasional nature of international relations would be more the exception than the rule. As contended by Cohen and Sabel, Nagel's anti-monism 1 would actually give rise to a form of dualism rather than to that form of pluralism that he invokes. Ultimately, there are supposedly only two options in Nagel as re-read by moderate cosmopolitans (such as Cohen and Sabel): either the full continuity of political relations in the domestic case, or the dominion of voluntaristic arbitrariness in the global case. At this point, however, it is clear that the cosmopolitans invoke a third option, where the creation of ever more stable and lasting international constraints generates a form of embryonic political community where cooperation and reciprocity progressively gain ground.

To be quite honest, in so doing they single out an element of weakness in statism. In a changing international situation, there seems to be no reason why the state should be the only one to determine normative constraints among its citizens. In particular, it is hard to see the need for a "either all or nothing" reasoning. Perhaps, these normative constraints grow side by side with international institutions and global interdependence. The example of the European Union is emblematic. The proliferation of foreign trade between European countries, and its progressive liberalization, have promoted over time the setting up and development of a partial political community. Does this type of hybrid community create normative constraints having the same weight as those between fellow-citizens in the state-nation? Probably, it does not, as Europe is not and a federal state.³⁹

³⁸ Nagel explicitly states that justice cannot be applied to "...a voluntary association or contract among independent parties concerned to advance their common interests" (op.cit. p. 140).

³⁹ As regards this subject, read the exchange included in "John Rawls and Philippe Van Parijs" in "Autour de Rawls", *Revue de philosophie économique*, 7, 2003, pp 7-20.

Does it create any? Just as probably, it does not, as the laws of the EU apply equally to the citizens of various states. The progressive regionalization of a few areas of the world seems to prop up the idea of a continuity of the normative constraints, popular among the cosmopolitans, rather than the idea of a discontinuity, popular among the statist. More in general, what is so truly *sui generis* in the domestic basic structure that would be unconceivable at global level? Substantially, it is its social institutional effectiveness over time and its ability to create a truly social dimension. However, I believe it reasonable to affirm that, in perspective, such an effect is not precluded in principle to the global community.

This type of reasoning, however, meets with at least two obstacles. Firstly, taking the last example, regionalization is not tantamount to globalization. Indeed, the different regionalizations (such as ASEAN, NAFTA, AU, APEC, OAS, ECOWAS) could give rise to a global system of mutual competition among regional areas. After all, going back to the case referred to above, the European nations have a common history and a series of shared institutions, and this is something that, for instance, does not apply between the latter and the African nations. Therefore, the regionalization case does not solve, I dare say by definition, a matter of global justice. Secondly, the fact that there is a tendency towards a greater global institutionalization, leading to less voluntaristic and arbitrary constraints among peoples, does not mean that, at present, there are already all the conditions warranting normative constraints among citizens throughout the world. After all, an ideal goal to be aimed at is not tantamount to an acquired right. For instance, one of the bases for cooperation within the domestic basic structure – from which, according to a Rawlsian reasoning, duties of justice are supposed to derive – is represented by reciprocity. Indeed, it is quite hard to assume that the same type of reciprocity we have at the domestic level can exist now also at a global level.

These conclusions cause me to think that the political conception (and the statist thesis) is not fully wrong when we consider a fair evaluation of what I have called institutional arguments in its support. In other words, I believe that, to-date, a full normative justification on an institutional basis of a global distributive justice is hardly tenable, *rebus sic stantibus*. It is as if the cosmopolitans were to put the cart before the horse: the moral thesis,

in their arguments, dominates its political counterpart⁴⁰. This is not acceptable for a liberal or, at least, it is not for a liberal who shares the classical philosophical view of liberalism –based on anti-monism 2-proposed by Rawls.⁴¹ In any event, if I am allowed playing with words, from this point of view statism is also static and this, in my opinion, is a not at all negligible fault. In other words, there could be a justification in embryo of a global distributive justice, even if there is not yet a full normative justification for it⁴².

If we reflect upon the way in which global society is ordered today, we can be driven to uphold the idea that eventually continuity better than discontinuity describes the relationship between domestic and global basic structures. The global space, after all, finds collective recognition within a world-wide organization such as UN. Of course, UN are rather a club of states than a world government in progress, but their work to protect human rights and humanitarian law is cosmopolitan rather than statist in nature. In particular, UN project dedicated to the “Millennium Goals”

⁴⁰ The difference between a full theoretical justification and a justification in its embryonic stage seems important also to take a position with respect to the proposal made by Thomas Pogge, who interprets the duties of global justice as being institutional inasmuch as they are set up against interactional duties. The institutional duties are only incumbent on those who share an institutional scheme. On the other hand, the interactional duties are incumbent on all those who have something to do with a situation where there is something like absolute poverty or, no matter how, injustice. The theoretical advantage of the former over the latter duties lies in the fact that, if proven, they are obviously more binding. The theoretical advantage of the latter over the former duties lies instead in the fact that their existence is simpler to prove. In Pogge’s thesis, the institutional nature of the duties towards poverty depends on the fact that the rich countries ultimately manage the world order and, therefore, are responsible for the clear injustices than result from this order. Hence, their inhabitants have a negative duty to make up for the damage, the one caused to poor nations by the present institutional system of the world, and not only a positive duty to provide a morally deserving assistance. This fact is supposed to reinforce their responsibility. However, even if the idea of a global order as such is controversial - also on account of the reasons stated by Nagel and Freeman (I believe that this may be a proper interpretation of the spirit of Samuel Freeman’s thesis in “Distributive Justice and the Law of Peoples”) - and if it is hard to believe that without the existing world order the poor of the world would be better off, to limit the duties toward poverty to the institutional duties can be wrong. In fact, there is nothing to prevent us from thinking in terms of a progressive transformation of the interactional duties into institutional duties, allowing for the time being a slight chance of a mixed situation where the two types of duties coexist and add up together.

⁴² If, for instance, we read Samuel Freeman’s objections to the cosmopolitans – which are not too far apart in their spirit from those we have been debating at length made by Nagel (op cit pp 59 and following) - it may be noted that, all things considered, the qualitative difference between domestic and global basic structure consists in the fact that there is no world state. All the other differences suggested by Freeman - such as that the difference principle is a political and not an economic principle, that it is not known “who” should apply it at a global level, and that its global employment would entail the lack of a limit (there would not be-off cut point) - substantially depend on the first one. However, the one based on the absence of a global state is a distinction having an historical character, and a progressive change in mentality and behaviors could reduce the distance between the two different basic structures.

neatly defines conditions for global justice⁴³. Parallel targets are pursued by a complex constellation of international organizations, often coordinated in a complex worldwide network⁴⁴.

All considered, given the existing doubts, it does not seem advisable to criticize statism only on institutional arguments, as I have called them before. This conclusion appears all the more evident if we reason not only in the light of the content of global justice but also in the light of those who are supposed to implement it. Who is supposed to decide on the application of the difference principle – or any other principle of justice – at a global level? Where is the democratic legitimation of those who are required to decide on matters that are so relevant both socially and politically supposed to come from?⁴⁵

These difficulties that a critique of statism finds at the institutional level make me think that a successful revision of statism can take place only if we are able to challenge the other premise of the statist thesis, namely the anti-monistic argument. But, as we have seen, anti-monism 1 is parasitic on the institutional argument, and so we are supposed to face with it the same troubles we have found with the institutional side of statism. So, it seems wise to direct our attention toward anti-monism 2. According to anti-monism 2, the difference principle -and any substantial part of a domestic vision of distributive justice for what matters- is a political and not only a moral principle, and then its application to the global community may not yet be considered fully justified by standard cosmopolitan arguments of moral nature. It seems important to check the meaning and the validity of such a statement.

4. In the preceding Section, I have tried to show that the institutional argument used by the cosmopolitans when they criticize statism presents a view of the obligation based on an idea of global distributive justice that, everything considered, it not easily acceptable. All this depends on the difficulty to prove the definite existence of a global institutional system, the actual presence of which is called seriously into question. On the other hand, in this Section I would like to argue for my positive thesis: even if we were convinced of the wrongness of the cosmopolitan thesis that upholds the presence of a global basic structure, this does not entails the acceptance of

⁴³ See www.un.org/millenniumgoals/index.shtml

⁴⁴ See Anne Marie Slaughter, *A New World Order*, Princeton University Press 2004

⁴⁵ This further difficulty of cosmopolitanism has been brought to my attention by Nadia Urbinati.

statism, and our duties towards inequality and poverty in the world depend on justice. With a view to obtaining this result, I will uphold that there is another source of moral obligations towards the poor of the globe, and that this source does not depend directly on the existence of a controversial global basic structure. The obligations conceived in such a manner should not violate the anti-perfectionist principles treasured by the political conception. They should be, in other words, anti-monism² resistant. Secondly, as a consequence, they are - so to speak - less demanding⁴⁶ than those that depend on the soundness of a theory of global distributive justice. They are not the outcome of choices that are, all in all, super-erogatory, as statist view them. From this standpoint, they may be viewed as falling within the standard way of conceiving socio-economic human rights.

In order to uphold such a thesis, I must take in consideration the two major arguments of the statism a la Nagel against cosmopolitanism, showing that they do not affect the liberal conception I am proposing. Therefore, I have to show that:

- (i) the liberal conception of the obligation to assist the poor of the world does not depend on the existence of a global basic structure similar to the basic structure of the domestic community;
- (ii) the liberal conception may get over the objection based on anti-monism that Nagel attributes to Rawls and applies to his very political conception.

Failure to respect (i) would imply to take for granted something is at the moment still controversial. Failure to take in consideration (ii) would imply to be at odds with a Rawlsian liberal framework.

Let us start from the first point. The typical cosmopolitan argument about global justice is usually based on strong interdependence, which presupposes the operational existence of a system of global cooperation, strengthened by an institutional structure witnessing considerable growth, centered on the validity and effectiveness of international law. In consequence thereof, there should be a global basic structure that does not differ too greatly from the state basic structure. This global basic structure imposes the rules of international trade and finance, governs property rights starting from intellectual property rights, determines the national borders and the law of the sea, and lays the foundations of that part of public international law the validity and effectiveness of which may not be

⁴⁶ See Murphy. op cit.

legitimately questioned. The conclusion ensuing from these premises is that this type of global basic structure affects all the inhabitants of the globe, starting from its economic consequences. Therefore, its evaluation in terms of distributive justice is possible and necessary.⁴⁷

The statist thesis questions this type of argument and – as we have seen in the preceding Section – it cannot be entirely blamed for it. At this point, according to my liberal conception, we have to answer a different question. Are we required to think that, questioning the cosmopolitan argument based on interdependence and institutionalization, there may be no moral obligations towards the poor of the globe? My answer to this question is “no”. This negative answer is warranted by the fact that these obligations could have no associative nature, as instead claimed by Nagel and, usually, as implicitly accepted by his cosmopolitan critics that, nonetheless, criticize the negative conclusion of the Nagel-type reasoning. In other words, they could differ from those that result from an actual social contract that – in agreement with Nagel – may hardly be conceived on a planetary basis. According to my thesis, there should be ultimately another source of moral obligations towards the poor of the earth, a source that allows talking about our duties (perhaps lesser duties than those provided for by a theory of global justice) even independently of the alleged existence of an actual structure of cooperation at a global level.⁴⁸ Actually, I believe that there is such a source and that it consists in a general and universal duty of justice. It is this idea that, among other things, gave rise to my decision to include as exergo in this article the words that Primo Levi used at the beginning of his book *If This is a Man*.

According to this universal duty of justice, we have a duty to protect human dignity in all its forms, regardless of the presence of a real global basic structure⁴⁹. Besides, in order to protect in such a manner everybody’s human dignity, we must make sure that a few fundamental basic rights are guaranteed. Quite naturally, these basic rights include a few socio-economic human rights, as those to subsistence, health, and a minimum education. It

⁴⁷ For instance, if I got it right, this is Allen Buchanan’s thesis in *Justice, Legitimacy, And Self-Determination: Moral Foundations for International Law*, Oxford University Press, 2004. A similar thesis is, in my opinion, the foundation of Darrel Moellendorf’s cosmopolitan view in *Cosmopolitan Justice*, Westview Press, Cambridge, MA., 2002.

⁴⁸ A similar thesis is upheld by Allen Buchanan “Justice as Reciprocity versus Subject-Centered Justice”, *Philosophy & Public Affairs*, vol. 19, no. 3, 1990, pp. 227-252. Buchanan’s idea is to set the duties apart from the idea of reciprocity in order to link them with the idea of subjectivity.

⁴⁹ Within a contractarian framework David A.J. Richards, “International Distributive Justice”, in J.R.Pennocck and J.W.Chapman (eds) *Ethics, Economics and the Law*, NOMOS XXIV, New York University Press, upholds a similar thesis.

goes without saying that the protection of these basic rights does require neither the controversial presence of a strong interdependence nor the effectiveness of operational international institutions. Indeed, as Primo Levi happened to write, when one is in the presence of a systematic “demolition of a man” there is little to argue and to wait.

One of the advantages connected with this alternative type of foundation is that we must help whoever is in extreme difficulty, with no need to take the trouble to ascertain whether, somehow, we are personally or collectively responsible for his/her hopeless situation. What’s more, given the complexity of the global network of socio-economic relations, I deem it reassuring to be able to think that first, we have the obligation to save someone who is dying of hunger or illness and, only later, we need to establish the quality of our relations with him or her. Even Pogge’s thesis, which endeavors to transform a vaguer positive right to help into a more certain negative right to refrain from damaging innocent third parties, actually proves much more complicated than the thesis I am proposing here⁵⁰. This is due to the fact – and I am going to repeat myself once more – that given the utmost complexity of social relations at a global level, it is often extremely hard to establish if I am or I am not responsible for maintaining an unjust international *status quo*. The existence of a general universal duty of justice solves, instead, this type of problem.

The existence of a general universal duty of justice avoids the more obvious difficulties of the cosmopolitan argument and the relative critiques by the statist. In any event, at this point it is legitimate to ask ourselves, what the theoretical base of this type of argument is. This question may be answered in two different manners that, taken together, could provide a sufficient solution to the problem it poses. On the one hand, one may try to elucidate the type of duty being considered, starting from the right that corresponds to it. On the other hand, one may try to trace its origins in a broader historical-critical reasoning. I will be quite concise with respect to the first point, while I will linger longer over the second one. The reason for this choice is that only a far-ranging historical-critical reasoning allows in my opinion to get over what is for me the statist objection based on the anti-monism 2 of the political conception.

As for the first issue, I will start stating that the humanitarian duty of justice - as dealt with in here – is based on the idea that, as members

⁵⁰ Thomas Pogge, re-reading himself, claims that the core duties he has in mind are either negative duties or intermediate duties (between a negative and a positive duty) depending on past violations like colonialism. See his “Real World Justice” cit. p. 34.

of the same kind, we must endeavor to enable each person to exercise his/her own essential functions as a human being.⁵¹ There are quite a few arguments to justify this type of assertion. As a rule, the basis of these arguments is that there are human rights, including the main socio-economic rights, where the failure to protect them makes it impossible to exercise the majority of other rights and, therefore, makes it impossible to live one's life in full. Something similar is evident if one considers the main human rights that safeguard the life of individuals as such and guarantee its fundamental functionalities. We may call this type of fundamental rights "basic rights", taking up Henry Shue's⁵² apt expression. Now, such basic rights include the right of subsistence and, therefore rights having a socio-economic nature. We may conceive them, always as Shue does – as a sort of meta-rights, namely rights without which no other rights or opportunities may be enjoyed. In this case, they would be a requirement to live one's life. More or less the same conception of meta-rights may also be supported in a less substantive and more formal manner, as Alan Gewirth has done.⁵³ In this case, by simplifying to a considerable extent his complex argument, it may be affirmed that the basic rights are conceptual prerequisites that dictate the conditions required for carrying out every human action and for the very exercise of freedom. In conclusion, the universal duty I have been talking about until now is a duty to ensure to (at least) all the members of our kind a few conditions of livability and agency.

In any event, as previously pointed out, what interests me the most is to trace back the origin or the source of such a duty. It is a sort of a *sui generis* natural duty. This is the reason why it is not subject to the scrutiny of pluralism, it is not controversial and does not depend on a single specific conception of the good, because it precedes the conceptions of the good or is supposed to be a part of all of them. The very idea of a meta-right, that is to say a right to right, highlights this unifying capacity of the universal duty. In my opinion, however, this general universal duty clings – as I have already said – to a farther-reaching historical-critical reasoning. Something similar may be appreciated turning to that concept of "ethical meta-comprehension of the species" proposed since a number of years by Jürgen Habermas⁵⁴. Habermas has used this concept in a specific bioethical perspective, particularly in the light of a critique of a few likely permanent changes in

⁵¹ In this respect, it is not too different from Amartya Sen's approach based on capabilities and functioning.

⁵² Henry Shue, *Basic Rights*, Princeton University Press, 1980, second edition reviewed in 1996.

⁵³ See the chapter in the preceding book of the same series.

⁵⁴ Jürgen Habermas, *Die Zukunft der menschlichen Natur. Auf dem Weg zu einer liberalen Eugenik?* Suhrkamp, Frankfurt am Main, 2001.

our genetic inheritance. However, I believe that this very concept may be applied to the case of the universal right I am talking about.

I believe that, with no basic rights corresponding to the general universal duty, we can no longer self-understand each other as human beings at their height. In other words, our ethical self-comprehension would fail lacking a similar duty. In fact, our ethical self-comprehension is embedded in the fact that we consider ourselves, both as individuals and as humankind, persons responsible for our own biographies. Indeed, should there be no basic rights to ensure security and subsistence, something similar would be missing. From this point of view, the fundamental human rights ensure that each life has a value and, therefore, is protected as such, in the way in which it is protected by security and subsistence. At the same time, however, they also allow each one of us to choose one's own life course, protecting the specificity of liberal pluralism, since they only guarantee the agency of each one of us and not a specific level of wellbeing.

The basic rights and the correspondent universal duty rest on the characteristic of human vulnerability⁵⁵. They are imposed by the fact that our weakness as human beings requires a necessary support that cannot be deferred. I feel that it is indeed this type of argument that offers a valuable solution to liberals who are, just as I am, particularly affected by the anti-monism 2, that a Nagel-type political conception attributes to the theoretical consequences of the Rawlsian approach. In fact, this criticism of monism is founded on the liberal hostility to perfectionism and on the pluralism of the conceptions of the good. Indeed, this pluralism makes the direct passage from a given view of the world to the institutional realization of its fundamental principles impossible for a liberal Rawlsian. And, obviously, always for a liberal Rawlsian, all this is connected with the well-known distinction between what is good within a given view of the world that, as such, needs to be submitted to the court of pluralism, and what is instead right and that, as such, needs to apply to everyone within a given community. I maintain that the thesis that founds a universal duty on the ethical self-comprehension of species is particularly interesting in this perspective, because it predicates an overlapping of the good and the right in a specific ambit and in limited cases. When the very sense of the community of all human beings is at risk, because the vulnerability of a few is not adequately protected, then the realization of such a good as assistance, which ensure the basic rights to subsistence to those who lack everything, turns

⁵⁵ The term is used in a consequentialist framework by Robert Goodin, *Protecting the Vulnerable; a Reanalysis of Our Social Responsibilities*, Chicago University Press 1985

also into justice. This happens because the good and the right together presuppose that general moral community whose first and foremost sense depends on the protection of the dignity of all its members.

As a rule, in a post-metaphysical world, as Habermas calls it, the metaphysical level of group ethics may not be transferred - in the name of pluralism – in the universal morals that found justice. In any event, I feel that there is an exception. The holocaust, as dealt with by Primo Levi, is perhaps the most typical exception of this kind. In the presence of such an event, whether or not we are responsible for it and whatever our opinions as human beings, we cannot wash our hands of it. However, the genocide of millions of persons who lack the basic rights to security and subsistence – a genocide that we are all substantially aware of - is a case definitely similar to the Holocaust. In the horizon of such a far-reaching drama, it is reasonable to convert the good, the universal duty, into the right, that is a valid and legally binding obligation. In different words, the exceptionality of the case allows getting over anti-monism 2, since the bond of human morals and of species unity is based on the protection of vulnerability. Without basic rights to subsistence, we could no longer legitimately consider ourselves human beings.

The ultimate reason for Rawlsian anti-monism 2 lies in his attempt to construct a public view of social justice. Such a public view must be coherent with a pluralistic account of justice, avoiding to incur into the risks taken by comprehensive doctrines. This certainly does not mean that Rawls thinks, for instance, that his principles of justice do not represent an important and recommendable version of social justice. However, a public view of justice must keep into account that there are different ethical options to which moral dignity must be attached. It is just on account of this reason that a view of the good may not be transferred directly into an institutional scheme. Actually, if I am allowed to speak out, perhaps the superiority of Rawls' justice principles with respect to utilitarianism – according to Rawls himself – does not lie really in the fact that they incorporate the idea of a better society for the purposes they mean to attain, but rather it lies in the fact that the Rawlsian theory succeeds better in keeping into account such distinctions as the difference between the right and the good and, in so doing, is more successful in defending pluralism. I believe that this is the core of what Nagel means by anti-monism of the political conception.

Now, as even Pogge recognized in an article devoted to G. Cohen and Murphy's criticisms of Rawls, anti-monism 2 in this acceptance would seem

to apply when we set ourselves ambitious targets or “supergoals”.⁵⁶ In my opinion, however, anti-monism is much less justified when – as in the case we have just debated – the goals are minimal. Security and survival are typical minimal objectives and, therefore, to resort to the defense of pluralism against those who propose them seems specious and unreasonable. As Pogge says in the aforementioned article:

*“Monism could be more plausible if specified through a less ambitious goal, such as the goal that all human beings have access to freedom and resources above some minimal resources”.*⁵⁷

The consequence of this reasoning is both theoretically and practically relevant⁵⁸. If, as I have upheld, in a few special cases - such as the genocide of the poor - the good turns into the right, then the obligations deriving from the universal duty of justice, although having a humanitarian nature, are no longer optional but indeed binding. There is nothing super-erogatory in them. Indeed, they legitimately fall within a theory of distributive justice that is certainly less strong than the one based on cosmopolitan assumption, but not as minimal as the statist postulation.

Note here that one could legitimately ask here what this anti-monism 2 prerogative has to do with global justice. This question can be formulated in two different ways. First, one can wonder why we should be worried about anti-monism 2 just at the global level. What, in other word, does make this global level particularly sensitive to the risk of incurring in the pitfalls connected with anti-monism2? My answer here is that cosmopolitans very often anticipate too much moral flesh within the global political setting. They moralize global politics, in other words, and that’s why they run toward anti-monism 2. Second, one can think that a liberal political conception a la Rawls already tried to avoid the risk of incurring in anti-

⁵⁶ Thomas Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy”, *Philosophy & Public Affairs*, 29, no. 2, 137-169.

⁵⁷ Article quoted in the preceding note, p. 163.

⁵⁸ It is a fact that a sort of consequentialist reasoning is often concealed under monism: our interest in institutions is not fetishistic, but it depends on what they are able to do in terms of the attainment of purposes commonly deemed just. This is contended by the Kantian and the anti-consequentialist anti-monism that, in the terms Nagel puts it - tends to defend a sort of partial autonomy of politics from morals. The liberal conception presented in this Section maintains that when the survival of so many human beings is at stake, these distinctions have little relevance and what prevails is a universal duty to assistance. It should be noted that all this happens without having recourse to the idea of an all-round replacement of political liberalism with comprehensive liberalism. In fact, although likely to solve such a problem, this strategy fails to get over the issue of anti-monism,⁵⁸ and, therefore, gives rise to considerable difficulties for all those who believe in a liberal pluralism.

monism 2 at the domestic level. Why should this risk come back when we leave the domestic level to approach the global one? My answer here is more articulated. On the one side, I could repeat what I have already said about the first objection. It's the attempt to moralize global politics that pushes many cosmopolitans toward reintroducing at the global level comprehensive visions of politics already discharged at the domestic level. On the other side, I also believe that often cosmopolitanism avoids to consider how much the "reasonable" is context dependent. When we leave the safe benches of the domestic basic structure, we will find another political situation, in which we cannot take for granted that our vision of what is reasonable and what is comprehensive is widely shared. Substantially, behind the will to keep a liberal position distant from anti-monism 2 there could be also a desire to avoid cultural and political imperialism.

5. The main source for obligations of global justice consists –in my reconstruction- in an universal duty to protect the security and the subsistence of all human beings. I don't see this duty as a purely humanitarian duty, because, as I said from the beginning of this article, the substance matter of it corresponds to the content of the most important socio-economic human rights. I think that this is a significant element, because for sure one of the attractions of the cosmopolitan project consists in the fact that we often believe there are normative constraints that exceed mere humanitarianism at the global level. Perhaps, I suggest, global politics requires more demanding norms than the ones dictated by mere humanitarianism, but less demanding norms than the ones recommended by a cosmopolitan egalitarian approach. The connection between the universal duty of justice and some human rights can provide the required institutional mediation. In fact, these human rights can be considered as a first step toward a process of global constitutionalization in progress⁵⁹. In 2004, The Secretary general of UN nominated an authoritative world commission, the "High Panel on Threats, Challenges and Change". This Commission presented at the end of its works a Report entitled "A More Secure World: Our Shared Responsibility", document that still now constitutes one of the most promising texts concerning the relationship between human rights and political globalization⁶⁰. This Report does not treat specifically economic and social matters, but is evident in it to see socio-economic rights –when they are discussed- as the core of the empowerment of individuals and

⁵⁹ See David Held, *Democracy and the Global Order*, Polity Press 1985 Cambridge

⁶⁰New York: United Nations Department of Public Information, 2004.

nations now in danger.

Main socio-economic human rights include moral principles, but they are also binding since their validity is not only moral but also legal. They have been recognized as legitimate rights by the Vienna World Conference on Human Rights (1993). What is most important, however, is that they have been fully acknowledged in the most important ethical-political and legal document in the matter, namely the Universal Declaration of Human Rights of the United Nations (1948). In its Preamble, it deals with social progress and its universal promotion, while several articles of the Declaration deal with such socio-economic rights as work, rest and education. More clearly than any other, article 25 upholds:

“Everyone has the right to a standard of living adequate for the health and the well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

The Commission on Human Rights of the United Nations has worked for a number of years with a view to specifying the nature of the socio-economic rights, until it got to the famous covenants of 1966, one on economic and social rights and the other on civil and political rights. Perhaps, the two types of rights should not be separated, to avoid giving the impression that the civil and political rights count more than the others do or that, no matter how, move on a different level. If, for instance, we consider a classical civil right, maybe that most classical of all, the right to life, we may appreciate at once that survival is also guaranteed by the socio-economic aspects that guarantee existence and, therefore, that there is no much difference between the two types of rights.

When dealing with socio-economic rights, it is important to pose the problem of the limit. Up to what point are rights such as the right to work and the right to health supposed to be implemented? What is the cut-off point? It is not at all easy to answer such a question and, perhaps, we need to consider a case at a time. However, I am under the impression that the cosmopolitan solution, based on the adoption of a theory of global distributive justice, tends to place the cut-off point too high and, in so doing, to be too demanding. In other words, it pretends too much from rich countries and, in general, requires what many see as a super-erogatory conduct on the part of their inhabitants. The solution based on human rights seems, instead, to require a less demanding commitment, as it concentrates

on guaranteeing security and subsistence to the individuals who lack them and a general right of assistance to those whom Rawls called the “burdened societies”.⁶¹ Both the rights to subsistence and the duty of assistance should not consist in the assignment of a share of one’s wealth based on an obligation to reciprocity, rather they should entail an socio-economic contribution to the political autonomy of the individuals in difficulties and the burdened societies. If the political society pretends such “circumstances of justice” as to make the attainment of political justice impossible without a minimum level of wellbeing, the rights to subsistence and the right of assistance consist in contributing to the construction of this minimum level.⁶² In different words, these rights correspond to an ethical-political threshold that all should succeed in reaching.⁶³ This permits to form at least a vague opinion of the cut-off point, which corresponds to the possibility of being able to act in a political sense.

Once this threshold - this welfare minimum to be politically autonomous - is reached, the citizens of the individual least advantaged states will be able to decide on their own and in a democratic manner on the policies to be adopted⁶⁴. Besides, they will be in a position to choose whether they should adopt investment policies or current expense policies. Their future will depend on this since – should they make the wrong choices – they will not be entitled later on to lay justified claims on the income and wealth of other countries that, in the past, have made better decision than they have.⁶⁵ As it is customary for a liberal to think, fundamental rights

⁶¹ The difference between human rights and rights to assistance should lie in the fact that the former – according to Rawls in LP – must be universally respected by all the liberal and decent peoples in order to be entitled to belong to the “society of peoples”. However, this does not necessarily apply to the burdened societies that, as a rule, do not belong to the society of peoples. Even the assistance duties fall onto the societies that belong to the society of peoples, but they are not universal and only address the burdened societies to enable them to start independent democratic processes. Besides, human rights would seem to address individuals, while the duty of assistance may also involve institutions.

⁶² This subject seems to be a base for worldwide peace if we assume the plausibility of the thesis founded on “democratic peace”.

⁶³ The idea of a minimal threshold is presented by Martha Nussbaum in her *Women and Human Development; The Capabilities Approach*, Cambridge University Press 2000. It is indeed the idea of a minimum threshold that leads me to think that basic rights and basic needs correspond to the universal duty of justice better than the capabilities mentioned by Amartya Sen. As a matter of fact, the ambit of capabilities is broader and hazier and is likely to include extremely sophisticated needs that allow a few subjects to function properly. Even in this case, I believe that the corresponding duties would be too demanding, while in the case of basic rights the only thing being assured is that all have the possibility of self-determination. I wish to thank Stefano Recchia for causing me to reflect on this distinction.

⁶⁴ Of course, it must be proved that citizens are able to decide upon their own state policies, and sometimes such an option is surely unavailable (see Pogge and Caney op cit).

⁶⁵ Rawls’ example in LP to rule out the possibility of global justice actually relates to the different conduct of two states after having reached the threshold of autonomy based on the socio-economic minimum. If one state behaves like a cicada and the other like an ant, is the latter state - having become richer in

enable people to have a starting position of relative equality, while the subsequent voluntary choices determine different outcomes, better or worse depending on individual cases. This principle is what counts, while the methods to attain its goals count up to a certain point. Ultimately, human rights and duty of assistance to burdened societies – which Rawls presents as two different aspects of the foreign policy of a liberal state⁶⁶ – may also be conceived as being actually two faces of the same medal that may coincide in an extended version of socio-economic human rights that enables everyone to make political choices. This would also allow attaining one of the major purposes of the Rawlsian liberalism: to conceive distributive justice and equality in general as instruments to get to a liberal-democratic political equilibrium rather than as independent moral purposes.

I would like to get back for the last time to the Rawlsian anti-monism that, in my opinion, remains an important aspect in any liberal conception of justice – including the “weak” one outlined here. In fact, it could be surmised that in *The Law of the Peoples*,⁶⁷ Rawls himself (and not only Nagel that interprets him) is too unwilling to extend his theory of domestic justice to the global level owing to a sort of nationalism. Instead, what seems interesting to me is to uphold that the problem is somehow independent of the domestic-global distinction. In other words, Rawls is not a mere nationalist or, at least, this is not the most interesting part of his argument. On the other hand, as pointed out a number of times following Nagel and Murphy, he is certainly an anti-monistic theoretician. To appreciate this properly, we need to consider that the internationalist model in *The Law of the Peoples* is inspired by the constitutionalist and domestic model in *Political Liberalism*⁶⁸. Due to such an inspiration, Rawls says that every liberal theory of human rights must avoid to rely on a comprehensive conception⁶⁹.

It is starting from *Political Liberalism* that Rawls partially bypasses the difference principle, namely the most strongly egalitarian core of his justice theory, from a view of justice that may withstand the test of pluralism. Ultimately, while the basic liberties – as Rawls admits in *Political Liberalism* – must be left untouched, the difference principle is and remains a controversial issue. Therefore, when the Rawlsians in favor of global

consequence of its prudent choices – supposed to recompense the former based on the global justice issue? Rawls says no.

⁶⁶ John Rawls, *The Law of the Peoples*, Harvard University Press, 1999.

⁶⁷ John Rawls, *The Law of the Peoples*, Harvard University Press, 1999.

⁶⁸ John Rawls, *Political Liberalism*, Columbia University Press, 1993 (1996 second edition).

⁶⁹ *Law of Peoples*, p. 68

justice are critical of Rawls, and would like the difference principle to be included in the theory of international justice, they should thoroughly consider the fact that even Rawls considers the difference principles controversial – risking to be monistic – even at a domestic level. Therefore, what holds him back is not an excess of nationalism, but rather a form of liberal pluralist and anti-monistic caution⁷⁰.

My thesis, as presented up to now, could appear to be following blindly Rawls' thesis in *The Law of Peoples* (and, perhaps, even Nagel's political conception), trying to find at the most a route differing from his explicit course to get there. This is not the case and – before closing – I will endeavor to explain why. In *Political Liberalism*, if Rawls isolates the difference principle in the name of anti-monism 2 and pluralism, however he makes up for it by attaching the utmost substantial significance to the foundations of the constitutional liberalism, causing it to include conditions of material equality that, usually, are not a part of it. In so doing, the egalitarian implications of political liberalism include a decent distribution of income, equal opportunities in education, basic healthcare for citizens, public funding of elections, and the state as employer of last resort. However, there is no trace of these implications in *The Law of Peoples*. No such substantial requirements may be found in either its view of human rights or the right of assistance to burdened societies. For Rawls, liberalism has always coincided with a strong defense of equality of opportunity. In any event, the Rawlsian equality of opportunity is not the classical “negative” equality of opportunity of the liberals, substantially based on the exclusion of any discrimination. It is a “positive” or fair equality of opportunity, in whose context the state must make considerable efforts to place all the citizens on the same level, starting from education and healthcare. This substantive equality of opportunity level – present in both *A Theory of Justice* and *Political Liberalism* – just fades out within the context of *The Law of Peoples*.

⁷⁰ This argument should also allow resisting the temptation to maintain that there is an implicit slippery slope in my thesis (Van Parijs objected something similar to me). One may wonder why the same argument used in this article against the view based on global distributive justice may not be used also on a smaller scale. In this case, taking anti-monism in earnest, it could be upheld that not even a domestic distributive justice is justifiable, and this seems to be paradoxically at odds with the Rawlsian paradigm within which our discussion has remained until now. However, if *A Theory of Justice* is read once again in the light of *Political Liberalism*, then one may not be too sure that this objection is right on the mark. Actually, as specified above, from a political standpoint, a full view of distributive justice becomes controversial even at a local level, and it does not mean that the difference principle may be applied. Hence, the paradox fades away.

This means that, even without adopting the difference principle as Rawlsian cosmopolitans would prefer, Rawls could have nonetheless insisted in *The Law of Peoples* on a minimal egalitarian approach. In my opinion, this means that there is no need to adopt the strong global justice view, as required by the cosmopolitans, in order to obtain greater global distributive justice within a framework that does not misinterpret Rawls' liberal and pluralist caution. The same applies with reference to the cut-off point problem referred to above. The aforementioned egalitarian implications would have made it easier to get to the threshold of democracy for those peoples who are currently unable to reach it. On the other hand, the meager view of human rights proposed by Rawls and the opaque view of the duty of assistance do not seem likely to obtain such a result. Obviously, I uphold the thesis that the liberal conception based on a weak global justice, as presented in this article, is likely to extend Rawls' principles of international justice in this direction. This happens also because the universal duty of justice, in the version here formulated, disentangle the notion of justice from the notion of reciprocity, differently from the political conception.

Therefore, what I am proposing in this article is a review of the political conception that might make it somehow less statist. In such a way, it corresponds to a reinterpretation of Rawls' thesis in *The Law of Peoples* in terms of weak distributive justice and in an attempt to make his internationalist perspective more egalitarian also –I admit- in a peculiar sufficientist and minimalist view. Should the commitment in favor of global distributive justice - required by the cosmopolitans – prove currently too arduous both theoretically and practically, as it overlooks the cautions of institutionalism and anti-monism, this does not mean that a more cautionary satisfactory solution may not be possible. This consists in: (i) conceiving a progressive justification of a global basic structure; (ii) strengthening the liberal framework of socio-economic human rights, viewing the basic needs as the substance of a political threshold. In different words, if adequately extended, these material bases of subsistence and security turn into the conditions for the autonomy of the political choices of the peoples. According to the liberal conception presented in this article, the human rights include the duties of assistance in the light of a universal duty that, considering how it is conceived, does not violate the limits of anti-monism and finds historical and legal confirmation in the main socio-economic human rights.

