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Justice in Assistance: A Critique of the 'Singer Solution'

This article begins with an examination of Peter Singer's 'solution' to global
poverty as a way to develop a theory of 'justice in assistance.' It argues that
Singer's work, while compelling, does not seriously engage with the
institutions necessary to relieve global poverty. In order realise our
obligations it is necessary to employ secondary agents, such as NGOs.
However, we should be concerned that the affluent and their secondary
agents are complicit with unjust institutions. Indeed, these agents can
create troubling social relationships with those whom they seek to help.
What is needed is a theory of justice in assistance. This is a distinct area of
justice theory because these agents are neither primary agents, like states,
but they often provide the basic social goods that we associate with primary
agents. The article ends by putting forward a provisional conception of
justice in assistance based on the republican idea of non-domination.

Is it wrong to donate money to alleviate global poverty? This seems like a
ridiculous question. The billion worst off human beings live in conditions of
extreme hunger, disease, ignorance, and fear. Peter Singer has argued
repeatedly over the past forty years that doing nothing to help the global
poor is like letting a small child drown in a shallow pond. It is morally
repugnant. If you can prevent another person from suffering, then you have
an obligation to do so. I do not dispute this claim. Singer's analogy is so
powerful because it is so simple. However, assisting distant strangers is not.
In order to satisfy our obligations to the global poor, we need secondary
agents, such as non-governmental organisations (NGOs), to deliver
assistance. These secondary agents, and their affluent sponsors, might be
complicit with unjust social institutions that produce global poverty.
Indeed, despite their good intentions, they might produce unjust
relationships with the people they are trying to help. This article argues
that humanitarian and development assistance raises problems of justice
that Singer is ill equipped to handle. What is needed is a theory of 'justice
in assistance,' understood as regulatory principles tailored for the aid
relationship. Justice in assistance is a special type of non-ideal theory
because the agents whose behaviour it regulates are not primary agents of
justice, like the state, which have the responsibility to distribute basic social
goods in ideal circumstances. However, as Onora O'Neill has observed,
these agents often take on this responsibility on a temporary basis when
relieving global poverty (2001, 191-2). Consequently, they should be
subjected to claims that regulate how they distribute goods and ensure that
they facilitate the primary agent of justice in re-establishing itself. Justice
in assistance is a useful concept because it can provide a framework to
critique and strengthen organisations like the Sphere Project and the
Humanitarian Ombudsman Project, which have sought to provide rules and
dispute resolution mechanisms for NGOs and the global poor. It satisfies
Singer's belief that ethics should provide guidance for pressing real world

problems but remains sensitive to the complexities of the addressing these problems.

Before moving forward, I will clarify the distinction between personal ethics and justice that will feature in this article. Personal ethics deals with the moral actions of individual human beings in a general sense. I am not concerned with the specific content of individual morality, but only its use as a category (Tan 2004, 21-4). Justice is understood as a practice-dependent form of morality that addresses social institutions and relationships. When human beings engage in social relationships or share social institutions it produces the need for principles of justice for purpose of regulation (Sangiovanni 2008, 138). John Rawls' statement that "justice is the first virtue of social institutions" is rooted in this concept of justice (1999b, 3). This is not to deny that there might be a notion of justice as a personal virtue, or that justice can apply to non-humans, or that a coherent practice-independent notion of justice is plausible. These are simply the conceptions used in this article. They are justified because Singer is explicit about his approach as a form of personal ethics and has stated that his solution to global poverty is compatible with practice-dependent theories of justice (2002a, pp. 127-8; 2002c, 123-4).

The article will be structured into three parts. The first will set out Singer's argument for the relief of global poverty, how these duties can be satisfied, and the function of secondary agents in the argument. It will show that Singer's analysis of NGOs is limited to matters of efficiency, even though he recognises important unquantifiable elements. The second section will address the problem of complicity with injustice. The final section will sketch the contours of justice in assistance via a conception based on non-domination.

1: The 'Singer Solution' to global poverty

Singer's argument that we have duties to alleviate the extreme poverty of distant strangers has two prominent components. The first is a thought experiment that engages his reader's moral intuitions. The second is a formal argument that generalises these intuitions and shows how they apply in the case of global poverty. The thought experiment involves a drowning child which was first put forward in Singer's 1972 article *Famine, Affluence, and Morality* and elaborated in his later work such as *Practical Ethics* and *The Life You Can Save* (1972, 231; 1993, 229; 2009, 3). We are asked to imagine a university professor on his way to deliver a lecture. His path goes by a shallow pond and in this pond is a child who is in immediate danger of drowning. The professor can easily rescue the child, as the pond is neither deep nor dangerous. He is also the only person capable of acting. However, the rescue will have a price. It will cause the professor's clothes to become wet and muddied, while his shoes will be completely ruined. He will have to go home and change, which will prevent him from delivering his lecture (Singer 1993, 229).

2

The question posed by this thought experiment is whether the professor is under an obligation to rescue the child. The answer must be yes, as the professor endures trivial burdens by muddying his clothes, ruining his shoes, and missing his lecture. The child, on the other hand, endures the non-trivial burden of death if the act is not performed. Since the professor has the capacity to rescue the child without enduring an unreasonable burden, such as risking his life in the effort, Singer makes the claim that there is a duty to perform the rescue and that to fail in this duty would be morally blameworthy (Singer 2002b, 156).

One may question why the professor has the responsibility to pull the child from the pond. No context is given for how the child came to be in the pond or whether there might be another agent that bears the burden of responsibility (Miller 2007, 233-8). So perhaps one could argue that this rescue is non-obligatory because the child has no particular claim on the professor's actions just as a particular cause has no claim to one's charity. Yet, Singer rejects this reasoning, because it is within the professor's power to rescue the child. If, after failing to rescue the child, the professor justified his inaction by claiming that he did not know the child or there was some other agent who was the proper duty-bearer he would be subject to legitimate moral blame (Singer 1972, 213; 2009, 3, 145-6). However, this argument demonstrates Singer's willingness to abstract individuals from social institutions, which will have troubling consequences when considering the problems of complicity (Singer 1972, 231-2).

The purpose of the thought experiment is to give an uncontroversial example of a duty of rescue: where it gains purchase in Singer's general argument is through the claim that there is no relevant moral distinction between it and the situation between the global affluent and the global poor. Those who possess even moderate wealth in the developed world could, with little cost to themselves, save the lives of some of those in extreme poverty. It may be true that those suffering in poverty are distant strangers, but this is irrelevant.

This claim at first seems rather wild, but Singer claims that the thought experiment and the relief of poverty share three premises. The first premise is that absolute poverty is bad for those subjected to it, just as drowning is bad for the child. This is uncontroversial. Absolute poverty being defined as 'a condition of life so characterised by malnutrition, illiteracy, disease, squalid surroundings, high infant mortality and low life expectancy as to be beneath any reasonable definition of human decency' (Singer 2002b, 81). This matches the moral condition of the global poor with that of the drowning child. In both circumstances, an uncontroversial wrong can be identified.

The second premise links responsibility with capacity. If it is within the power of an agent to prevent a moral wrong, without sacrificing something of comparable moral value, then there is an obligation to prevent

it. The professor in the thought experiment bears the duty to rescue the child because he has the capacity to do so and it would not cost him anything of comparable moral significance (Singer 1972, 231). The second premise should be noted since it has a strong influence on the practical guidance offered by Singer. The second premise contains a limiting condition, which prohibits duties that require significant sacrifices (Singer 1972, 241). One is not obligated to rescue a drowning child from a lake that is infested with alligators, as it would put one's life in immediate danger. It should also be noted that Singer acknowledges that this may be too demanding since there are few things that have comparable moral significance to the life of an innocent person. He offers a moderate position that simply reduces the limiting condition to not sacrificing "something morally significant" (Singer 1972, 241). This leaves the understanding of moral significance to the judgement of the duty-bearer (Singer 1993, 231-2; 2009, 16-7).

The final premise is that it is within the power of the affluent to alleviate at least some absolute poverty and that it can be prevented without the sacrifice of something of moral significance. This is also a relatively uncontroversial claim since it is also limited. It does not assert that all global poverty could be easily eradicated with little cost to the duty-bearers. It merely asserts that some global poverty can be alleviated without imposing unreasonable costs on duty-bearers. It does not require that assistance to distant strangers be optimal or problem free, just that it works some of the time and saves some lives (Singer 1993, 231-2).

These three premises lead to the conclusion that, as living in absolute poverty constitutes a wrong that can be at least partially relieved by the world's affluent without a sacrifice of something of comparable moral significance, the relief of some absolute poverty is a duty that attaches to relatively affluent individuals. This duty holds regardless of the distance between agents or whether they share social institutions like the state. Living in absolute poverty is no less deplorable for a distant stranger than it is for a close friend. Denying that one has a duty on these grounds would be comparable to the professor who does not pull the child from the pond because he is unknown to him.

The above thesis has been used to justify what has become known as the 'Singer Solution' to global poverty. Singer is know for his advocacy of 'practical ethics,' which is the reasonable notion that academic philosophy should provide guidance for the moral dilemmas we face in everyday life.[i] The duties found in Singer's argument have a notable characteristic. They are imperfect. This does not mean that they have less moral significance than perfect duties, but it merely means that they are incomplete. Usually this means that while the duty-bearer is identified there is ambiguity about the content of the duties or to whom exactly they are owed (O'Neill 1999, pp. 144-8; Sen 2011, pp. 373-4). This makes these duties highly discretionary. This does not mean that they are optional, but the way in which they are satisfied is contingent on the disposition of the duty-bearer

(Singer 1993, 231-2). Singer relies on honesty of his duty-bearers (2009, 17). This is often thought of in terms of how much people give ranging to marginal utility or any income beyond what is necessary, which Singer thinks was justified, to between 5% and 10% of annual income, which he advocates as reasonable (Singer 1972, 234; 1999; 2006; 2009, xvi-xv). However, it also applies to the *means* by which poverty is relieved. The child in the pond cannot demand to be rescued in a particular way, say fireman's carry versus a piggyback ride, and the global poor cannot demand that aid take the form of microfinance as opposed to large scale infrastructure investment. In other words the way in which duties to the global poor are satisfied depends on the *arbitrium* or judgement of the duty-bearer. The desires and interests of the duty-recipient are not part of the argument, except perhaps insofar as they may be factored into a calculation of utility.

He offers guidance for two ways to satisfy these duties. The first is to increase the quantity and quality of state-based foreign aid to the global poor. The second is to make direct donations to NGOs that are engaged in relieving poverty. The focus of Singer's writing has been on the second option. This is because the second option is something that will have an immediate effect on the lives of the global poor, whereas government reform may be a long time in coming. (Singer 1972, 239; 1993, 241-2; 2009, 36). However, these are not mutually exclusive options. It may be desirable to have a lifeguard by the pond or a fence that will deter small children, but their absence should not prevent the professor from rescuing the child.

Yet, there is a gap between Singer's guidance and his initial argument. The professor's duty to the child can be satisfied by a brief and discrete action by the professor; all he needs to do is wade into the pond, pull the child to shore, and perhaps deliver the child to their guardian or another responsible adult. All of these actions are within the personal capacity of the professor. However, Singer's solution does not require identical actions. Duty-bearers are not required to personally help those suffering from poverty's ill effects. Instead, he advises, among other things, that individuals should give money to NGOs so they can organise relief efforts. This, however, introduces secondary agents into Singer's solution and with it the distinction between unmediated and mediated capacity.

The second premise of Singer's thesis is that if an individual has it in their power to prevent something bad from happening, without sacrificing something of comparable moral value, they have an obligation to do so. The critics of Singer have focussed on the limiting condition in this statement, but have neglected what it means to have the power to prevent something bad from happening. In the case of the drowning child, it is incontrovertible that the professor has it within his power to save the child. This is not the case with global poverty. The addressees of Singer's argument do not have it in their power to prevent or relieve global poverty in an analogous way. This is illustrated by the example of the Gates Foundation. Bill and Melinda Gates created the foundation in part to alleviate the problem of global

poverty. They endowed the Gates Foundation with a significant part of their personal wealth, approximately \$24.5bn. Yet, in order to help alleviate global poverty, even Bill Gates needed to create a complex organisation to manage and distribute funds. The way he exercises power is distinct from the way the professor does, even though the Gates family constitutes the executive board of the foundation, because he requires the necessary assistance of secondary agents to satisfy his duties. This also applies to persons who do not possess wealth comparable to the Gates family. The average person in the developed world possesses a relatively large share of wealth when compared to a person in absolute poverty, but they do not have the wealth to create a philanthropic foundation. They can give to NGOs to finance relief efforts, but they do not exercise power over these organisations in the same way the professor exercises power over his body to rescue the child. The claim that affluent persons have it in their power to prevent some global poverty in a way that is directly analogous to the professor's power to rescue the drowning child is inaccurate. The latter's capacity is unmediated; the former's is mediated.

At this point a truculent critic may decide to dig in his heels and say this is a minor divergence, but has no real significance. It is evident that Singer does not consider secondary agents to be a problem. In *Famine, Affluence, and Morality* Singer wrote so cavalierly about NGOs that it deserves to be quoted at length:

> From a moral point of view, the development of the world into a "global village" has made an important though still unrecognised, difference to our moral situation. Expert observers and supervisors, sent out by famine relief organisations or permanently stationed in famine-prone areas, can direct our aid to a refugee in Bengal almost as effectively as we could get it to someone on our own block. (1972, 4)

We find in his early work the opinion that there really is not that much of a difference between pulling a child out of a pond and relieving global poverty. Secondary agents are portrayed in a way that is akin to the limbs of a person; NGOs rescue people from poverty in the same way that the arm of the professor pulls the child out of the pond.

In his recent work, Singer has expressed a more nuanced understanding of secondary agents. However, there is a fundamental continuity between his early work and his current work, insofar as the only matter taken under serious consideration is that of effectiveness. In *The Life You Can Save*, he focuses on how individuals can select the NGO that will provide the most effective means to help the global poor. To his credit, he appreciates that this requires more than trusting the press releases from NGOs that show how they minimise administrative costs. This alone cannot assess the effectiveness of assistance. He points to work done by Holden Karnofsky and Elie Hassenfeld. They found it very difficult to assess the

effectiveness and transparency of charities and eventually founded GiveWell, an NGO dedicated to improving transparency and effectiveness in other NGOs (Singer 2009, 82-5). Karnofsky and Hassenfeld also extended their analysis to organisations like the Grameen Bank. This organisation was founded by Muhammad Yunus and provides microfinancial support to poor persons in South Asia. The loans are insignificant to most Westerners, the example given is a $40 loan to start a restaurant, but they provide basic capital that people can use to pull themselves out of poverty (Singer 2009, 91). Singer does express some concerns about the efficacy of microfinance but says there is sufficient evidence that they improve the life of the poor even if they don't make them into entrepreneurial dynamos (Singer 2009, 92). Their work is admirable and necessary, but it says little about the social relationships that NGOs have with the global poor. The transparency and accountability is directed towards duty-bearers, not recipients. It assesses outcomes, but not the means by which these outcomes are achieved. Singer's analysis of secondary agents is limited to the efficiency by which they can transfer resources from the affluent to the poor.

Singer does gesture towards concerns beyond efficiency when writing about recipient involvement when dealing with his work with Oxfam America and Oxfam Australia. He points to work done with 'ragpickers' in India. These women were typically lower caste Dalits who work in deplorable conditions for a pittance. Oxfam actively involved them in shaping the character of the project to meet with their own desires. When the recipients decided it was time for Oxfam to leave, the NGO left behind a stronger community with a recognised union, The Registered Association of Ragpickers (Singer 2009, 95-6). Similarly, he gives the example of Oxfam's work in Mozambique engaging in legal reform to improve the status of women in that country (Singer 2009, 97). What is interesting about Singer's support of initiatives designed to empower recipients in the aid relationship and in the post-aid environment is that he acknowledges their value but cannot explain why there are valuable. He writes, "it isn't possible to quantify the impact of Oxfam's work" (Singer 2009, 97). This shows that focussing on quantifying aid's effectiveness, while important, may draw attention from another important dimension of development: the sorts of social relationships that are produced by international assistance.[ii]

2: The Complicity Problem

The shortcomings of Singer's approach become evident when looking at how Singer insulates his duties from existing social institutions and relationships. Cosmopolitan critics have argued that he does not address the causes of poverty. This critique will be explored and furthered. It is not enough to say that Singer does not take into account how the international system can cause absolute poverty, but we must also ask if duty-bearers and their secondary agents are complicit with this system.

These critics share common ground with Singer. They are, like him, cosmopolitans. The difference between Singer and his cosmopolitan critics

is methodological. Singer focuses on individuals, whereas his critics focus on the justice of institutions. The charge institutional cosmopolitans bring against Singer is that by focusing on what individuals ought to do to alleviate global poverty, he overlooks how the transnational system causes global poverty (Kuper 2002a, 126). So long as the transnational system allows powerful agents to compel weaker ones into unfair agreements and allows governments, no matter how corrupt, to exercise control over resources and borrowing, global poverty will remain a problem (Pogge 2008, 18-9). Donating all of one's surplus income to charities might relieve some absolute poverty, but it does nothing to alter the systemic causes of global poverty (Kuper 2002b, 111-2).

They are on the right track, but Singer has an apparently convincing reply to cosmopolitan critics. The different methodologies indicate that they are interested in different questions. Singer may agree that the transnational system produces or exacerbates global poverty and supports the cosmopolitan agenda of reform. However, given that a fundamental reorganisation of the transnational system will not occur in the foreseeable future, individuals need to ask what they should do to alleviate global poverty in present circumstances (Singer 2002a, 128). Consequently, the institutional cosmopolitan critique is misplaced since it addresses a different, though related, topic in the literature on global poverty. However, this answer is not satisfactory, because we cannot easily separate the duty-bearers or the secondary agents from the world in which they exist. This raises concerns about whether affluent persons and the NGOs they fund are complicit with injustice. My concern is not only about complicity with unjust international institutions, but with injustice within the aid relationship itself.

Singer's duty-bearers cannot be separated from the international system. Affluence has a history and, if we accept the cosmopolitan argument, it's an unpleasant one. Thomas Pogge has argued that the international system is characterised by structural problems that foster extreme poverty to the benefit of citizens in the developed world. Specifically, he points to resource and borrowing privileges (Pogge 2008, 118-22). The former allows states, regardless of their character, to sell the natural resources of their territory and the latter allows states to borrow from international institutions. This has the effect of destabilising fragile states, because these privileges can be extremely lucrative and this incentivises *coups d'état* (Pogge 2008, 154-8). However, the more pressing concern is the use of coercion by developed states in setting the rules of the global economy. Agreements, such as The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), have proved controversial because they protect patents on medicines and have undermined the generic pharmaceutical industry in the developing world. This has caused many people to fail to receive fair access to affordable medication for life threatening illnesses (Pogge 2008, 224-9).

This connects to Singer's argument because the affluence that makes citizens of the developed world duty bearers is connected to these structural injustices. Let us return to the Gates Foundation, which was created by Bill Gates using the wealth he earned from founding and helming Microsoft. The Gates Foundation may put its endowment to good use by financing development projects in Africa or vaccines for diseases that disproportionately affect the poor, but, if the cosmopolitans are correct, then this wealth has come from an unjust system that privileges large corporations like Microsoft. Moreover, the Gates Foundation manages its endowment like a hedge fund. It is used to make investments that will sustain the Foundation's coffers over the long term. In 2007, it became known that the Gates Foundation, via Warren Buffet's donation of Berkshire Hathaway stock, was invested in the Sudanese oil industry (Piller 2007). The Gates Foundation was accused of supporting and profiting from the Sudanese government despite the widespread condemnation of the humanitarian crisis in Darfur. After this association was made public, the Gates Foundation withdrew its investments from Sudan. The Gates Foundation should not be singled out. This argument can be generalised to the citizens of the developed world. An average middle class person might have their pension invested in one of the large pharmaceutical corporations that benefits from TRIPS, they might purchase clothes made in sweatshop conditions, the shrimp that they serve as an appetiser might have been caught by people who are slaves in all but name in Thailand. If we accept, as Singer does, the claim that the international system is unjust then we cannot ignore that most people in the developed world are complicit with this system because they reap the benefits (Singer 2002a, 127-8; 2009, 28-33).

The complicity with the international system is not simply a matter of dirty hands, but there is a parallel concern that NGOs sustain unjust circumstances by ameliorating the worst excesses of the international system. These organisations are co-opted into enforcing the coercively imposed rules of international cooperation. Critical development theorists, such as Arturo Escobar, have claimed that NGOs are a component of a system that perpetuates a "politically and technically manageable" form of underdevelopment (Escobar 2012, 46-7). That is, when states in the developing world accept the terms of cooperation laid out by the World Trade Organisation or accept loans from the International Monetary Fund they must comply with certain conditions such as terminating protectionist trade policies, liberalising the economy, and cutting public sector spending. This often exacerbates inequalities within these states, but international NGOs often ease the transition by "filling the gaps" left by the withdrawal of the state. This has the effect of depoliticising socioeconomic justice by placing it in the hands of private agents and exercising ideological discipline over the discourse of poverty and development (Escobar 2012-2; Ferguson 1994, 254-6, 275-7; Hulme and Edwards 2013, 276-9). The activities of NGOs in Bangladesh provide an example of this. These organisations have

recently employed micro-credit as a means to assist the very poor, especially women. However, the debt-relations produced by micro-credit facilities have had unanticipated negative consequences for the very persons they were trying to help. Lamia Karim, for example, found that loans delivered to poor rural women with the intention of allowing them to gain a measure of fiscal independence had the effect of reducing local solidarity, as the recipients of loans would then lend money to others at usurious rates and then establish micro-financial cartels (2001, 100-1). They may alleviate some poverty, but there is a cost to the community. This helps to explain why Sauveur Pierre Étienne claims that NGOs act as "the iron spear of neo-liberal policies" and Michael Hardt and Antonio Negri call them "the mendicant orders of empire" designed to discipline recipient communities into conforming with the international system that contributes to their immiseration (Étienne 1997, 236; Hardt and Negri 2000, 36; Schuller 2007b, 98). This claim seems a little extravagant. However, the point made by these critical theorists is well taken. We cannot segregate the practices of NGOs from the broader global system and there is at least a case to be made that they support, perhaps unintentionally, the system that fosters global poverty in the first place.

Yet, even if we set aside the problem of international complicity there remains the problem that the aid relationship itself raises questions of justice. There are three issues I will examine: undermining the state, perpetuating complex emergencies, and facilitating exploitation. The way in which NGOs can undermine the state is overdetermined, but I will address several recurring themes. The most simple of these is that the presence of NGOs diminishes the human capital available to states in recipient communities (Easterly 2002-3, 227 fn.4; Morton 1997, 24; Schuller 2007a, 90-1). These organisations often offer wages that greatly exceed those offered by the public sector and this prompts an "internal brain drain" to NGOs. The consequence is that the state is less able to satisfy its obligations of justice, because those who possess the expertise to maintain the state have been drawn away to work elsewhere. The effect of this change in the labour market is not limited to reduced institutional capacity: it also produces a new sector in the economy that develops its own interests. People employed by NGOs have an interest in maintaining their relatively lucrative and high status employment. Consequently, this provides incentives to prolong relationships of assistance (Anderson 1999, 42-3; Jackson 2005, 178-9; Schuller 2007a, 91-3). The creation of what Mark Schuller calls the "NGO class" helps to show that relations of assistance can profoundly affect the structures of the societies in which they operate in a way that is at cross purposes with the aim of assistance(de Waal 2011, 136-8; Schuller 2007a, 91-3).

NGOs also divert other resources away from the state. The growth of NGOs in the past thirty years as one of the primary means to assist those in poverty has also created a vicious circle regarding public institutions. NGOs attract funds that have, in the past, gone directly to states in

developing countries. This is in part because of the belief that these organisations are more accountable, that they work closely with the persons that are in need of assistance, and that they make more efficient use of resources. It may be that this is the case, but drawing away these resources from the state creates a self-fulfilling prophecy; the state will have less resources, with which it will be able to do less than it could previously, which will enhance the perception that NGOs are better positioned to be agents of assistance (Hulme and Edwards 2013, 4-7). Stephen L. Esquith has recently made the argument that NGOs in Mali inadvertently facilitated the recent coup d'etat. The organisations working in Mali became the "fourth branch of government" (2013, 380). By providing access to important social goods they came to be viewed as more legitimate than the state. Consequently, Malians became less willing to support the state or pay taxes. This was not the intention of the NGOs but as Esquith points out their self-proclaimed neutrality or bystander status made them blind to the impact they were having on Mali (2013, 383).

This connects with the concern that by siphoning off resources from the state, NGOs usurp its legitimacy. Large NGOs can exercise a great deal of influence over state policy. In some cases a few organisations have come to act as essentially private government ministries that take charge of the provision of social goods. In Bangladesh during the 1990s, for example, sixty percent of foreign funds entering the country went to the eight largest NGOs; these funds were used to create a hierarchical structure in which the majority of smaller, often local, organisations were dependent upon their liberality. The absence of accountability mechanisms helped to set up these organisations as new social elites with little evidence as to whether they were actually improving the lives of the intended targets of assistance (Karim 2001, 96). Moreover, by enticing educated classes with better career prospects, they assimilated potential critical groups (Karim 2001, 97-98). This does not imply that these organisations have questionable motives or that they are not improving the lives of the global poor. However, it does raise concerns about whether they are effectively displacing the state rather than buttressing it. Instead of supporting the state, NGOs become rivals to it or remake it in their own image (Ferguson and Gupta 2002, 994; Kamat 2003, 167-71; Matanga 2010, 114).

Although there is a trend towards larger NGOs, it is common for there to be numerous small and medium sized organisations operating inside fragile states. It is not so much a "cartel" of powerful organisations, to use William Easterly's term, but, to use Laura Zannoti's term, a "cacophony" (Easterly 2002, 243-7; Zanotti 2010, 757-62). Mark Schuller, for example, travelled to Haiti in 2002 and found that the Haitian government office in charge of monitoring the activities of non-government organisations had not updated its list since 1995, when it was updated in 2005, two-thirds of the contact information was out of date. Although it is supposed to receive annual reports from all organisations operating in Haiti, it is clear that this is at the discretion of the organisations (Schuller

2007c, 74). In these circumstances numerous NGOs carve niches within recipient communities, sometimes overlapping and replicating services. They can constitute an obstacle to recipient states being able to enact national policies, since these organisations can mobilise their own constituencies against policy options that run against their interests (Mathews 1997, 53-5; Pierre-Louis 2011, 192-3). Yet, in situations of "cartels" and "cacophonies," there are reasons to be concerned that NGOs do not support the state, but rather produce rival bases of power.

The second concern is that NGOs can perpetuate complex emergencies. This is especially evident in the militarisation of refugee camps. In the aftermath of the Rwandan Genocide many international NGOs recognised that they had exacerbated the crisis. When Rwandan refugees fled to what was then Zaire following the Genocide, especially in the area surrounding Goma, the NGOs and the leadership of the refugee camps acted as a "state-in-exile" that operated without oversight from the Zairian government (Lischer 2003, 107). NGOs supplied aid to refugees, among those were many directly or indirectly involved in the genocide and were waging a guerrilla campaign against the new Rwandan government. (Dijkzeul and Wakenge 2010, 1148; Tong 2004, 183-4). For example, those moving into refugee camps run by *Médecins Sans Frontières* (*MSF*) were forced to pay camp leaders, often associated with *genocidiaries*, for basic goods such as plastic sheets, food, and water. These goods were provided by *MSF* and were supposed to be free of charge to refugees but wound up being used to finance continued violence (Terry 2002, 190). Although they were aware of this, humanitarian organisations continued to pour assistance into the camps and played down the relationship between the refugees and the genocide. The consequence was that they were feeding militants, supporting the dependents of militants, granting militants legitimacy, and stabilising the war economy (Anderson 1999, 42-44; Barber 1997, 10-11; Cooley and Ron 2002, 27-8; Lischer 2003, 83-5; Terry 2002, 37-47). It should, however, be noted that the French section *MSF* and the International Rescue Committee did eventually withdraw from Zaire, but it did so after much internal debate and with a great deal of external criticism from other NGOs in the area (Terry 2002, 2-4, 195-8).

Finally, there is also the chance that NGOs can be complicit with injustice caused by their own employees. There are examples where the employees of NGOs have used their power for despicable ends. An example of this would be the sexual abuse of women and children in West African refugee camps. In 2002, the Office of the United Nations High Commissioner for Refugees and Save the Children-UK investigated allegations of sexual misconduct and confirmed not only widespread exploitation of women and children in refugee camps, but that some of the perpetrators were employees of NGOs, including *MSF,* the American Refugee Committee, and the International Federation of the Red Cross and Red Crescent (Reyes 2009, 215-6). The abusers used their control over the distribution of basic social goods, such as food or employment opportunities,

to gain sexual favours from women and young girls. Moreover, the victims found themselves in a situation where they were unable to speak out without the fear of incurring negative repercussions due to ineffective accountability mechanisms and lack of knowledge about their own rights (Csáky 2008, 12-14; Reyes 2009, 216-8) This is an exceptional perversion of international assistance, but it is a useful example as it shows that arbitrary power can be directed towards exploitative ends. The fact that power relations within the aid relationship could allow this type of abuse to occur serves to show, in an admittedly extreme way, why we should be concerned about justice in assistance. It is the capacity for exploitative terms of social cooperation that is the worry rather than actual instances of exploitation.

This section has argued that it is incredibly difficult to speak about the relief of global poverty as a matter of individual action, since there are strong reasons to assume that Singer's duty-bearing agents and the secondary agents required to satisfy duties to the global poor are complicit with unjust social relationships and institutions. At the global level there is the problem of duty-bearers benefitting from unjust economic relationships with the duty-recipients and their secondary agents supporting the continuance of this system by ameliorating its worst elements. At the domestic level, secondary agents can undermine the state, perpetuate the conditions that warranted intervention, and be a source of exploitation.

3.0: Conceptualising Justice in Assistance

This should not be taken as a wholesale rejection of Singer. He is correct to argue that our duties to the global poor require swift action and cannot be limited to long-term structural reforms of the international system. However, he did not in 1973 and does not, as of his latest major intervention in 2009, seem to appreciate the problem of complicity with injustice in the international system and within the aid relationship. This is why a theory of justice in assistance is necessary; it seeks to reconcile moral urgency with the regulation of social institutions. This concluding section will examine how justice in assistance differs from individual ethics and cosmopolitan theories of justice by sketching a tentative conception based on non-domination and how it could affect international aid.

Justice in assistance is distinct from individual ethics in that it aims to regulate social institutions rather than individual actions. It is similar to practice-dependent theories of justice. Although, it is more closely related to non-ideal theory, as it shares the assumption that some agents are unable or unwilling to comply with duties of justice (Rawls 2001, 13). If this were not the case there would be no need for something like the Singer Solution, since extreme poverty seems incompatible with any reasonable ideal theory of justice. However, it is distinct from non-ideal theory, which has been thought of as derivative. Ideal theory provides the principles of justice and non-ideal theory seeks to realise them in circumstances of non-compliance (Rawls 1999a, 89-90). Where justice in assistance differs is that

it recognises that social institutions set up in non-ideal circumstances might require principles of justice suited to them in particular. This is in line with Rawls' claim that "the correct regulative principle of a thing depends on the nature of that thing" (1999b, 25).

A theory of justice in assistance must be tailored to the nature of international assistance. However, the nature of the agents, such as NGOs, that would be regulated by these principles is problematic. O'Neill's taxonomy of agents of justice is useful here. Primary agents of justice are those that determine how to institutionalise principles of justice. Secondary agents of justice, in contrast, are charged with supporting the primary agents of justice and conforming to the principles of justice (O'Neill 2001, 181).[iii] It seems uncontroversial to assert that NGOs are of the second category, while the state is commonly thought to be the default primary agent. The claim NGOs should be suborned to primary agents of justice is plausible in ideal theory, but what has been overlooked is whether this is possible in non-ideal circumstances.

The role of a secondary agent of justice is supportive, but NGOs operate in circumstances in which there is no primary agent to support or the primary agent is so enervated that it cannot meet its obligations. This leaves NGOs in an ambiguous position. In these circumstances, O'Neill has argued, these organisations often act as secondary agents by badgering states into enforcing principles of justice, but they also take on duties that are often associated with the state as the primary agent of justice (O'Neill 2001, 191-2). If a NGO provides access to basic social goods such as education, health care, or access to food, it is operating beyond the bailiwick of a secondary agent of justice. This gives them characteristics that are associated with the primary agent of justice. It seems, therefore, that the distinction between primary and secondary agents loses its sharpness in practice. NGOs behave like hybrid agents by attempting to support infirm primary agents of justice while at the same time taking on their distinctive functions. The problem of this mixed position has been addressed in this article. NGOs, by acting as pseudo-primary agents of justice, can inadvertently undermine the capacity of weakened states to reassert themselves in their role as the primary agent of justice, while benefitting from or creating social relationships that can be considered unjust.

This is why justice in assistance is required. It regulates these agents on the terms of their practices. If they partially assume the role of primary agents of justice, they should be subject to the claims individuals make against primary agents to ensure that they are meeting their obligations. However, this role is provisional. They are not meant to replace the state as the primary agent of justice. These are organisations that must eventually wither away or revert to their ideal theory role as secondary agents. Consequently, a theory of justice in assistance must have a teleological component, as it aims at ending or at least alleviating poverty, and side-constraints on how these agents can exercise their power. The teleological

component is uncontroversial. Secondary agents need to work towards realising an ideal theory view of the world, regardless of whether it is utilitarian, cosmopolitan liberal, or a form of statism. The issue of side-constraints is more interesting.

The problems identified in this article point to the problem of unaccountable power in assistance. This has strong resemblance to republican worries about domination. Their central claim is that the antithesis of liberty is domination as opposed to interference (Pettit 2012, 8-11). Domination is understood in the following terms:

- A social relationship is dominating if X, an agent, possesses the capacity to arbitrarily interfere in the choices available to Y, a dependent agent.

If we accept that NGOs may dominate the global poor it does not imply that they act with malevolence. Domination is about structural distribution of power between agents, not about their intentions. It is not characterised by the psychological disposition of any of the agents involved (Lovett 2010, 43-7). Pettit uses Torvald's benevolent but suffocating paternalism towards Nora in Ibsen's *A Doll's House* as an example of this (1997, 60). What matters is that one agent has the capacity to arbitrarily interfere in the choices of another not their reasons for doing so. Domination is a concern because of the way that it undermines the minimal autonomy of persons subjected to it. Minimal autonomy in this case refers to the capacity of a person to formulate and pursue a reasonable plan in the society of other persons over a complete lifespan (Laborde 2010, 54-5; Lovett 2010, 130-1; Pettit 1997, 90-2). This notion of autonomy does not imply that there is a single "good life" worth pursuing, but that it is important that individuals are able to develop and pursue their own conception of a good life. Domination constitutes a serious impediment to this. The majority of aid workers may have the best intentions and do good work, but arbitrary power it can curdle into something grotesque and those subject to it tend to be aware of this. This is precisely the problem with the sexual abuse scandal in West Africa noted above. Indeed, it does not need to be intentionally exploitative to be problematic; domination can produce the moral blindness Esquith identifies with NGOs, which is comparable to Torvald's shocked confusion when Nora leaves him (2013, 378). A dominating agent may cause harm unintentionally, because there is no way for dependent agents to hold them to account.

Domination allows us to understand why recipients are often discontent with assistance. The Listening Project has conducted interviews with persons in post-aid situations. Recipients express a great deal of gratitude towards NGOs, but also frustration and resentment (Anderson 2009, 97-105). There was the perception that aid projects are not aligned with the needs of recipients, but are tailored to the interests of donors. This is, in part, due to the drive towards accountability in assistance. The

15

problem is that accountability has become donor-oriented rather than recipient-oriented. This disrupts the feedback loop between recipients and NGOs, since recipients are unable to reward or punish these organisations in the same way as donors (Bebbington and Riddell 2013, 121-7; Cooley and Ron 2002, 22-3; Hilhorst 2002, 204; Macrea *et al.* 2002, 50-1; Reinikka 2008, 180-1). Consequently, the recipients of aid come to view the input they have into the projects that deeply affect their lives as tokenistic, or fear that if they speak out of turn they may lose assistance. Consultation with NGOs may take place, but they do not yield substantive results, especially when these results would conflict with the aims or ideological dispositions of donors (Narayan *et al.* 2000, 106-7). If domination provides a framework that captures the problems identified in this article, then non-domination could be a plausible side-constraint in justice in assistance derived from respect for persons.

Republican theories of justice have focussed on minimising domination rather than a blanket prohibition (Lovett 2010, p. 170-9). In the case of justice in assistance the focus must be on reducing arbitrariness, as the relationship between the affluent, NGOs, and the poor will always be characterised by an asymmetry of power and dependency. The affluent have resources the poor desperately need, if this was not the case there would be no need for assistance. It should be noted that this is independent of republican teleological commitments. Minimising domination should command an overlapping consensus if it is a corrective to the problems identified in the previous section.

Minimising arbitrariness could provide support to projects like the Sphere Project and the proposed ombudsman for humanitarian assistance (HAO). The Sphere Project has attempted to create a humanitarian charter to establish minimum standards for NGOs working in disaster zones. It would allow recipients to know the rules of the relationship and hold donors and NGOs to account when they are not met. It also includes a consultation process for recipients (The Sphere Project 2011). This is complimented by the idea of a HAO, which would provide an independent and impartial institution to mediate disputes (Christoplos 1999). Neither of these are perfect initiatives. *MSF* has been very sceptical of the Sphere Project on the grounds that it would impose technocratic standards that would stifle innovation and be dictated from donors and powerful states (Tong 2004, 184). The HAO has been met by scepticism about whether it could ever have the power to sanction NGOs and whether it could be immune to the influence of powerful donors (Mitchell and Doane 1999, 122-3). Both initiatives were criticised for being biased to the perspectives of donors and NGOs. In the case of Sphere, consultation has been stressed but what "meaning consultation" entails. Indeed, the provision that consultation can be set aside when it creates "additional risk", indicates that NGOs possess a veto in the aid relationship (The Sphere Project 2011, p. 41).

If the empowerment strategies were pursued in a way that specified the influence that recipients have within the aid relationship and ensured that they had the means to hold NGOs to account via a sufficiently powerful invigilating institution, it would help to reduce domination in the practices of NGOs. This echoes the republican focus on the rule of law and democratic contestability as the means to constrain the power of the state. The combination of this sort of empowerment and accountability are attractive strategies, because they build on existing ideas within the humanitarian and development communities and are not in conflict with the values that most NGOs publically advocate. Minimising domination would allow the global poor to hold the affluent and their agents to account for their complicity with an unjust international system, while at the same time minimising the damage that can be done by NGOs through arbitrary power.

Global poverty is a problem of great moral urgency. Singer should be applauded for making a compelling and simple argument why the affluent have duties to assist people living in dire conditions. However, affluence has a history that is mired in injustice and, even if this were not the case, assistance can negatively affect the very people it tries to help. Justice in assistance recognises the teleological aim of ending poverty, but also recognises that there must be side-constraints. I have suggested that minimising domination is a plausible constraint on assistance. However, this is only the first and very tentative step in developing a complete conception of justice in assistance.

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[i] "Second, ethics is not an ideal system that is noble in theory but no good in practice. The reverse of this is closer to the truth: an ethical judgment that is no good in practice must suffer from a theoretical defect as well, for the whole point of ethical judgments is to guide practice." (Singer 1993, 2)

[ii] It seems to be a common mistake that Singer's solution is a utilitarian approach to global poverty. He has been very clear for at least 20 years that it is not:

> "It's no great secret that I'm a preference utilitarian, and so he could have inferred that I believe that goods ought to be distributed so as to maximize the satisfaction of preferences, in the long run. But in writing about the obligation to assist the world's poorest people, I

> want to reach people who are not utilitarians, so I don't rely on utilitarian premises for that argument" (2002b, 127)

Also refer to Singer 1993, 229-30.

[iii] This is comparable to Rawls' distinction between the social institutions that bear duties of justice and the natural duty to individuals to support and further just institutions. (Rawls 1999b, 6-10, 47-8, 293-301)

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