

Defending the “claimability objection” from non-conventional arguments

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ABSTRACT: According to the well-known “claimability objection” posed by O’Neill, it is unjustified to hold that each individual has a human right to socioeconomic goods because the duty-bearers are not sufficiently determined. Even though this objection has been defended in the literature from many counter-arguments, attacks against the claimability objection based on non-conventional conceptions of human rights remain unexplored. In this paper, I aim to fill this significant gap in the philosophical literature. I defend the claimability objection from arguments that aim to undermine such an objection on the basis of non-conventional conceptions of human rights. By doing so, I reinforce the defence of the claimability objection.

KEY WORDS: Claimability objection, human right to socioeconomic goods, human rights, global justice, O’Neill.

1. Contribution to the existing discussion

Is it justified to hold that each individual in this world has a (moral) human right to socioeconomic goods such as food, clothing and housing? O’Neill’s well-known “claimability objection” provides a negative answer to this fundamental question (O’Neill 1996; 2000; 2005; 2016). The claimability objection proceeds in two steps. First, the so-called “claimability condition” asserts that an agent *S* has a right to *P* only if the duty-bearer is sufficiently determined – this means only if it is sufficiently clear against whom *S* claims her right to *P*.¹ Assuming this premise on the specification of the duty-bearer, which is proposed as a

¹ For a detailed exploration of this premise, see Rettig (2020).

necessary condition that any (justified) ascription of a right must satisfy, the second step of the argument states that it is unjustified to hold that each individual has a human right to socioeconomic goods. The reason is that it is systematically unclear “where claims [to socioeconomic goods] should be lodged” (O’Neill 1996: 132; see also Hope 2014).

This argument has generated a massive debate in the literature (e.g. Ashford 2006; Beitz 2008; Igheski 2016; Jones 2011; Nussbaum 2004; Raponi 2016; Sen 2004; Stemplowska 2009; Tasioulas 2007; Tomalty 2014; Wringer 2010). Even though the claimability objection has been defended from many counter-arguments (Hope 2014; Rettig 2020; 2021; Tomalty 2014), attacks against the claimability objection based on non-conventional conceptions of human rights remain unexplored in the philosophical literature. By “non-conventional conceptions”, I mean new (or alternative) ways of understanding human rights that go beyond how these rights are traditionally defined in the philosophical literature. For example, in the case of the human right to socioeconomic goods, conventional conceptions hold that it should be conceptualised as a right that individuals in need may claim against states (Beitz 2008; Tomalty 2014). This is clearly faithful to how this human right is understood in existing human rights practice (Donnelly 2013). As I will analyse in detail (sections 2.1 and 3.1), non-conventional conceptions redefine this right by holding that the content of its correlative duties is wider than what existing human rights practice assumes (Pogge 2002), or simply significantly different from what we usually think (Collins 2016).

In this paper, I aim to fill this significant gap. I defend the claimability objection from two unexplored arguments that aim to undermine the claimability objection on the basis of non-conventional conceptions of human rights. The first tries to undermine the claimability objection on the basis of what I call the “reasonable-consideration” conception of human rights. This conception holds that the duties correlated to human rights should be understood as obligations to give reasonable consideration to what one might do to respect, protect and fulfil the right (Collins 2016; Sen 2004). Assuming such an idea, this argument holds that the claimability objection fails because the duty-bearer correlated to the human right to socioeconomic goods is sufficiently determined: each individual in need has a “human right that each agent deliberates equitably about how to respect, protect and promote the socioeconomic good, and acts accordingly” (Collins 2016: 710). Call this the “reasonable-consideration argument”. The second argument aims to undermine the claimability objection on the basis of an institutional conception of

human rights that incorporates aspects of the so-called interactional conception.² It holds that human rights should be understood “primarily as claims on coercive social institutions and secondarily as claims on those who uphold such institutions” (Pogge 2002: 45). Under this conception, it asserts that the claimability objection fails because the duty-bearer correlated to the human right to socioeconomic goods is sufficiently determined: each individual in need has a claim against the coercive social institution imposed upon her and those who participate with her in the same social system (Pogge 2002: 44–45, 66). Call this the “institutional argument”.

In this paper, I argue that both arguments fail to undermine the claimability objection for several reasons – including reasons related to the conceptions of human rights they assume. Concerning the reasonable-consideration argument, my claim is as follows. First, it is not difficult to see that not every agent has the skills, time, information, and so on, to undertake what Collins calls an “epistemically reasonable deliberation” (Collins 2016: 710). Even if we modify the universal character of that proposal, the reasonable-consideration argument fails for reasons related to the conception of human rights that Collins assumes. To say that the human right to socioeconomic goods merely implies the procedural duty to deliberate about how to respect, protect, promote socioeconomic goods and act accordingly is not faithful to our conceptual intuition about what a human right to socioeconomic goods should entail – i.e., positive duties of assistance. I show that there are independent reasons to be faithful to such an intuition. Concerning the institutional argument, I argue that it fails at two levels of analysis. First, the very base of Pogge’s argument (i.e., his own conception of human rights) is inherently problematic because it carries implausible implications for our judgments about human rights violations. Second, Pogge’s proposal, constructed over his conception of human rights, is unsatisfactory because there is not always an institution capable of discharging the positive duties correlated to the human right to socioeconomic goods.

I proceed as follows. Firstly, I analyse the reasonable-consideration argument. After that, I reject it on the basis of the argument summarised above. Secondly, I do the same with the institutional argument. I then address possible objections. Finally, I conclude by noting that someone

²The interactional conception holds that human rights are claims against all agents. Griffin’s conception is an example. According to him, “a human right is a claim of all human agents against all other human agents” (Griffin 2008: 177).

could try to undermine the claimability objection by invoking another non-conventional argument, but, as I will suggest, that strategy is problematic.

2. The reasonable-consideration argument

2.1. *Analysis*

According to Sen (2004: 339), human rights' correlative obligations should be understood as duties to give "reasonable consideration" to what one might do to respect, protect and fulfil rights.³ Assuming this conception, Collins (2016) tries to undermine the claimability objection as follows. For O'Neill (1996; 2000; 2005; 2016), it is unjustified to hold that each individual has a human right to socioeconomic goods because it is not true that each individual may claim this right against a sufficiently determined duty-bearer. Collins argues that the claimability objection fails because it is possible to specify these duty-bearers. Under the non-conventional conception she endorses, the duties correlated to the human right to socioeconomic goods are universal in scope: "each" individual in need "has a human right that each agent deliberates equitably about how to respect, protect and promote" socioeconomic goods "and acts accordingly" (Collins 2016: 710). Of course, an easy objection to this proposal is that the content of the duty to give reasonable consideration is too vague. To avoid this objection, Collins specifies this obligation as follows:

For each socioeconomic good, each human has a claim on each moral agent (whether individual or collective) that: (1) the agent undertakes epistemically reasonable deliberation and thereby forms an epistemically reasonable belief about which, if any, measure she should take to help further or secure the provision of [socioeconomic goods] for the claimant, and (2) the claimant does not receive morally inequitable consideration in that deliberation, and (3) if, in virtue of having completed (1) and (2), the agent reasonably believes she should take a measure to help further or secure the provision of [socioeconomic goods] for the claimant, then the agent acts with regard to the claimant as that measure dictates (Collins 2016: 710-711).

³ Following the same line, Gilibert holds that human rights involve correlative duties of "the highest priority for individuals and governments to identify ways to protect certain important interests through (1) specific rights and entitlements, but also, when these are insufficient or not presently feasible, through (2) urgent goals of institution-building" (Gilibert 2009: 673).

There are three different duties in this proposal (1, 2, 3). For clarity, I shall call them D1, D2 and D3. That said, two brief points deserve attention. First, this argument tries to undermine the claimability objection on the basis of a universalistic conception of correlative duties: “these rights are claimable” simply because “each human is owed [D1], [D2] and [D3] from every agent” (Collins 2016: 715). Second, this argument does not presuppose the conventional interpretation of the human right to socioeconomic goods, according to which this is a right to goods such as unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and so on (Shue 1996). In Collins’ words, “we should admit that duties to give reasonable consideration correlate with rights to receive reasonable consideration, not rights” to socioeconomic goods (Collins 2016: 710).

2.2. Counter-argument

The reasonable-consideration argument aims to undermine the claimability objection on the basis of a universalistic understanding of the duties correlated to the human right to socioeconomic goods: “each human is owed [D1], [D2] and [D3] from *every* agent” (Collins 2016: 715; emphasis added). However, this universalism is implausible. To think the opposite implies idealizing the living conditions of millions of people around the world. Let me unpack this claim in detail. D1 holds that the agent should undertake an “epistemically reasonable deliberation” whose aim is to specify a certain “measure”; a measure the agent “reasonably believes will help further or secure the provision” of these goods (Collins 2016: 711). Call this measure M. It is evident that the specification of M requires complex stages of reasoning. For example, suppose an agent S should undertake an “epistemically reasonable deliberation” whose aim is to specify M. Firstly, it seems plausible to say that S should do some research about the effectiveness of conventional measures such as giving money to Oxfam. After all, there are serious concerns about the effectiveness of these conventional measures (Lichtenberg 2010). Secondly, suppose S concludes that conventional measures are effective. If so, S should evaluate the effectiveness of conventional measures open to her. This implies another type of research – what Collins calls “measure-ranking research” (Collins 2016: 719). Suppose S believes that there are four measures open to her: M_1 , M_2 , M_3 and M_4 . After careful reflection, S concludes that the most effective measure is M_1 . If that is the case, it seems evident that this cannot be the end of the story. S should evaluate

M_1 from a moral perspective. Suppose S concludes that M_1 necessarily implies the violation of the basic rights of many individuals. If so, it is evident that S should dismiss M_1 on the basis of moral reasons.⁴ Finally, if S finds an acceptable measure, it is plausible to hold that S must evaluate if this measure is compatible with her own legitimate commitments, moral responsibilities, life plans, and so on. If there is no compatibility, there are good reasons to dismiss that measure. For example, suppose S believes that M_2 is an effective measure, but it is an all-consuming burden that severely affects her ability to pursue her own commitments. If that is the case, it is plausible to dismiss M_2 because it would be “unreasonable” to act according to it (Meckled-Garcia 2013: 75).

That said, it is inherently problematic (if not naïve) to believe that this obligation can be understood as universal in scope. It is implausible to hold that everyone should (or even could) undertake this type of “epistemically reasonable deliberation”. Even if we think in highly abstract terms, there are billions of people who are not in a position to discharge D1. The reason is that D1 requires complex skills, time, information, and so forth, that not all people have. To think the opposite is to idealize the living conditions of millions of people around the world.⁵ I am thinking of people who have access to socioeconomic goods but lack access to education, do not have sufficient information about different “measures”, work long hours, struggle to meet their own commitments, have time-consuming responsibilities, and so on. After all, as an author rightly says, “philosophising is an activity for which one has to have time and space in which one is not pressed by mere physical survival tasks” (Cudd 2006: vii). Certainly, it is possible to avoid this problem by simply saying: if and only if the agent S is in a position to discharge D1, S has

⁴ To exemplify this point, Collins says: “Suppose you reasonably believe that the only education-furthering political party on your ballot card will focus on elite private schooling. This will help secure adequate education for rich children (...). However (you reasonably believe), the party will sharply cut public spending, which will strongly exacerbate poverty. You reasonably believe that it is wrong to contribute to, or symbolically indicate support of, the exacerbation of poverty.” If that is the case, she adds, it is plausible to argue that “voting for the education-furthering party” is not the best measure (Collins 2016: 713).

⁵ I am thinking of O’Neill’s well-known objection to idealizations in normative theory. Contrary to an abstraction, an idealization “can easily lead to falsehood. An assumption, and derivatively a theory, idealizes when it ascribes predicates – often seen as enhanced, ideal predicates – that are false of the case in hand, and so denies predicates that are true of that case. For example, if human beings are assumed to have capacities and capabilities [...] that are evidently not achieved by many or even by any actual human beings, the result is not mere abstraction; it is idealization” (O’Neill 1996: 41).

the duty D1. But even if we give up the strong universalistic character of the reasonable-consideration argument, it fails for other reasons.

According to the reasonable-consideration argument, the content of the duty correlated to the human right to socioeconomic goods is merely procedural. This point, related to the conception of human rights that Collins assumes, is inherently problematic because it is not faithful to our conceptual intuition about what this right should entail: positive duties of assistance. For example, consider this assertion: “Jack has a human right to socioeconomic goods.” Intuitively, this seems to imply something more than procedural duties. Paraphrasing Orend, to have a human right to socioeconomic goods seems to be something more than having an abstract right that involves merely procedural duties – it is to have a well-grounded and concrete claim on specific (positive) actions of other agents (Orend 2002: 16).⁶

The objector may claim that an intuition is not sufficient to justify my position. But it should be noted that there are independent reasons to be faithful to such an intuition. Consider our common judgments about human rights violations. If the (non-procedural) content of the correlative obligation of the human right to P is sufficiently specified, it is possible to orientate our judgments about the violations of this right. For example, consider Shue’s well-known conception of the right to socioeconomic goods. If Susan has the duty “not to eliminate a person’s only available means of subsistence” (Shue 1996: 52), but she deliberately eliminates Jack’s only available means of subsistence, it is possible to argue that she violates his right to socioeconomic goods. By contrast, how can we know if agents in a position to discharge D1 undertake epistemically reasonable deliberations? How can we know if agents in a position to discharge D2 provide morally equitable consideration to each agent in their deliberations? And how can we know if agents in a position to discharge D3 act with regard to the claimants as their measures dictate?

⁶ Following the main tendency in (analytical) moral philosophy, I assume that intuitions can play an important role at certain points of philosophical reflection (in this case, an important role at certain points of our reflection on how human rights should be understood). This does not imply that intuitions are always sufficient to justify our arguments. For this reason, I provide an additional justification in the next paragraph. Furthermore, being faithful to the main tendency in (analytical) moral philosophy, my methodological assumption does not entail any form of strong foundationalism according to which intuitions cannot be defeated by countervailing evidence. For an analysis of the role of intuitions in (analytical) moral philosophy, see Huemer (2005) and Stratton-Lake (2002). For the idea of strong foundationalism, and the more modest view I assume, see Feldman (2003).

After all, they could act on the basis of other measures. Given that we do not have access to the mental states of agents, it is not possible to know if they fulfil (or simply violate) these correlative duties. I can perceive acts and omissions, but I do not have access to the epistemically reasonable deliberation of each agent to judge if these individuals fulfil their duties.⁷

3. The institutional argument

3.1. *An analysis*

In this section, I analyse another non-conventional strategy: Pogge's argument against the claimability objection. Before proceeding, I emphasise that such an argument presupposes his institutional conception of human rights, but, unfortunately, it is not consistent. For example, Pogge says that the "most remarkable feature" of his "institutional understanding" of human rights is that "human rights entail only negative duties" (Pogge 2002: 66). However, he says something significantly different in another place: "I do not want to deny (or assert) that human rights also impose positive (...) duties" (Pogge 2010: 200). Furthermore, Pogge states: "in proposing this institutional understanding [of human rights], I reject its interactional alternatives" (Pogge 2002: 65). However, he says something substantially different elsewhere: "I am not denying an interactional understanding of human rights according to which you have claims against all other human agents" (Pogge 2010: 200). Given this evident lack of consistency, my aim in this section is to reconstruct what, in my view, is the best interpretation of his non-conventional argument against the claimability objection. Put briefly, I will try to formulate it in its "best light".

The structure of Pogge's argument has two bricks (this is important because my critical analysis will assume this distinction). The first brick contains the specification of his institutional conception of human rights:

⁷ It should be noted that Collins anticipates this problem. She suggests that her proposal seems to be inherently problematic because "I might never know if you have done your duty with regard to me, so never know" if you violated my right (Collins 2016: 716). She responds by claiming: "notice that the same is true of civil-political rights" (Collins 2016: 717). However, that reply is unsatisfactory. It is true that it can be difficult to know if someone violated some negative right of non-interference (Ashford 2006). But if the non-procedural content of the duty is sufficiently determined, it is still possible to orientate our judgments about the violations of these rights – that is actually a common practice. In the case of "Collins' rights", it is impossible to orientate these judgments because we do not have access to the epistemically reasonable deliberation of individuals.

these rights should be understood “primarily as claims on coercive social institutions and secondarily as claims on all and only those who participate with this person in the same social system” (Pogge 2002: 44-45). Two points deserve attention. First, Pogge’s institutional conception of human rights is “softer” than Beitz’s influential account. According to Beitz (2008), individual agents do not have any relevant role in his two-level model of allocation of duties (106-117). By contrast, Pogge’s institutional conception holds that individual agents have a secondary but relevant role in protecting human rights standards. For example, he holds, “each member of society, according to his or her means, is to help create and sustain a social and political order under which all have secure access to the objects of their civil rights” (Pogge 2002: 75). For this reason, Beitz rightly says that there is an important difference between his conception and Pogge’s institutional conception of human rights: “I believe that Pogge is correct to regard human rights as standards that apply in the first-instance to institutions. [...] Pogge’s conception of an institutional understanding, however, says more than this” because it incorporates some aspects of the interactional conception (Beitz 2008: 115). Second, even though Pogge’s institutional conception of human rights is “softer” than Beitz’s conception, Pogge endorses the main negative thesis of the institutional approach: “human rights give you [primarily] claims not against all other human beings” (Pogge 2002: 73).

The second brick of Pogge’s argument aims to undermine the claimability objection on the basis of that institutional conception of human rights. Pogge rightly notes that positive human rights, such as the human right to socioeconomic goods, are “often dismissed on the ground that, unlike the favored civil and political rights, they are in many actual social contexts fated to be mere manifesto rights” (Pogge 2002: 73; for an example, see O’Neill 1996). To be more precise, he notes, the human right to socioeconomic goods is usually dismissed because “it is left unspecified who is supposed to do what in order to bring it about that all supposed right-holders have secure access to the object of the right” (Pogge 2002: 74). Nevertheless, this author believes that this objection, namely, the claimability objection I am defending in this paper, fails. The reason is that the duty-bearer of the human right to socioeconomic goods is sufficiently determined under the two-level model of allocation of duties derived from his own institutional conception. The individual in need has primarily a claim against the “coercive social institution” imposed upon her. The individual in need has a claim against each member of her society secondarily. It should be noted that this secondary obligation

entails positive duties: “each member of society, according to his or her means, is to help bring about and sustain a social and economic order within which all have secure access to basic necessities” (Pogge 2002: 75).

3.2. *Rejecting the first brick of Pogge’s argument*

Why should we accept the first brick of Pogge’s argument? To be more precise, why should we endorse Pogge’s institutional conception of human rights, according to which “human rights give you [primarily] claims not against all other human beings” but only against “coercive social institutions” and those who participate with you in the same social system? (Pogge 2002: 73). Pogge provides an answer to my question. From his perspective, the naturalistic conception of human rights defines these rights as “moral rights that every human being has against every other human being or, perhaps, more generally, against every other human agent (where this also includes collective agents, such as groups, firms, or governments)” (Pogge 2005: 160). He then claims: “I do not deny that there are such universal moral rights and duties, but it is clear that we are not referring to them when we speak of human rights in the modern context” (Pogge 2005: 160). But (again) why? Pogge provides two key reasons. The first reason refers to the content of international human rights instruments. According to Pogge, his own institutional understanding of human rights “is confirmed by the human rights that have actually been recognized in various international documents” (Pogge 2005: 161). The point, he adds, is that most of these rights “do not appear to be addressed to individual agents at all” (Pogge 2005: 161).⁸ The second reason refers to our linguistic practices – what is sometimes called “ordinary usage”. Under Pogge’s institutional conception, “human rights violations, to count as such, must be in some sense official” (Pogge 2002: 57).⁹ From his perspective, this implication of his institutional conception of human rights is faithful to our judgments about human rights violations. Consider, he says, “some ordinary criminal assault. Though the victim may be badly hurt, we would not call this a human rights

⁸ This is very similar to what Beitz (2008) says.

⁹ For example, Pogge says: “Human rights can be violated by governments, certainly, and by governmental agencies and officials, by the general staff of an army at war, and probably also by the leaders of a guerrilla movement or of a large corporation – but not by a petty criminal or by a violent husband. We can capture this idea by conceiving it to be implicit in the concept of human rights that human rights postulates are addressed, in the first instance at least, to those who occupy positions of authority within a society” (Pogge 2002: 57-58).

violation. A police beating of a suspect in jail, on the other hand, does appear to qualify. This suggests that, to engage human rights, conduct must be in some sense official” (Pogge 2005: 160).

Is the first brick of Pogge’s argument (i.e., Pogge’s own conception of human rights) satisfactory? Not at all. Firstly, the standard methodological duty of being faithful to the existing human rights practice invoked in his argument fails to support his own institutional conception of human rights.¹⁰ As recognised in the literature, the methodological duty of being faithful to the practice is not absolute but only *pro-tanto* because it may be legitimately overridden by normative reasons about how human rights should be understood (Griffin 2008). Pogge anticipates this objection. “Of course”, he says, the defender of the interactional conception may reply “that international human rights documents are mistaken on this point: Every human agent has a moral responsibility to promote the fulfilment of every human right of every human being” (Pogge 2005: 33). Put simply, he rightly notes that the defender of the interactional conception may claim that it does not matter if international human rights instruments define human rights under the institutional conception; human rights *should* be understood as interactional requirements for a variety of given reasons (see Caney 2007; Griffin 2008). Pogge does not provide any reply to that objection. From my reading, the reason behind that silence is related to the normative nature of his own account of human rights. Pogge emphasises that the aim of his account is not descriptive but prescriptive: “my account should then be tested not against what people actually say about human rights, but against what they would or should affirm upon reflection” (Pogge 2002: 58). In that sense, he clarifies, “my account is normative” (Pogge 2002: 58). Consequently, he must accept that it is possible to “affirm upon reflection” that human rights should not be understood as institutional but rather interactional requirements. To say the opposite would be inconsistent.¹¹

¹⁰ It is widely accepted in the literature that any account of human rights should be faithful to existing human rights practice (Beitz, 2008; Sangiovanni, 2017; Tasioulas, 2009). However, as noted in the literature (Griffin 2008), this methodological duty cannot be absolute because of the very critical nature of normative theory. For an exploration of this duty, see Etinson (2018).

¹¹ One could claim that there is an “implicit” reply in his work. It is true that the defender of the interactional conception may argue that human rights should be understood as interactional requirements, but the fundamental problem is that the interactional conception “changes the subject” because it is not about human rights but something different (Pogge 2002). This standard argument fails. The “changing the subject objection” is focused only on the content of different conceptions of human rights. Consequently, it sets aside the fact that authors such as Caney (2007) and Griffin (2008) are providing competing interpretations of the same object of analysis.

Furthermore, the first brick of Pogge's argument is inherently problematic for another reason. Pogge rightly notes that his own account of rights implies that "human rights violations, to count as such, must be in some sense official" (Pogge 2002: 57). However, that implication is not precisely a virtue of his theory; it is rather an important problem of his institutional conception of human rights. Consider two real cases:

Khalid Adem, 41, a native and citizen of Ethiopia was convicted in Gwinnett County, Georgia, of aggravated battery and cruelty to children in the first degree on Nov. 1, 2006, and sentenced to 10 years imprisonment. Using scissors, Adem mutilated the genitals of his 2-year-old daughter (ICE 2017).

Ahmed Bashir died after he was attacked with a sword and a machete in the garden of his own west London home. Waseem Afsar, 32, and Nisar Khan, 31, both of Slough, stabbed and slashed the 21-year-old Afghan 43 times in 1996 for being in a relationship with Afsar's younger sister Nightat (Coleman 2011).

According to Pogge's institutional conception, these brutal cases are not instances of human rights violations because these violations are not "official". If we believe that these are clear examples of human rights violations, it is because we are conceptually confused. However, that seems to be implausible. Consider the case of Khalid Adem. Female genital mutilation is recognized internationally as a violation of the human rights of girls and women (OHCHR 2008: 8). Following that line, the U.S. Immigration and Customs Enforcement holds that "female genital mutilation/cutting is a federal crime. Any involvement in committing this crime is a serious human rights violation" (ICE 2017). The main point of that statement seems to be faithful to our intuition that female genital mutilation is always an instance of a human rights violation; it does not matter if the violation is (or not) "official". Consequently, assuming that intuitions may play an important role in philosophical reasoning (in this case, reasoning on how human rights *should* be understood), the implication of Pogge's institutional account of human rights is problematic – unless countervailing evidence arises.¹²

3.3. *Rejecting the second brick of Pogge's argument*

Why should we adopt Pogge's institutional conception of human rights? I argued that Pogge fails to provide a satisfactory answer to this fun-

¹² I said in footnote 6 that intuitions are not always sufficient to justify our arguments in philosophy. But it should be noted that here I am just saying that the implication derived from Pogge's account is counter-intuitive, unless countervailing evidence arises. In the next section, I criticise Pogge's argument on other grounds.

damental question. Nevertheless, that is not the end of the story. The second “brick” of Pogge’s institutional argument fails to undermine the claimability objection. Let me explain this in detail. First, it should be noted that the first part of Pogge’s two-level model of allocation of duties is subject to an important constraint about agency. The so-called “coercive social institution” must be an agent. If not, Pogge’s institutional argument against the claimability objection is pointless – it would not make any sense to say that the individual in need should claim her human right to socioeconomic goods against something that simply cannot have obligations. Put in other words, as an author rightly suggests in the literature, proposals like Pogge’s institutional account make sense only if the so-called “coercive social institution” is an agent because “attributing obligations to [non-agents] makes [...] obligation statements impotent: it requires action from something that cannot act” (Lawford-Smith 2015: 226). That said, Pogge’s account tries to avoid that problem by holding that the right-holder should claim her right against an institution that can be defined as an artificial agent: her government. In his own words:

In our world, national societies are the paradigmatic example of relevant social systems, and the responsibility for the fulfilment of your human rights falls then upon your government and your fellow citizens (Pogge 2002: 72).

Pogge repeats the same idea in other passages of this work. For example, he suggests that the “government” is the “primary guardian of human rights and the prime measure of official disrespect” (Pogge 2002: 72). However, I claim, it is inherently problematic to hold that the claimability objection fails because individuals in need should claim the human right to socioeconomic goods against their “governments and fellow citizens”. To use Pogge’s own words, his proposal entails that “the preeminent requirement on all coercive institutional schemes is that they afford each human being secure access to minimally adequate shares of basic freedoms and participation, of food, drink, clothing, shelter, education and health care” (Pogge 2002: 51). This is implausible. What about individuals who live in extremely poor countries without the capacity to discharge the positive duties correlated to the human right to socioeconomic goods? Suppose country C_1 is extremely poor. C_1 ’s government does not have the capacity to protect the human right to socioeconomic goods of its residents because it has been a victim of several natural disasters. Jack (an individual in need) is one of these residents. If that is the case, it would be an empty gesture to say that Jack may claim his right against his “government and fellow citizens”; they do not have the

capacity to discharge the positive duties correlated to the human right to socioeconomic goods. Following O'Neill, the point is that the "lack of capability always counts against an ascription of obligations, except where the lack is chosen" (O'Neill 2016: 169). I want to emphasise that this is more than an abstract philosophical point about Pogge's proposal. Consider the well-known humanitarian crisis of Haiti in 2010. According to Amnesty International's report of 2011,

January's earthquake left nearly 2 million people homeless and triggered an unprecedented humanitarian crisis. At the end of 2010, more than a million people remained displaced in makeshift camps where violence against women and girls was increasing. [...] The destruction and depletion of state institutions meant there was virtually no access to justice [...]. Public institutions and offices were severely affected: 15 out of 17 ministry buildings, 1,500 schools and 50 hospitals and clinics were destroyed (Amnesty International 2011: 161).

In this complex but real case, it is implausible to hold that the claimability objection fails simply because "responsibility for the fulfilment of your human rights falls then upon your government and fellow citizens" (Pogge 2002: 72). The reason is that it is evident that these agents do not have the capacity to discharge the positive duties correlated to the human right to socioeconomic goods.¹³ Pogge quickly notes this fundamental problem of his institutional proposal. The author suggests that the "applicability" of his proposal seems to be "contingent" because "human rights are merely latent" in complex cases of allocation of duties (Pogge 2002: 170). For this reason, I believe, Pogge tends to *redefine* the human right to socioeconomic goods in more modest terms. For example, he says that this right only involves the duty to "reduce insecurity of access to basic necessities" (Pogge 2002: 74).

The defender of Pogge's account may try to rescue his argument by saying that Pogge's non-conventional conception of human rights does not deny that individuals "share" responsibility for human rights fulfilment abroad (Pogge 2002: 227). According to his institutional approach,

¹³ This fundamental problem of Pogge's proposal is quickly noted in the literature. For example, Collins claims that Pogge's institutional reply to the claimability objection is unsatisfactory because "there is not always an institution capable of fulfilling a given human's socioeconomic human rights" (Collins 2016: 706). Collins provides this example: "Take the right to adequate healthcare in Gaza. Is there any one social institution that can fulfil this right? Perhaps Hamas can. But its ability is questionable, given the role Egypt and Israel play in controlling Gaza's border (and, therefore, the healthcare equipment that must come across that border). If no one agent can provide Gazans with adequate healthcare, then no agent can have a duty to do so" (Collins 2016: 706). From my perspective, the example of Haiti is much clearer. For another analysis of Haiti's case, see Rettig (2021).

individuals fall under that collective duty if they are “influential and privileged participants in a transnational scheme of social institutions under which some persons are regularly, predictably, and avoidably denied secure access to the objects of their human rights” (Pogge 2002: 227). Consequently, even an individual living in an extremely poor country may claim her right against determined agents: influential and privileged participants in a transnational scheme. These participants “have a human-rights-based duty to work for reforms of our global institutional order that would reduce or eliminate the incidence [...] of severe poverty” (Pogge 2002: 227). From the practical perspective, however, that strategy is inherently problematic because it is insufficiently action-guiding. To contribute to the discharge of the collective duty “to work for reforms of our global institutional order”, the member of the group should not only instantiate the duty in “some way” (Hope 2014). The agent should perform an action that must contribute something valuable to an interdependent chain of actions. But what type of contributory action? Given the finite epistemic capacities of the agent, it is not possible to provide an answer to that critical question. The reason is that she has no privileged access to the actions of the other members of the group (Collins 2019).

4. Two additional objections

I have addressed significant objections against my own defence of the claimability objection to the human right to socioeconomic goods. Let me address two additional objections in this section. Pogge holds that the “responsibility for the fulfilment of your human rights falls [...] upon your government and your fellow citizens” (Pogge 2002: 72). Nevertheless, I claimed, what about individuals who live in extremely poor countries without the capacity to discharge the positive duties correlated to the human right to socioeconomic goods? In these cases, it would be pointless to say that individuals should claim this human right against their “government and fellow citizens”. The first possible objection against my defence states that the individual may claim her human right to socioeconomic goods against these agents even if they cannot discharge these positive duties fully. The reason is that they can fulfil these duties partially (Gilbert 2009: 670). This would be a way to rescue Pogge’s position from the claim that poor states and their citizens cannot fulfil socioeconomic rights. From my perspective, that objection is unsatisfactory. For example, there are cases in which the government does not even have the capacity to fulfil the positive duty to provide

partially. For example, in the case of Haiti's well-known humanitarian crisis in 2010, it does not make sense to say that the government could fulfil this type of duty partially because of the destruction and depletion of state institutions mentioned in Amnesty International's report of 2011. Gilibert tries to avoid that standard objection by suggesting that the human right to socioeconomic goods should be conceptualised under Sen's conception of human rights: it is possible to fulfil the duty partially in every possible case because the human right to socioeconomic goods does not entail demanding duties to "provide" goods to the needy, but rather duties to "give reasonable consideration" (Gilibert 2009: 672; see also Sen 2004: 319). I have already established that the "reasonable-consideration" conception of human rights should be resisted for reasons analysed in the second section of this paper.

The second objection holds that the non-conventional arguments analysed here fail to undermine the claimability objection, but we could try to undermine the claimability objection on the basis of another non-conventional conception of human rights. My reply is as follows. Certainly, the objector may try to undermine the claimability objection based on another non-conventional conception, but it should be noted that such an argumentative strategy suffers from a shortcoming: it seems to be no more than what is called an "ad-hoc rescue" – i.e., a type of argumentative strategy whose aim is "to save the claim [in this case, the claim that the claimability objection fails] in the face of mounting evidence that it is wrong" (Carey 1994: 120).¹⁴ The arguments presented in this paper show that the non-conventional arguments analysed are problematic because of the reconceptualisation of the human right to socioeconomic goods. It is plausible to think that the problems (regarding the reconceptualisation of the human right to socioeconomic goods) that

¹⁴ Consider Tomalty's non-conventional argument (2011). She suggests that it is possible to overcome the claimability objection if we conceptualise the human right to socio-economic goods in the form of a negative right. Given that O'Neill holds that negative rights satisfy the claimability condition, the solution to the problem seems to be straightforward: the human right to socio-economic goods should be conceptualised as a negative right that only involves negative duties of non-interference (Tomalty 2011: 131-160). This seems to be an *ad-hoc* conception (unless countervailing evidence arises) specifically designed to rescue that alleged right from the claimability objection. Furthermore, it is counter-intuitive. Paraphrasing Orend (2002), to have a human right to socio-economic goods seems to be something more than having a negative right – it is to have a well-grounded and concrete claim on specific (positive) actions of other agents (16). It should be noted that the argument in Tomalty (2011) is different from her view in Tomalty (2014), in which she supports Beitz's account (Beitz 2008) – a conventional conception of human rights.

I have shown in this paper extend to any non-conventional argument that, by definition, redefines our traditional understanding of this right.¹⁵

5. Conclusion

The much-discussed claimability objection to the human right to socioeconomic goods has been defended from several objections in the literature (Hope 2014; Rettig 2020; 2021; Tomalty 2014). However, there is no available defence from attacks based on non-conventional conceptions of human rights. In this paper, my aim was to fill this significant gap in the philosophical literature. Concerning the reasonable-consideration argument against the claimability objection, I argued that it is not difficult to see that not every agent has the skills, time, information, and so on, to undertake Collins’ “epistemically reasonable deliberation”. Even if we modify Collins’ initial proposal, her argument should be resisted. To say that the human right to socioeconomic goods merely implies procedural duties is not faithful to our conceptual intuition about what the human right to socioeconomic goods entails – i.e., positive duties of assistance. I showed that there are independent reasons to be faithful to such an intuition. Pogge’s argument against the claimability objection fails for other reasons. The “first brick” of his institutional conception of human rights is inherently problematic because it carries implausible implications for our judgments on human rights violations. The “second brick” of his proposal fails to undermine the claimability objection because there is not always an institution capable of discharging the positive duties correlated to the human right to socioeconomic goods.¹⁶ Of course, imagining other non-conventional arguments against the claimability objection is possible. However, as I suggested at the end of the previous section, I am critical of this type of strategy. If my arguments are sound, the defence of the claimability objection is now stronger than before.

¹⁵ Kahn (2021: 162) “argues that human rights should not be understood to be Hohfeldian claim-rights.” Kahn’s proposal is interesting. But given that the claimability objection (to be more precise, the claimability condition) assumes the Hohfeldian idea of claim-rights (O’Neill 1996), a right redefined under Kahn’s conception cannot overcome the claimability objection by satisfying its first premise – as the proposals analysed in this paper try to do. I have defended the claimability objection’s first premise elsewhere (Rettig 2020).

¹⁶ Note that my arguments do not invoke matters on the utility of human rights or their logical strength – understood in the standard Razian sense of the strength of reasons for action (Raz 1975). As this summary shows, the arguments I presented in this paper are independent of these matters.

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