

## Article

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# JUSTICE AND CHARITY: POSITIVE DUTIES AND THE RIGHT OF NECESSITY IN PABLO GILABERT

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## ABSTRACT

This article considers Pablo Gilabert's attempt to defend against libertarian critics his ambitious argument for basic positive duties of justice to the world's destitute. The article notes that Gilabert's argument – and particularly the vocabulary of perfect and imperfect duties that he adopts – has firm roots in the modern natural rights tradition. The article goes on to suggest, however, that Gilabert employs the phrase 'imperfect duties' in a manner that is in some tension with the tradition from which it is derived. Indeed, Gilabert's novel deployment of the phrase contains a number of radical possibilities that are not pursued in his text. The article suggests that Gilabert would do better to break more decisively from a tradition that insists on the essential distinction between justice and charity.

## RÉSUMÉ

Cet article examine la tentative de Pablo Gilabert de défendre, contre la critique libertarienne, l'argument ambitieux selon lequel nous avons des devoirs positifs fondamentaux de justice envers les plus démunis du monde. L'article souligne le fait que l'argument de Gilabert — et particulièrement le vocabulaire des devoirs parfaits et imparfaits qu'il déploie — est profondément enraciné dans la tradition moderne du droit naturel. Cependant, la manière dont Gilabert utilise la formule « devoirs imparfaits » entre en tension avec la tradition dont elle est issue. En fait, l'usage novateur que Gilabert fait de cette formule recèle un certain nombre de possibilités radicales qui ne sont pas pleinement considérées dans son texte. L'article suggère que Gilabert ferait mieux de rompre plus nettement avec une tradition qui insiste sur la distinction essentielle entre justice et charité.

The aim of Pablo Gilabert is one with which it is difficult not to be in great sympathy. I certainly endorse the basic principle that positive duties towards the destitute of the world ought to be conceived as obligatory duties of justice rather than voluntary duties of charity. I am less convinced by the larger argument about a universal humanist egalitarianism and the Scanlonian contractualism that gets us there, but one oughtn't to make the best the enemy of the good, and if we could manage merely to realize the ideal proposed in the first part of this book—the widespread adherence to the view that we have positive duties of justice at least towards so-called “sufficientarian” ends—we would have achieved quite a lot. On the international front one has a hard enough time eliciting from people charity let alone justice. (Readers will note, in passing, that the Canadian government has insisted recently that future projects in international development will be employed to further the interests of Canadian resource extraction companies, which indicates just what charity means today.<sup>1</sup>) I must admit a certain admiration for Gilabert's quixotic task, for he is pursuing an ideal on a global level that is currently having a difficult enough time defending itself within the confines of the state. But perhaps this ambitious move is only sensible: the welfare state is on the run facing the disciplining power of mobile capital and out of control debt, so perhaps the only place to go for the welfare state is global. *De l'audace*. Without entering into the discussion of feasibility, I suggest that this project is quite utopian; but that is not necessarily a criticism. In the following paper, I will suggest that Gilabert might have erred in not following through with the radicalism of his intuitions. Embedded in his idiosyncratic use of natural rights discourse is a radical proposition concerning property rights. But he still remains wedded to the basic framework of the modern natural rights tradition—thus, improbably demanding as his political proposals might be, I will suggest that his philosophical program would benefit from an extra dose of audacity.

The paper proceeds as follows. The first section addresses Gilabert's response to the work of Jan Narveson and Thomas Pogge. Here, I will spend some time on Gilabert's debate with Narveson, and I will suggest that while Gilabert powerfully dispatches a number of Narveson's arguments, he nonetheless remains vulnerable to challenges both on empirical matters concerning the sources of poverty and, more importantly, on ethical matters concerning the nature of the good. The second section follows up on this latter point, inquiring into the natural rights tradition whose vocabulary Gilabert adopts. I indicate that there is something quite new in Gilabert's treatment of the distinction between perfect and imperfect rights, something, indeed, that would have been thought contradictory in the tradition of modern natural rights discourse. I suggest that implicit in Gilabert's novel treatment of this distinction are some radical possibilities that Gilabert does not fully realize. In the concluding section, I return to Narveson's charge that champions of redistribution such as Gilabert are simply trying to impose upon others their idiosyncratic tastes for material equality. I indicate that Gilabert's attempt to shift the line dividing justice from charity is extremely important, but that it does not go far enough: Gilabert's robust version of the right of necessity is still wedded to a theory placing the emphasis on rights over

the right. Following through on the intuition that allowed Gilabert to speak of ‘imperfect duties of justice’ would entail radically revising – if not effacing – the line separating justice and charity.

## 1. POGGE AND NARVESON

Chapter three has two targets, Jan Narveson and Thomas Pogge. The debate with Pogge is more of a friend’s quarrel; it is in the section on Narveson that the sparks truly fly. But the common point is that both Pogge and Narveson accept the view that duties of justice are negative duties and that one can only justify redistribution if it is compensatory for some previous wrong. Narveson takes the empirically weak position that rich countries bear little responsibility for the poverty of poor countries (save insofar as they have trade barriers that a libertarian can’t support), therefore “we don’t owe them a thing!” (as he writes, supplying the exclamation mark that conveys his resentment at being made to feel guilty).<sup>2</sup> Pogge soundly rejects this position and argues for a redistributive scheme based on the moral responsibility of the rich for the poor’s poverty. Given that wealthy nations have caused a harm, they have a duty—on a purely negative account of duties of justice—to redress it. Pogge adopts this position for pragmatic reasons, but Gilabert is of the view that it doesn’t go far enough as it ignores our positive duties of justice towards those whose dire need is not our fault. We need to go beyond mere negative rights and duties—we need to articulate a strong claim to enforceable positive duties to the destitute, duties that are ‘underived’, that is, not derived from some prior harm that the wealthy have committed. (I would take Gilabert one step further and point out that Gilabert’s solution avoids the rather difficult task of establishing precisely who caused what harms in the global economic order; if one is able simply to demonstrate a universal duty of justice to the destitute, one is relieved of some tedious and interminable debates about the attribution of blame for existing economic disparities.)

So Pogge only gets two cheers from Gilabert because his justification of compensatory redistribution, while essential, does not go far enough in pointing out our duty to the poor. Gilabert urges Pogge to stop trying to appeal to libertarians by adopting their highly limited principle of justice and simply go the whole way to adopting a view of positive duties towards the poor, a position which would contribute more to the lasting and complete eradication of poverty. But it is Narveson with whom Gilabert most has to quarrel, for Narveson does not merely adopt the doctrine of negative duties strategically—he gives an account of them that follows a style of contractualist argument that is close enough to Gilabert’s own method to bear comparison (though it differs sufficiently to give birth to radically different conclusions). Gilabert indicates that Narveson’s argument contains holes through which one could drive trucks; Gilabert wants to drive a truck full of foreign aid through them. The disagreements are both empirical and logical. Let us begin with the empirical issues.

Gilabert does not need to break a sweat to demonstrate the greater reliability of taxation over voluntary charity, so we don’t need to spend much time on Narveson’s claim that charity concerts are superior to government action, nor on

Narveson's view that charity can be enforced by the informal method of expressing moral disapprobation to shame those who fail to contribute.<sup>3</sup>

Narveson thinks, also improbably, that global poverty is mostly due to inequalities of geography and technology. Insofar as structures of international trade are a contributing factor to poverty, Narveson thinks that this is due to insufficient liberalization of trade. Gilabert retorts that this is simply blinkered. Neoliberalism has been an abject failure, and what is required is rather a kind of internationally sanctioned protectionism that would keep poor countries' industries from being eaten up by the wealthy: 'fair trade'. I suspect the weight of the evidence is on Gilabert's side, but there is something awkward about the debate, since both authors offer up counterfactual ideals as their promised solutions to the current system. Narveson offers the image of complete free trade, and he cites a study detailing with risible precision exactly how many lives would be saved if the EU stopped protecting its markets (6,600 a day).<sup>4</sup> If there is oppression of the poor it is because we're not liberal enough. Narveson also gives the widespread view that foreign aid merely serves to prop up corrupt dictatorships. Gilabert retorts that "no serious advocate of foreign aid would quarrel with this claim, and would certainly ask for 'smart' forms of aid precisely targeting small business and civil society when governments are clearly defective".<sup>5</sup> Fair enough, but this reply seems laden with similar wishful thinking, for just as Narveson imagines some fanciful land of plenty once the demons of protection and planning have been slain, Gilabert imagines a foreign aid scheme that cannot get co-opted by ruthless elites, and a 'fair trade' scheme that does not engender stagnation and increased costs to the poor, but rather allows their industries to grow and flourish.

I do not wish to offer a false equivalency between these two positions, but I do think that Gilabert fails to engage sufficiently with the serious challenges posed by the opponents of protectionism and foreign aid. Gilabert's proposed solution of funding civil society directly without having to deal with corrupt, autocratic governments, for instance, is not without problems—Haiti is a good example of a place where one often hears the lamentation that the central government has been actively undermined by thousands of well-meaning NGOs operating with even less legitimacy than a corrupt central government. Gilabert is clearly aware that there are numerous complexities, both moral and practical, to the administration of foreign aid, and it would not be the place of a philosophical text of this nature to enter into all of the empirical details of development policy. And he is surely correct to point out that even if some foreign aid regimes have been badly executed this in no way weakens the case for a positive duty to ameliorate the condition of the destitute. (It simply raises questions about the best means to do so.) Nonetheless, since an important part of Narveson's argument rests on empirical claims about the nature of free trade, protectionism and foreign aid, a full hashing out of this question will ultimately require some heavier economic lifting (on both Gilabert's and Narveson's parts). For Narveson is unfortunately not alone in thinking sweatshops a good idea—it is a widespread view among champions of globalization (many of whom have not been convinced by the likes of Pogge). This is, of course, a central empirical question requiring more than the

small handful of citations that the two authors lob at each other's camps. But it also entails more than the empirical question about the efficacy of aid: the very institutions of international redistribution are fraught with types of domination about which one must think both institutionally and conceptually.<sup>6</sup>

It would be churlish to fault Gilibert for not articulating the final word to stop the mouths of neoliberal economists. But on the relationship between redistribution and power one suspects Narveson of making an important point that Gilibert glosses. This is the question of the liberty to decide what goods a country or community wishes to pursue. Gilibert suggests that there are basic needs that human beings have, that we can establish these and derive duties of justice from them. The great difficulty in this position is that it entails making strong claims about the good, and that task—one of the most important tasks of political philosophy in my view—is widely neglected in contemporary political philosophy. Narveson asserts that people who make arguments on the nature of the good are all would-be philosopher-tyrants. Narveson's libertarianism is at base a way of making the right precede the good—and like many such positions, it winds up begging the question, appealing rather unreflectively to an intuition about the good. (In this case, the intuition is that property should be sacrosanct.<sup>7</sup>) But there is naturally something to be said for his objection that different peoples might not necessarily see welfare or duty in the same way. Gilibert gives a democratic gloss to how his global distribution would work, with a kind of open-ended discursive democratic ideal tied to some frankly vague suggestion that democratic accountability is required from donors and recipients of aid. But this feels very much like an afterthought, and it addresses neither the serious institutional issues such ideals entail, nor the fundamental conceptual problems that arise when truth meets will. Gilibert's project would entail integrating everyone into a global distributive scheme—in a sense, globalization becomes an enforceable duty. Instead of building a new barn, would a wealthy Amish village be obligated to sell some surplus goats in order to pay for health care in distant nations?<sup>8</sup> Communal projects have a very low place in Gilibert's estimation—he doesn't discount them, but they clearly can't trump global obligations, and they cannot override the primacy of the individual.<sup>9</sup> My point is not to enter into Gilibert's argument for the relative weight of associativist and humanist justification; I mean merely to point out that his ideal, which ultimately places a universal duty of justice on all to enter into the global redistributive scheme, might well clash with democratic will. It should not be pretended that these things can be reconciled with ease. Indeed, the very point of establishing these universal duties of justice is to place them *beyond* the vagaries of particular democratic wills.

## 2. POLICING THE LINE BETWEEN CHARITY AND JUSTICE: THE RIGHT OF NECESSITY IN MODERN NATURAL RIGHTS DISCOURSE

Let me turn to what I take to be the most interesting aspect of Gilibert's argument in chapter three: his attempt to shift the line between charity and justice. This is, I suggest, a very good thing to do, but it is here that Gilibert might have



gone further. The distinction between charity and justice is, of course, heavily embedded in the modern natural rights tradition, whereby every right has a corresponding duty on the part of another. Rights are properties: if I have a right to X, everyone else has a corresponding duty to respect my right. A sensible Hobbesian would say that your corresponding duty only exists when there is a sovereign to enforce it, and in any natural state our rights will clash, but Gilabert disapproves of such legal positivism, belonging more to the tradition that thinks that there is, prior to the establishment of a sword, a series of natural rights and corresponding duties (though he does not use this language, and would offer, by means of Scanlonian ‘contractarianism,’ a metaphysically abstemious manner of getting to the same point). He wants to argue that among these rights are rights to other people’s goods in cases of necessity. If I am starving and you are rich, you have no right to withhold aid to me—I have a claim on some portion of your goods, a claim that is not merely an appeal to your charitable nature; it is a claim that ought to be enforced with the sword. Certain positive duties are duties of justice, and if it is unclear just how we are to fulfil these we have an anterior duty to build institutions to make such transfers regular and enforceable. That is, Gilabert wants to make sure that we do not look upon these positive duties as mere appeals to our virtue: they are obligatory duties of justice.

Now, for medieval natural right, getting over this hump from virtue to justice was not as difficult—consider Aquinas, for whom anything in excess of what one needs is properly speaking the property of the hungry (*Summa Theologica* II, ii, 66, art. 7). It would be a stretch to turn St. Thomas into a defender of the welfare state, but my point is merely that justice and charity were not so essentially divided. But modern natural rights discourse typically made the move harder. When people begin from the perspective of natural rights, they tend to place emphasis on negative duties (the duty not to infringe someone’s rights). Nonetheless, there is an old move among natural rights thinkers that has its analogy in Gilabert’s chapter three: we can move into the territory of positive rights and duties when survival is at stake. Of course the right of necessity is entirely unproblematic for Hobbes, since it would be a contradiction to cede such a right upon entering civil society; but since Hobbes’ right of necessity does not necessarily imply duties on the part of another, it is also less attractive for someone seeking to buttress positive duties to the distant destitute. Locke, Pufendorf, or Grotius, though highly committed to individual property rights and to drawing a firm distinction between charity and justice nonetheless do allow for a move that somewhat dilutes the claims of justice in name of charity. In general, the story is that if someone is on the verge of death, you do not have a right to withhold basic needs, providing you have a surplus. This can be seen in Locke’s brief line in the first treatise that you can’t use someone’s poverty to enslave them.<sup>10</sup> It can be seen in Pufendorf, who justifies theft if one is going to starve and there is absolutely no way of getting food by charity, though he goes a long way towards restricting this right in a manner that informs all attempts to distinguish the deserving poor from the rest of the riff-raff.<sup>11</sup> (On this issue, Gilabert treads carefully, clearly not wanting to fall into the trap of asserting who are the deserving and the undeserving poor. Nonetheless, he leaves open the possibility that such a distinction could be established.)<sup>12</sup>

The standard way of managing the distinction between negative and positive rights was to distinguish between perfect rights and duties (which are the basis of contracts, and are legally enforceable) and imperfect rights and duties (which are the basis for charity and are not coercively enforceable). I will have to make a bit of an excursus into the history of this distinction because Gilabert's argument hangs on a novel conception of imperfect and perfect duties. Typically when this distinction is employed in modern natural rights theory it functions in the following way. Every perfect right entails a perfect duty on the part of others; every imperfect right entails an imperfect duty on the part of others. So if I am cold I have an imperfect right to your second coat, and you have an imperfect duty (a duty of charity) to lend or give me the coat. If you fail to do so, you have not committed an injustice, but have lacked charity. One can convert imperfect rights into perfect ones, but only by contract or, as we will discuss in a moment, in cases of necessity. That is, the bedrock is the *meum et tuum*. Perfect rights and duties are the realm of justice; imperfect, the realm of virtue or charity. Now, the distinction between perfect rights (rights of justice) and imperfect rights (rights to charity) is altered somewhat in Kant, who gives the distinction several slightly different meanings. There is no space here to enter into the variations of Kant's idiosyncratic use of the distinction in the *Groundwork* and the *Metaphysics of Morals*. Let it suffice for us to note that Kant's shift from the standard usage in the *Groundwork*, he retains in the *Metaphysics of Morals* a basic continuity with the tradition, mapping the perfect and imperfect roughly onto the distinction between justice and virtue: imperfect duties are all ethical (rather than juridical). Kant's distinction is notoriously ambiguous given that it shifts, and Kant introduces some confusion by suggesting in some places that there are some *perfect* duties that are duties of virtue.<sup>13</sup> But he remains clear that imperfect duties are always duties of virtue, not justice: "Imperfect duties are, accordingly, only *duties of virtue*."<sup>14</sup>

Gilabert appears to be following Kant in some respects, but he goes further than Kant in undermining the standard distinction between perfect duties as duties of justice (obligatory and legally enforceable) and imperfect duties as duties of virtue (voluntary and morally praiseworthy). He follows an element of Kant's meaning, treating perfect rights as ones that are concrete and particular, and imperfect as ones that are general, or open to interpretation ('wide').<sup>15</sup> Of course, this was always part of the traditional distinction, since charity admitted of discretion partly because it was open to interpretation to whom you had this duty and how much you owed. But *contra* Gilabert the fact that an imperfect duty was general was not its defining feature—it was, rather, the fact that it was not contracted and was not externally enforceable. An imperfect duty was a duty of charity, enforced by one's conscience and open to one's discretion. People like Pufendorf felt that it was important to maintain this distinction for the Aristotelian reason that you get to be generous when charity is at your discretion, and hence you get moral brownie points. Kant, too, thought that fulfilling imperfect duties gave one merit, whereas fulfilling perfect duties did not because fulfilling perfect duties did not involve making voluntary sacrifices and could be enforced coercively (we don't, after all, think that merely paying one's debts is



worthy of great praise).<sup>16</sup> The primacy of mine and thine is never undermined in Kant, and it is indeed extremely important for him to separate virtue and right for just this reason—our ethical duties, for instance, to push for an improvement of civic conditions, do not justify breaches of our duties of right.<sup>17</sup>

Now, for Gilabert, you can have *imperfect duties of justice*, something that would, both in the tradition and in Kant's somewhat idiosyncratic version, have been a contradiction. For Gilabert, the fact that duties are imperfect *merely* means that they are owed in a general way; this does not reduce the strictness of their claim (they belong to justice, not virtue). So an imperfect duty is itself a call to make itself perfect—we should be trying to nail down how much we owe and to whom by establishing the institutions that can make it so. We have a general duty of justice to give ourselves particular duties of justice. That is, Gilabert would have been perfectly Kantian if he had written that we have an (imperfect) duty of virtue to create (perfect) duties of justice; while the passage is ambiguous, Kant might have been suggesting something of the sort when he wrote, "The wider the duty, therefore, the more imperfect is a man's obligation to action; as he, nevertheless, brings closer to *narrow* duty (duties of right) the maxim of complying with wide duty (in his disposition), so much the more perfect is his virtuous action."<sup>18</sup> But Gilabert does not say this. He clearly wants this wider duty, the imperfect duty, to be conceived of as a duty of justice; it is in this claim that there lies a hidden radicalism because he ultimately blurs the lines between justice and charity that the modern natural rights tradition had wanted to keep clear. An imperfect duty of justice is, in the modern natural rights tradition, a contradiction in terms. Gilabert's move is thus quite novel, and pregnant with radical implications.

How does the natural law tradition articulate positive rights as rights of justice? For some in the natural rights tradition, duties of charity could become duties of justice when survival was at stake. Kant does not allow this—he merely suggests that you can't enforce the law in cases of necessity.<sup>19</sup> Grotius is somewhat ambiguous on this, for while he says that absolute necessity allows us to return to a condition in which the earth was owned in common (for we must assume that when property was introduced the people who introduced it never would have consented to a system that runs counter to 'natural equity'),<sup>20</sup> he also speaks of the case of necessity as an "exception."<sup>21</sup> The needy can abrogate strict laws in cases of necessity, but they are bound by duty to restore the object to the owner once they are in a condition to do so.<sup>22</sup> Pufendorf said the same thing in one place.<sup>23</sup> But why should one person's survival impose strict duties on others? Some introduce an original common ownership of the earth, which has some element of equal access that cannot be overridden by later property relations, but we noticed that in Grotius this led to a right of necessity but not to a corresponding duty on the part of the propertied. Locke's 'enough and as good' provision offers some justification for granting people access to the labour market as a right of necessity (a move that Gilabert correctly sees as exploitation<sup>24</sup>). In a concrete proposal, Locke advocated the most unlibertarian policy that property owners should be forced to employ beggars. Of course, he offered this in lieu

of their paying the poor tax, and he insisted that beggars should be forced to take the jobs proffered by the propertied at much less than the going rate, or be pressed into naval service.<sup>25</sup> I do not wish to enter into details; I merely wish to suggest that this can be construed as an attempt to render precisely the positive duties that accompany the right of necessity, a right that came out of the initial common ownership of the earth. Gilabert doesn't play this game, and he is perhaps right not to. For what Locke was doing was finding a way of *deriving* positive duty in cases of necessity from some original, violated right—the right of access to the means of survival.

One interesting exception in modern political thought is Leibniz, who makes the surprising argument that justice *is* charity—the “charity of the wise.”<sup>26</sup> It is worth noting here because its defence bears a striking resemblance to the ‘contractarian’ argument that Gilabert employs whereby something is wrong if it would be disallowed according to principles that no one can reasonably reject. Leibniz employs the golden rule, asking, “suppose that you were plunged into misery; would you not complain of him who did not help you at all, if he could do it easily?” He continues, “justice, at least among men, is the constant will to act, so far as possible, in a way such that no one can complain of us, if we would not complain of others in a similar case.”<sup>27</sup> Leibniz was trying to undo the damage done by the excessive focus on strict negative duties, but that horse was already out of the barn, and even he kept the basic elements of the Grotian distinction between perfect and imperfect duties, referring to ‘strict’ justice that can be grounds for a legal claim and the more demanding claims of justice, which are not necessarily convertible to enforceable rights, though he did leave the door open: “Equity demands strict right ... except when an important consideration of a greater good makes us depart from it.”<sup>28</sup>

### 3. RIGHTS AND THE RIGHT

We have seen that Gilabert breaks with the modern natural rights tradition in insisting on not conflating the distinction between perfect and imperfect duties with the distinction between justice and virtue. This enables him to come up with a rather strong right of necessity based on his conception of imperfect duties of justice. But what grounds Gilabert's right of necessity? Like Leibniz, he wants to rely more on intuitions—the intuition, say, that having some small rise in taxation on our disposable income is more acceptable than having babies starve to death. And, indeed, Gilabert does not place the threshold for rights of justice at mere survival, but at a minimally decent standard of life. Narveson thinks this is a perverse and idiosyncratic intuition that can't be maintained by anything other than mere assertion; for someone to take this as primordial is to beg the question and impose their own tastes on the world. He complains that such people are simply saying “the difference between your view and mine is that I am right.” Narveson clinches the argument by asserting “My view seems to me more reasonable because it is in accord with reality.”<sup>29</sup> So Gilabert correctly responds, *tu quoque*, demonstrating that Narveson himself has placed an undefended premium on existing property rights and the negative duties to respect

them. Gilabert argues that Narveson can't reasonably defend his possessive individualism through his 'contractualist' position whereby a "configuration is better" if no one loses anything. By 'losing', Narveson means losing property. Well, this is clearly an entirely arbitrary preference, piggybacking on a number of assumptions about what constitutes advantage, and about the justice of the current baseline of property distribution. Gilabert and Leibniz certainly have more intuitive appeal.

Gilabert takes apart Narveson's argument carefully. He argues that Narveson's account of the rational contract slides back and forth from a prudential consideration of the person who knows his position in society to a more abstract, Rawlsian veil of ignorance argument. On the basis of the first, Gilabert writes that the Narvesinian contractor, if he knows he is in a powerful position, would have no reason even to support negative rights. Why not simply take what you want from the poor if you are contracting from a position of force? Yet when, in the context of another essay, Narveson moves the bargainers to a more impartial position, one of semi-Rawlsian ignorance, they surely would be tempted by a more egalitarian outcome than Narveson suggests. This is largely, Gilabert points out<sup>30</sup>, because Narveson offers as the only two options for property distribution wealthy inequality or poor levelling. I must admit that the first argument against Narveson seems a somewhat uncharitable reading, and the running together of two passages from very different contexts might raise Narveson's hackles. (Which would be a feat, since he already has high hackles.) Greater attention to Narveson's more thorough *The Libertarian Idea* might have been desirable here.<sup>31</sup>

But what the debate ultimately comes down to is the basic question of whose intuition is more rational. For the crux of the matter is, as Gilabert rightly points out, Narveson's assumption that people have an "absolute right to their pretax income."<sup>32</sup> Narveson charges the egalitarian with imposing upon others his subjective taste for equality; Gilabert retorts that Narveson is asserting an odd and poorly defended preference for the protecting pre-tax income. I do not think that Gilabert is merely expressing an idiosyncratic taste when he is upset by extreme poverty—by the fact, say, that about 350 people around the world will have died of starvation by the time you have finished reading this article. He is not expressing an idiosyncratic judgment, though the existence of people like Narveson indicates that it is perhaps not a judgment based on principles to which "no one would reasonably object". The more radical philosophical task, in my view, is to make a substantive argument for a conception of property tenure that does not place great weight on subjective rights, but greater weight on the notion of *the right* (action which is right), property tenure as stewardship rather than ownership. I would go further and suggest that the challenge should be to question the very distinction between justice and charity. For the central achievement of the modern natural rights tradition has been to separate charity from justice, granting us the right to do wrong.<sup>33</sup> Justice is about what's mine and thine; virtue is about what I should do with what's mine. We have enshrined the right to do wrong, the right to be an arsehole or an angel—you pays your nickel, you takes

your choice. The right of necessity existed to give some limits to how much of an arsehole we were allowed to be. The likes of Narveson have wanted to remove these limits; Gilibert wants to increase them. But perhaps a more radical philosophical task is to ask whether we are philosophically justified in accepting strict divisions between justice and charity, or whether the task is not to think about ways of conceiving of property tenure as a kind of stewardship rather than ownership. In suggesting that there can be such a thing as an imperfect duty of justice, Gilibert has clearly gone partway down this road, confounding the categories of modern natural rights theory. For in declaring that our imperfect duties are duties of justice he has basically called into question the strict right of *mine and thine* that is the bedrock of modern natural rights theory; after all, if we are to consider our imperfect duties to part with our property as duties of justice, we must think that 'our' property is not wholly ours, but somehow exists in a grey area (the same grey area that made the realm of necessity so difficult to define). Taking this thought further would entail less calling for redistribution than calling for just use of resources; less articulating demands in terms of rights claims, but in terms of what is right.

As long as we're being utopian.

## NOTES

- <sup>1</sup> Kim Mackrael, "Ottawa signals shift in foreign-aid policy toward private sector," *Globe and Mail*, Nov. 23, 2012. <http://www.theglobeandmail.com/news/politics/ottawa-signals-shift-in-foreign-aid-policy-toward-private-sector/article5582948/>. Accessed 28/1/2013. It is difficult to resist the powerful altruism expressed in the minister's comments: "'Yes, there is a business component to this, obviously we can't ignore that,' Mr. Fantino said. 'But I want to highlight that there's an altruistic reason, certainly for Canada to be doing what we're doing, and that the purpose, [the] intent, is to help the industry succeed in an ethical way.'" Kim Mackrael, "Fantino talks foreign aid with mining industry," *Globe and Mail*. Friday, Mar. 01 2013. <http://www.theglobeandmail.com/news/politics/fantino-talks-foreign-aid-with-mining-industry/article9242181/>. Accessed March 18, 2013. In addition, the Agency itself is being shuttered and its mandate will now be taken over by the Department of Foreign Affairs and International Trade.
- <sup>2</sup> Jan Narveson, "We Don't Owe Them a Thing! A Tough-minded but Soft-hearted View of Aid to the Faraway Needy," *The Monist*, 86:3 (2003), 419-33.
- <sup>3</sup> *Ibid.*, 429. Narveson suggests the appellations of "dumb-ass or a scrooge" would be appropriate.
- <sup>4</sup> Jan Narveson, "Welfare and Wealth, Poverty and Justice in Today's World," *Journal of Ethics* 8:4 (2004), 337.
- <sup>5</sup> Pablo Gilabert, *From Global Poverty to Global Equality*, Oxford: Oxford University Press, 2012, p. 91.
- <sup>6</sup> Gilabert is aware of some of these problems, but his attempt to deal with them entails somewhat vague appeals to democracy and deliberation; a book from him on this subject would be highly illuminating.
- <sup>7</sup> Narveson, it must be noted, goes beyond mere assertion, offering an extended argument for the link between liberty and property in his *The Libertarian Idea* (Peterborough: Broadview, 2001); his argument, nonetheless, remains replete with normative question begging.
- <sup>8</sup> Gilabert's argument leans heavily on the claim by Pogge that alleviating dire poverty would actually require a very small, almost unnoticeable percentage of global wealth; thus, the Amish village would merely sacrifice a small percentage of their year's milk (say 4.38 days' worth of milk, if Pogge's 1.2% of GNP is correct). I do not dispute Gilabert's point that forcing such a sacrifice for the sake of eliminating dire poverty would be morally desirable, but I wish merely to indicate that such a scheme would entail costs beyond the wealth transfer, and that such a scheme entails turning the fact of globalization into a political imperative.
- <sup>9</sup> We see him touch on the problem of national self-determination at p. 209-211, 290-291, but he does not truly grapple with the problem of deep pluralism. In a sense, he might reply that economic globalization is simply a fact, so if his scheme equally would submit the globe to a uniform rule it is a much more humane and morally acceptable rule than the simple rule of corporate interest. Perhaps, but this scheme would rule immoral a number of radical political projects.
- <sup>10</sup> John Locke, *Two Treatises of Government* ed. P. Laslett (Cambridge: Cambridge University Press, 2003) I:42. Locke does not say in this passage that one has a duty of justice to help the starving. On the contrary, he purposely distinguishes our duty of charity from our duty of justice. Nonetheless, he suggests that one has a 'title' to another's surplus if one is in extreme want and is not able, through the sale of one's labour, to survive otherwise. The nature of this title is a source of interpretive debate. It is ever to be recalled that though Locke insists that poverty cannot be used as an excuse to enslave someone, there are no such concerns about poverty reducing someone to the necessity of 'drudgery' *Ibid.*, II:4.
- <sup>11</sup> "Which distinction being omitted," writes Pufendorf, "a Right seems to be given to idle Knaves, whose Vices have brought them into want, to seize forcibly for their own Use the Fruits of other Mens honest Labours" *Of the Law of Nature and Nations: in eight books*, tr. Basil Kennett, 4<sup>th</sup> ed. (London: Wilkins et. al., 1729), II:VI, 208; Pufendorf is speaking of Grotius here, but Grotius, too, sets a very high standard to trigger the right of necessity.
- <sup>12</sup> 110, n.82.
- <sup>13</sup> *Ibid.*, 6:421ff.



- <sup>14</sup> *Ibid.*, 6:390.
- <sup>15</sup> Kant, *Metaphysics of Morals*, 196, 6:476-477.
- <sup>16</sup> *Metaphysics of Morals* 6:390-391. That said, it is *meritorious* to have a will disposed to act in accordance with the law (rather, say, than merely to fear punishment). The principle is nonetheless clear that it is important to have room to practice free benevolence.
- <sup>17</sup> This helps explain Kant's torturous attempt to celebrate the French revolution while condemning revolt in the strongest of terms.
- <sup>18</sup> *Metaphysics of Morals*, 6:390.
- <sup>19</sup> *Metaphysics of Morals* 6:236: "there could be no necessity that would make what is wrong conform with law." Of course, Kant had no objections to the sovereign taxing people in order to alleviate poverty, and there are ways of rendering his thought compatible with positive duties of justice. *Metaphysics of Morals* 6:325-326. See Allen Rosen, *Kant's Theory of Justice* (Ithaca: Cornell University Press, 1993); Pablo Gilabert, "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81:2 (2010), 382-418.
- <sup>20</sup> Hugo Grotius, *The Rights of War and Peace* (Indianapolis: Liberty Fund, 2005) II:ii:6, p.433-434. The right of necessity is merely an exception. J. Salter fleshes out the distinction between the right that this gives and the type of right that would entail a perfect positive duty on the part of the property holder, "Grotius and Pufendorf on the Right of Necessity," *History of Political Thought* 26:2 (2005), 288.
- <sup>21</sup> Grotius, *Rights of War and Peace*, II:ii:6, p.434-435. Indeed, he deliberately counters one interpretation of St. Thomas that would make the right of necessity an enforceable duty.
- <sup>22</sup> *Ibid.*, II:ii:9, 436-437.
- <sup>23</sup> Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law* (Cambridge: Cambridge University Press, 1991) I:5:23, p.55. Elsewhere, however, he faulted Grotius for confusing matters by suggesting that the object needs to be restored—this would suggest that the person's right to the object was somehow of a lesser status than other rights. Pufendorf, *Of the Law of Nature and Nations: in eight books*, tr. Basil Kennett, 4<sup>th</sup> ed. (London: Wilkins et. al., 1729) II:VI:v, p.208.
- <sup>24</sup> He declares this to be "intuitively repugnant," p.83.
- <sup>25</sup> John Locke, *Political Writings*, ed. David Wooton (Indianapolis: Hackett, 1993), 450-451. I leave aside his proposals for the whipping of poor children, though I note in passing that it demonstrates that it is possible to be even more insouciant about suffering than the insufferable Narveson (though note that Locke is actually offering a more generous principle than that of the libertarian).
- <sup>26</sup> Leibniz, *Political Writings*, ed. Patrick Riley (Cambridge: CUP, 1988), 54.
- <sup>27</sup> Leibniz, 56-57.
- <sup>28</sup> Leibniz, 173. But he places greater weight on the importance of enforcing strict property on utilitarian grounds.
- <sup>29</sup> Narveson, "Welfare and Wealth, Poverty and Justice," 323. He says this in the context of denouncing those who believe they can make foundational claims as fanatics who believe they have godlike powers.
- <sup>30</sup> Gilabert, *From Global Poverty to Global Equality*, p.88.
- <sup>31</sup> That said, though it would have been more intellectually generous on Gilabert's part to engage at greater length with Narveson's more substantive treatment, it would likely have come to the same conclusions.
- <sup>32</sup> Gilabert, *From Global Poverty to Global Equality*, p.85.
- <sup>33</sup> This is argued forcefully in Edward Andrew, *Shylock's Rights* (Toronto: University of Toronto Press, 1987)