THE FEASIBILITY CONSTRAINT ON THE CONCEPT OF JUSTICE[1]

By Anca Gheaus

There is a widespread belief that, conceptually, justice cannot require what we cannot achieve. This belief is sometimes used by defenders of so-called 'non-ideal theories of justice' to criticise so-called 'ideal theories of justice'. I refer to this claim as 'the feasibility constraint on the concept of justice' and argue against it. I point to its various implausible implications and contend that a willingness to apply the label 'unjust' to some regrettable situations that we cannot fix is going to enhance the action-guiding potential of a conception of justice, by providing an aspirational ideal. This is possible on the condition that, at all times, we cannot specify with certainty the limits of what is feasible for us collectively. The rejection of the feasibility constraint entails that there can be injustice without perpetrators; this is a theoretical price worth paying.

I. INTRODUCTION

A contentious issue in contemporary methodological discussions about justice, and especially in the debate about 'ideal' and 'non-ideal' theories, concerns the very concept of justice. Theorising about justice at a very abstract level – that is, by bracketing the existence of institutions, of empirical facts about people's motivation, as well as epistemic and technical limits to achieving particular states of affairs – is sometimes criticised as inadequate because it mandates the realisation of unachievable states of affairs. The conceptual question is whether a principle can qualify as a principle of justice if it entails infeasible practical requirements.

For, the criticism goes, if a principle recommends courses of action that are not open to us, either individually or collectively, then it fails to be action-guiding. But being action-guiding seems to be a necessary conceptual feature of justice[2], and so, if something cannot be achieved, that thing cannot represent a requirement of justice. According to this view, what lies outside the reach of human action must also be outside the scope of justice. In Daniel Hausman's words, for instance, only the actions of responsible agents and their consequences raise moral questions.[3] Similarly, writes Amartya Sen: 'a calamity would be a case of injustice only if it could have been prevented, and particularly if those who could have undertaken preventive action had failed to try'.[4] The example of a calamity that:

(a)   could not be prevented,
(b)   the effects of which we cannot mitigate, and
(c)   the victims of which we cannot compensate

is often used as an example of a regrettable, but nevertheless not unjust, state of affairs. The reason is precisely that nobody can help such situations. Adam Swift captures well the intuitive appeal of the criticism (without necessarily subscribing to it):

> Some hold that in order for a proposition to qualify as a claim about *justice*, it must have *some* action-guiding aspect. We misdescribe a state of affairs as unjust if we identify it as being bad in ways that we might regret but that human agents – collectively or individually – are incapable of remedying. We might regret instances of irremediable unfairness, for example, but if they really are impossible to remedy, then we can make no claim about their *moral* badness – they are simply unfortunate facts about the world – and they cannot be regarded as unjust.[5]

Why would this be so? Why would it be a conceptual mistake to think that, say, the outcome of an unavoidable natural disaster that kills people is not only regrettable (because it destroys what is valuable) but also an injustice (because, for instance, it inflicts different levels of

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[2] For a recent discussion of the requirement that theories of justice be action-guiding see L. Valentini, 'On the Apparent Paradox of Ideal Theory', *Journal of Political Philosophy*, 17 (2009), pp. 332–55.
[3] D. Hausman, 'Egalitarian Critiques of Health Inequalities', in O. Frithjof Norheim (ed.), *Measurement and Ethical Evaluation of Health Inequalities* (Oxford UP, forthcoming). See also his earlier article 'What's Wrong with Health Inequalities', *Journal of Political Philosophy*, 15 (2007), pp. 46–66.
[4] A. Sen, *The Idea of Justice* (Harvard UP, 2009), p. 4.
[5] 'A. Swift, 'The Value of Philosophy in Nonideal Circumstances', *Social Theory and Practice*, 34 (2008), pp. 363–87.

undeserved harm on individuals, and the worst affected cannot be compensated)?[6]

This position is opposed by political philosophers who think that the ideal of justice – that is, the fundamental principles of justice – is insensitive to what human agents are or are not capable to achieve. One of them, Gerald A. Cohen, argued for the logical priority of fundamental principles (which are fact-insensitive) over practical principles that recommend particular actions (which need to take feasibility constraints into account if they are to be useful.)[7] Similarly, Pablo Gilabert distinguishes between the evaluative and the prescriptive uses of justice claims; while the prescriptive use is conditional on feasibility issues, the evaluative use is not.[8]

I argue in favour of the latter position. Before doing so, however, let me state what I take to be the best argument in favour of the former position. It may be easier to accept that Cohen's claim holds for other normative ideals; usually, we do not believe that the meaning of any ideal other than justice can be affected by feasibility issues. We do not even *ask* whether unattainable standards of beauty are still about the beautiful, whether unknowable truths are true and whether courage beyond what human beings can muster – Olympic Gods' courage for example – counts as real courage. We do not seem to doubt that unattainable goodness is goodness. (There is, nevertheless, a close parallel to be found in recent debates about rights. There the question is whether the conditions necessary to enforce a right, such as identifiable bearers of duty and adequate institutional mechanisms, have to be in place for something to count as a moral right.[9] The debate concerning 'rights as enforceable claims' is of

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[6] Another contemporary philosopher who believes that the very concept of justice depends on empirical truths include David Miller, who thinks that 'even the basic concepts and principles of political theory are fact-dependent: their validity depends on the truth of some general empirical propositions about human beings and human societies, such that if these propositions were shown to be false, the concepts and principles in question would have to be modified or abandoned'. In 'Political Philosophy for Earthlings', in D. Leopold and M. Stears (eds), *Political Theory. Methods and Approaches* (Oxford UP, 2008), p. 31.

[7] G. Cohen, *Rescuing Justice and Equality* (Harvard UP, 2008).

[8] P. Gilabert, 'Feasibility and Socialism', *Journal of Political Philosophy*, 19 (2011), pp. 52–63. For a defence of the value of decoupling the fundamental principles of justice from feasibility constraints see R.Goodin 'Political Ideals and Political Practice', *British Journal of Political Science*, 25 (1995), pp. 37–56, and Z. Stemplowksa 'What's Ideal about Ideal theory?', *Social Theory and Practice*, 34 (2008), pp.319–40.

[9] See, for instance, S. James, 'Rights as Enforceable Claims', *Proceedings of the Aristotelian Society CIII* (2003), pp. 133–47; S. Meckled-Garcia, 'Neopositivism about Rights. The Problem with 'Rights as Enforceable Claims', *Proceedings of the Aristotelian Society CV*, VOLUME (2005), pp. 143–8; and S. James, 'Realizing Rights as Enforceable Claims', in A. Kuper (ed.), *Global Responsibilities: Who Must Deliver on Human Rights?* (New York: Routledge, 2005), pp. 79–93.

course a different debate than the one addressed in this paper.) Is there a dissimilarity between the ideal of justice and other normative ideals – such as beauty, truth, courage and goodness – that can warrant a putative difference between the way in which feasibility considerations impact on the very meaning of these ideals? Perhaps the most promising starting place for thinking about this is to note that justice concerns what people are being owed. While most, if not all, of the above ideals generate different kinds of obligations, justice is unique in specifying the *recipients* of the duties that it generates. I assume that the strongest reason to resist calling states of affairs that human agents cannot improve on 'unjust' (or otherwise 'immoral') is that in such cases nobody is doing anything wrong; hence, no individuals have grounds for complaint against other people. If it is conceptually possible that justice requires the infeasible, it means that there is a gap 'between the idea of injustice, on the one hand, and the idea that some are treating others unjustly, on the other. Some will find that too high a price to pay.'[10] More specifically, many people find more convincing an understanding of justice according to which injustice necessarily involves rights violations. By contrast, in this article I put forward the case for an understanding of justice in which injustice need not entail rights violations; in this understanding, justice is about what is desirable from the point of view of fairness, and which could become a matter of rights if it were achievable.

I refer to the criticism that, conceptually, justice cannot require what we cannot achieve as 'the feasibility constraint on the concept of justice', or, shorter, 'the feasibility constraint'. I argue we are better off dropping it. The reasons I provide against the feasibility constraint point to the theoretical costs of endorsing it; if these reasons are sufficiently appealing, it may be worth it to pay the price of allowing that there can be injustice without rights violation and without perpetrators. In particular, I contend that a willingness to apply the label 'unjust' to regrettable situations that we cannot fix is going to *enhance* the action-guiding potential of a conception of justice, by providing an aspirational ideal. This is possible on the condition that, at all times, we cannot specify with certainty the limits of what is feasible for us collectively – as I argue below. (If, by contrast, we could be certain about the scope of feasibility, dropping the feasibility constraint would not improve the action-guiding potential of a conception of justice.) An upshot of this position is that one can be utopian in a productive, rather than unproductive, way and that it is misleading to criti-

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[10] Z. Stemplowska and A. Swift, 'Ideal and Non-Ideal Theory', in D. Estlund (ed.), *The Oxford Handbook of Political Philosophy* (Oxford UP, 2012), p. 385.

cise all theorising about justice at the 'ideal' level as failing to be action-guiding.

The next section delimits the scope of feasibility for the purpose of this discussion. I then suggest that the feasibility constraint is, in some ways, non-intuitive. The fourth section explores two theoretical problems encountered by the proponents of the feasibility constraint; these problems disappear if one rejects the feasibility constraint – for instance, by drawing a distinction between the ideal of justice and practical principles (like Cohen) or between evaluative and prescriptive uses of justice claims (like Gilabert). In the fifth section I offer a debunking explanation of the appeal of the feasibility constraint, and in the sixth section I argue that dropping the feasibility constraint is compatible with the more plausible interpretation of the 'ought implies can principle'. The conclusion is that, while issues of feasibility are relevant to limiting the scope of agents' duties, they are not relevant to determining the content of the concept of justice. I end with some remarks about the practical importance of disagreement concerning the feasibility constraint.

Many of the actions and outcomes that are not feasible for certain agents at particular times are nevertheless feasible for collective agents over time. For reasons of simplicity, in this paper I focus on the diachronic feasibility of claims of justice that are addressed to humanity rather than on the feasibility of claims of justice addressed to particular agents at particular moments. If it turns out that the concept of justice is unconstrained by actions and states of affairs that may remain unfeasible no matter how well we organise ourselves and how tenaciously we try to achieve them, then the feasibility constraint is mistaken.

II. WHICH 'FEASIBILITY'?

Much of what is at stake depends on the precise meaning of 'feasibility' and on beliefs about what human beings are in principle capable of achieving. The very meaning of feasibility is far from uncomplicated, as various contributors to the debate made clear[11]. Many courses of action that some people are tempted to dismiss as 'infeasible' are in fact merely very difficult, or psychologically very costly, to achieve – and

hence are improbable rather than infeasible[12]. And many states of affairs
are infeasible only in the sense that we cannot achieve them directly, that
is, from here and now; but we know there are possible paths that would
lead us there, if only we could find the practical will to follow them. To
take an example given by Pablo Gilabert and Holly Lawford-Smith, it is
not directly possible for Australia to escape the effects of draught, but it is
indirectly possible to do so by building a proper irrigation system[13].

In this paper I reserve the word 'feasible' to characterise states of affairs
that we know we could achieve[14], if we were to summon sufficient practi-
cal will and direct our (individual or collective) efforts in the right direc-
tion. Thus, both what we can achieve directly, i.e., from here and now,
and indirectly, i.e., by putting ourselves in a position to achieve them, are
within the scope of the feasible[15]. Also within the scope of the feasible are
things that we do not know how to achieve from here and now (either
directly or indirectly) but we know are possible because they have been
realised in the past. Examples of what belongs to the realm of the infeasi-
ble include prediction and prevention of some natural disasters. They
include the design of a large-scale economic system that works on the
basis of human generosity[16], because nobody knows *how* to design such a
system – at least not within a mass society and not in a sustainable way –
and nobody knows *if* it is possible to design such an system. They
also include giving adequate compensation to people for some of the ways
in which their lives go badly and for which they are not themselves
responsible.

The realm of the feasible is here generously delimited; therefore,
accepting the feasibility constraint need not be a license for concessive,
status quo enforcing, conceptions of justice. Yet, one may worry that this
definition of feasibility will identify as infeasible actions and states of
affairs that are not 'really … impossible to remedy' and therefore will fail
to engage with the criticism that we cannot apply the concept of justice
to the latter. But there are two reasons to delimit the feasible from the
infeasible in this way. First, calling 'infeasible' what we do not know (a)

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[12] See D. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton UP, 2008) and
'Human Nature and the Limits (If Any) of Political Philosophy', *Philosophy & Public Affairs*,
39 (2011), pp. 207–37.
[13] Gilabert and Lawford-Smith, *ibid*.
[14] Or, more precisely, 'we can be reasonably confident'. In this paper, I gloss over the
fact that thinking in terms of probabilities would be a more adequate way to frame predic-
tions about what agents could achieve, if they were to try.
[15] See also Gilabert and Lawford-Smith, *ibid*.
[16] Which is what Cohen identifies as the main obstacle in realising the ideal of social-
ism. See *Why Not Socialism?* (Princeton UP, 2009), pp. 57–8.

how to achieve and (b) whether is achievable, is sufficient in order to preserve the connection between something being feasible and it being required of particular agents. Some of the states of affairs thus deemed infeasible may be possible to achieve in principle, as we would learn if we had access to the point of view of an ideal agent with unlimited knowledge; but, since we do not have access to such a standpoint, we cannot know what is and what is not possible to achieve. And we cannot attribute to any agent the responsibility of bringing about states of affairs that we do not know to be possible to achieve. If the strongest argument in favour of the feasibility constraint is that there cannot be an unjust society without perpetrators of injustice, this definition of the feasible will do.

Secondly, I assume that, in most cases, and perhaps in all cases involving examples of what justice may possibly require, we cannot *exclude* the possibility that one day we collectively will be in the position to realise what today appears to be infeasible, should we try. Suppose we were to define the domain of the feasible to encompass everything that may be achievable in principle. Then we would not be able to rule out from the 'feasible' even the most extravagant hypothetical examples, meant to test the limits of our intuition that justice may require the impossible. Recent contributions to the topic of feasibility claim that physical and biological realities represent hard constraints, impossible to overcome[17]. But, in fact, we cannot know *which* of these constraints are and which are not possible to overcome. (Since fundamental scientific theories themselves are subject to change, we cannot even rely on their basic presuppositions in order to determine with *certainty* the scope of what is possible.) Take, for instance, the example of justice requiring that people stop sleeping, in order to devote more time to productive labour[18]. This is given as an example of a truly impossible demand; and, indeed, the most we can do at the moment is to make people stay awake for a few days with the help of drugs. But sleep is one of the phenomena that we do not understand yet. If and when scientists will fully understand sleep, a demand (fancy as it seems) that people stay awake forever would become feasible.

Stipulating a definition of feasibility that includes whatever might be possible in the future would be over-inclusive because we do not know how to determine the scope of what is in principle possible from what is in principle impossible.

[17] Gilabert and Lawford-Smith, *op. cit.*
[18] An example given by David Estlund, see http://publicreason.net/2008/04/26/remarks-on-comments-on-chapter-14-and-a-concluding-note/.

III. IS THE FEASIBILITY CONSTRAINT REALLY INTUITIVE?

There is something intuitively troubling about the feasibility constraint on the concept of justice. It suggests that we cannot *know* whether the realisation of any particular state of affairs is a requirement of justice until we know whether we can realise it. This implies that one must first establish what is feasible in order to determine what is just. This seems counter-intuitive: usually, in everyday exchanges, we first try to establish what justice requires, and only *then* worry about how, and if, we can realise the demands of justice. Indeed, we sometimes find out where is the limit of what we can accomplish – individually or collectively – only *after* we have tried to bring about a particular state of affairs, often in the name of justice. And, as I argue in this paper, we have good reason to keep this order. Conversely, if the feasibility constraint is true, striving for a cause may turn out not to count as a struggle for justice at all, if, in hindsight, it becomes clear that the goal was out of human agents' reach from the very beginning. If, for example, communism is an infeasible ideal (for whatever reason), the defender of the feasibility constraint would have to say that the idealistic people who tried to achieve real world communism were not, in fact, pursuing justice. Rather, they were pursuing what they *believed* to be justice but, in so far as their goal was impossible to attain, they mischaracterised it as a requirement of justice. Yet, at least some of the people involved saw their activity as a struggle for justice whether or not they were convinced of its feasibility; the concept of justice that animated at least some of them was free from the feasibility constraint.

Moreover, we sometimes call the results of procedures that we do not believe can be improved 'unjust'. For instance, the best penal system will fail to convict some criminals and will mistakenly convict some innocent individuals, and we think of these instances as unjust although we do not think it is possible to prevent such mistakes.[19]

I try to make sense of the counter-intuitive nature of these implications by indicating two unwelcome implications of the feasibility constraint on the concept of justice. First, it does not capture the full extent to which we deem certain states of affairs to be regrettable. And, secondly, it prevents, or at least considerably hinders, the establishment of priorities of justice. I discuss both problems *via* various examples.

But first, consider one more counter-intuitive implication of the feasibility constraint. The criticism from infeasibility is usually levelled at

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[19] As pointed out by T. Christiano and W. Braynen, 'Inequality, Injustice and Levelling Down', *Ratio*, XXI (2008), pp. 392–420.

distributive theories of justice, such as Rawls', and it is especially salient in discussions of the so-called luck-egalitarian theories of justice. Luck egalitarianism, broadly construed, takes fairness to play an important role in determining whether a state of affairs is just; it holds that it is unfair, and therefore *pro tanto* unjust, if some people's lives are worse than others' from no fault or choice of their own[20]. This is obviously a very demanding conception of justice, which is likely to lack immediate action-guiding potential. In the first place, in many cases it is really difficult to compare the relative overall quality of people's lives and often it is even difficult to believe such comparisons are meaningful. (Especially so for value pluralists.) It is perhaps equally difficult to establish what can and what cannot be correctly attributed to responsible individual decision-making. Finally, even if such informational problems were overcome, it is plain that we are not able to see to it that people's lives go equally well – losses due to individuals' own choices or faults apart.

But it is worth noting that, if the feasibility constraint is correct, it must hold true across all conceptions of justice. Thus, if a just society is one in which intrinsic, or basic, needs are met, then a society can be fully just even if some needs remain unmet, provided there is nothing we can do to change the situation.

Or, take the family of relational egalitarianism, according to which justice is about eliminating humiliation, oppression, exploitation, marginalisation, powerlessness, stigma and other pathologies of human relationships. It is imaginable that there are limits to our ability to achieve this goal – maybe even if we all made a concerted and conscious effort to relate to each other as equals. Many people – such as Sigmund Freud, Albert Einstein, and Bertrand Russel – thought that a tendency to dominate, and even to destroy, others is so deeply ingrained in human nature that it will inevitably re-emerge even if an egalitarian society were to be temporarily achieved. On a more contemporary note, one may think for instance of studies about implicit bias, showing that it is instrumental in creating relational inequalities *in spite* of people's explicit, and honest, desire to treat everybody as equals. It may be a lot less intuitive

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[20] I assume Rawls' is not a luck egalitarian theory of justice, in spite of the title of some of his work on justice and of the fact that the luck-egalitarian intuition concerning the importance of fairness for determining justice *is* present in Rawls'. He wrote that the moral goal of a theory of distributive justice is to come up with a conception 'that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in the quest for political and economic advantage'. See *A Theory of Justice* (Oxford UP, 1972) p. 15. Samuel Scheffler convincingly argued that the luck egalitarian intuition plays a peripheral role in, and is incompatible with, Rawls' overall conception of justice. See his article 'What is Egalitarianism?', *Philosophy & Public Affairs*, 31 (2003), pp. 5–39.

that a society that breeds unconscious discrimation can nevertheless be just, than that a society whose people have been very unequally affected by an unavoidable natural disaster can be just. Yet, the feasibility constraint equally commits one to both beliefs.

IV. TWO PUZZLES

IV.1. *The feasibility constraint obscures some of the regrettable nature of what is infeasible*

Philosophers who think that the feasibility constraint on the concept of justice is correct, believe that, say, instances of unfairness, or of frustrated basic needs, or relational inequalities that we cannot prevent, remedy or compensate for cannot be a matter of justice. At the same time, they believe that such situations are regrettable.

Suppose we grant the truth of the feasibility constraint. How can we make full sense of the regrettable nature of states of affairs that we cannot change? One will want to say that they are regrettable because the world would be a better place if things were different. But why would the world be a better place if things were different? Take the example of the unforeseeable natural disaster. One reason why the disaster is regrettable is that it kills and maims people and destroys their settlements with all that is valuable in them; but an additional kind of badness certainly comes from the fact that the natural disaster also causes unfairness: some people are left worse off than others, out of no choice or fault of their own. The first kind of badness – the destruction of value – has nothing to do with injustice. But the second kind – the unfairness – is, at least on a luck egalitarian account, one of the main ingredients of injustice in cases when – since we granted the feasibility constraint – unfairness could be prevented or remedied. Or take the case of involuntary and unconscious discrimination due to implicit bias. This is bad precisely because it involves discrimination, and hence, a type of relational inequality. But relational equality is exactly the feature that, according to relational egalitarians, makes a state of affairs unjust in cases in which one *can* do something to eliminate the inequality.

The proponent of the feasibility constraint can see that unfairness and relational inequality are regrettable, but not that part of what makes them regrettable is the injustice they inflict on some people. But isn't it mysterious that the same features that make improvable situations unjust should make non-improvable situations regrettable but not unjust? If unfairness can render a situation regrettable *because*, to the extent to which it is

unfair, it is unjust, then why cannot unfairness also make a non-improvable situation unjust? At this point one should either deny that unfairness, respectively discrimination, *necessarily* create injustice – which would amount to a *reductio* of luck egalitarianism, respectively relational egalitarianism – or else reject the feasibility constraint and accept the connection between injustice and unfairness, respectively discrimination, *independently* of whether we can eliminate them or not.

    I now turn to the next puzzle.

IV.2. *The feasibility constraint obscures the difficulty of establishing some priorities of justice*

As discussed above, accepting the feasibility constraint is compatible with saying that some situations are regrettable, and hence if we *could* do something to make things better we *should* do it. I assume that, at all times, there are cases of, say, unfairness or relational inequality that we – individually or collectively – cannot do anything about. One reason for this is the limitation of human knowledge at that moment. But, of course, we *can* invest our time, money, energy and thought in finding ways to change what is feasible. I also assume – as explained above – that it is impossible to say in advance what will and what will not become feasible in the future, if enough resources are directed towards achieving a particular goal. In other words, we should be very careful with declaring something impossible in principle as opposed to infeasible in the light of current knowledge. When tempted to declare things impossible in principle it is good to remember that we have already developed technologies allowing us to go against what people once believed were the laws of physics – we can fly, – or of biology – we can cut open living bodies, extract functioning organs from them, sew them back, and find them still alive and well! And, closer to our times, scientists who otherwise revolutionised their field have, on principled grounds, predicted as impossible technological developments that were soon to happen. Werner Heisenberg, for instance, believed an atomic bomb was a virtual impossibility due to the quantity of fissile material required[21]. We also know now how to overcome emotional and behavioural dispositions that might have looked like laws of human nature at times – such as for instance homophobia.

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[21] See P.L. Rose, *Heisenberg and the Nazi Atomic Bomb Project, 1939–1945: A Study in German Culture*, (University of California Press, 1998).

Now suppose the feasibility constraint is correct and that states of affairs that are not unjust are nevertheless regrettable – the problem of making full sense of their regrettable nature notwithstanding. Then, there is a case for investing resources in pushing further the limits of what is feasible, but the case is weak. Our resources are (moderately) scarce and they may always go towards remedying injustices that we *know* how to remedy. Take, for instance, issues of inequalities in health and health care. If the feasibility constraint holds, justice cannot require us to save individuals who suffer from fatal diseases that kill them young, if we do not know how to cure these diseases. At the same time, justice does generate a (*pro tanto*) reason to dedicate resources to remedy more minor ailments that make some worse off than others out of no choice or fault of their own, or that contribute to relational inequalities. If the feasibility constraint is correct, we will always have reasons to prioritise remedying injustices that we are currently able to remedy, over embarking on the ever-risky enterprise of discovering remedies for, say, illnesses that are currently incurable and that we are not sure whether we will ever be able to cure.

But, in fact, it is consistent with our considered judgements about resource allocation that some resources should go towards achieving desirable goals that we know how to achieve, while others should be devoted to finding solutions to problems we currently cannot solve. In some cases (when the unsolved problems are particularly serious) this is a choice between attending to what is more urgent and attending to what is more important. When resources are limited it is hard to decide whether one should, for instance, give speech therapy to children who need it now (or else they will lead impaired lives) or whether one should maximise the chances to find a cure for a currently untreatable disease.

Rejecting the feasibility constraint need not, of course, mean that we should always give priority to more important aims that we are unsure we can achieve over the more urgent ones; rather, it is necessary in order to make full sense of the difficulty of this choice.

V. 'JUSTICE REQUIRES...'

The feasibility constraint seems to rely on an attachment to the belief that if something is desirable *as a matter of justice*, then it must be somebody's duty to deliver that thing (and somebody's right to get it). This attachment stands in need of further explanation; it may stem from the widely-used expression 'Justice requires that...': if justice requires something,

then it must require it *from somebody*. But 'justice requires…' is, of course, only a metaphor we use to express the joint belief that:

(a)   in order to be just, a state of affairs has to fulfil this and that criteria [introduce the principle(s) of justice to which you subscribe] and
(b)   someone ought to bring justice about

The two claims are logically independent and hence it is possible for the first to be true in a situation in which the second is not. (a) refers to what Cohen calls the fundamental principles of justice – that is, it captures what Gilabert identifies as the evaluative element in claims of justice taking the form of 'justice requires that…'. Therefore, fundamental principles of justice can be true even in cases when (b) is false.

(b) may be false in precisely those situations when justice recommends the impossible. Thus, in cases when we run together claims (a) and (b) by saying that 'justice requires that…', the deepest source of our attachment to the feasibility constraint seems to be the widely endorsed principle that 'ought implies can'.

Although it is frequently invoked, the 'ought implies can' principle is far from undisputed and it is open to several interpretations. In the next section I discuss how this principle may bear on the feasibility constraint and argue that at least one interpretation of it is consistent with the rejection of the feasibility constraint. In this case, one may believe both that ought implies can and that some applications of the principles of justice are infeasible. In such cases one should endorse (a) but not (b); the endorsement of (a) will make full sense of the regrettable nature of the fact that some requirements of justice are infeasible, while the rejection of (b) will release agents from a duty to bring about what they cannot. It follows that we should accept that a society may be unjust even if nobody can be charged with treating others unjustly. Moreover, I think that we can make sense of an unjust society where all individuals are equally victims of injustice without perpetrators, as I illustrate at the end of the next section. In such cases it is implausible to think that everybody's rights are violated, since no correlative duties can be identified.

VI. IS, OUGHT, CAN

Proponents of the feasibility constraint on the concept of justice often invoke the generally accepted principle that 'ought implies can' in support of their position. For instance, William Galston thinks that 'ought implies

can' is a constraint on the validity of political norms.[22] Laura Valentini argues that 'ought implies can' invalidates requirements of justice that are beyond human reach.[23] But the only reading of 'ought implies can' that is not vulnerable to the naturalistic fallacy is compatible with a rejection of the feasibility constraint. The reason is that an unqualified endorsement of the 'ought implies can' principle is incompatible with another, just as widely endorsed principle: the principle that 'is does not imply ought' – that is, that one cannot derive a normative claim only from factual ones. A reading of 'ought implies can' to mean that, if X cannot be achieved, then X is the wrong ideal, is to derive a normative claim from a factual one.

By contrast, one may interpret 'ought implies can' to mean that if A cannot do X, then A is under no duty to do X' – that is, that nobody is obliged to do what they cannot do. This reading is not vulnerable to the naturalistic fallacy criticism, since it is a mere statement of a necessary condition under which it is possible for someone to have a duty: in order for an individual to have a duty, that individual should be able to accomplish what the duty requires of her. Thus interpreted, the principle tells us when to hold individuals responsible for failing to realise a desirable state of affairs. This is consistent with recognising that X is desirable independently of whether anybody can ever achieve it: it ought to be the case that X even if nobody can bring X about. So, in a world of compulsive liars, truth telling would not cease to be desirable.

The crucial question, then, is whether there is anything that distinguishes oughts of justice from other kinds of oughts, such that principles of justice must always indicate actual duties – that is, whether all the 'oughts' of justice *must* be attributable to some agent. This does not seem to be conceptually necessary. Some participants to the debate over the feasibility constraint have already discussed the possibility of 'unowned oughts'[24] – that is, of oughts that do not attach (any more) to any pres-

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[22] W. Galston, 'Realism in Political Theory', *European Journal of Political Theory*, 9 (2010), pp. 385–411. He writes that 'because both sides accept 'ought implies can' as a constraint on the validity of political norms, much of the debate between realists and idealists revolves around deep empirical disagreements that are yet to be clarified.', p. 385.

[23] 'If "ought implies can"', a valid (ideal) theory of justice should not contain requirements that are altogether beyond human reach. ... If we can regard reasonable disagreement about justice as a persistent feature of human existence (in the same way in which moderate scarcity and limited altruism are), then we are led to conclude that there is no justice beyond legitimacy'. L. Valentini, review of L.H. Meyer (ed.), 'Legitimacy, Justice and Public International Law', *Notre Dame Philosophical Review*, (2010) http://ndpr.nd.edu/news/24430-legitimacy-justice-and-public-international-law/

[24] H. Lawford-Smith, 'Debate: Ideal Theory – A Reply to Valentini', *Journal of Political Philosophy*, 18 (2010), pp. 357–68, following the suggestion of John Broome.

ently existing agent. One example is oughts that originate in a past event and have been 'owned' then but became unowned; imagine a case of injustice that no one can rectify, because all the perpetrators and beneficiaries of the injustice are dead. The victims, however, are still alive and therefore the injustice is not a mere past injustice; it continues in the present. It is true that perpetrators had a duty not to inflict injustice on the victims: the 'ought' was owned in the past. But in the present nobody has a duty with respect to such an injustice, and yet it seems to make perfect conceptual and moral sense to call the world in its present state 'unjust' since the victims continue to suffer unfairly.

In other cases the 'unowned oughts' spring from situations where we cannot identify any perpetrators of injustice, present or past, as when people say that 'Life ought not to be so unfair'.[25] But even in these cases it makes sense to talk about *hypothetical* duties. Under the second proposed interpretation of 'ought implies can', if X is a just state of affairs then, if A could realise X, A ought to realise X. The conceptual connection between duty and an unrealisable ideal – in this case, unrealisable justice – need not be lost; but the connection is not to an actual duty.

As the second puzzle above shows, justice can provide a duty to expand the limits of feasibility. There may be no duty to remedy what one cannot remedy, but there is a duty to invest resources in becoming able to realise what justice requires[26]. (Or, perhaps, in enabling other individuals – such as future people – to do so.) I now turn sympathetically to the suggestion that, in many situations, we should apply 'ought implies can' as indicating what is, in principle, possible, rather than indicating what is required of us[27]. In these cases one should endorse both (a) – therefore rejecting the feasibility constraint – *and* a modified version of (b), something like:

(b') someone ought to try to make it possible that others (or our future selves) bring justice about.

This interpretation makes sense only if, indeed, the feasible (as defined in this paper) is far from capturing the 'possible in principle'. This reading

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[25] *ibid.*

[26] This is similar to what Gilabert and Lawford-Smith call 'dynamic duties'. See Gilabert, 'The Feasibility of Socioeconomic Human Rights and 'Feasibility and Socialism'. Gilabert and Lawford-Smith, 'Political Feasibility' write: 'We may not be able to see that we have reasons to pursue these dynamic expansion of feasible sets if we do not have an evaluative picture of the kinds of social worlds we should try to achieve if we can.'

[27] I pick up this suggestion from the Martin Wayne's interesting discussion of 'ought implies can' in 'Ought but cannot', *Proceedings of the Aristotelian Society*, 109 (2009), pp.103–28. He expressively calls the usual, *modus tollens*, application of the principle a 'duty-restricting' application; by contrast, he calls the *modus ponens* application a 'capacity- expanding' application.

of 'ought implies can' explains why a conception of justice has more action-guiding potential in the absence of the feasibility constraint.

Contemporary references to the 'ought implies can' principle tend to use the principle in a *modus tollens* reading: A cannot do X, therefore A is not under a duty to do X. It is, however, possible to apply the principle, in a *modus ponens* way: A ought to do X, therefore A can do X[28]. So, is the principle telling us mainly that we cannot have a duty to do what we are unable to do, or that we can do what we have good reason to think we ought to do? The second interpretation sounds absurd only if what we can in principle accomplish is independent of what we think we ought to accomplish. What would it take for this to be false?

First, imagine that we can be more confident that we know what we ought to do (because, say, we have good normative theories) than that we know what we can do. At least when it comes to what we can achieve collectively over a long period of time, this is not an implausible assumption. Then, suppose that knowing what we ought to do has *some* motivational force in prompting us to look for means of honouring those ought that we start off not having any idea how to honour (again, not implausible). Finally, assume that what will become possible in the future strongly depends on how hard we try (a very plausible assumption.) With these three assumptions, the *modus ponens* interpretation of 'ought implies can' does not look absurd although it does leave open a possibility that agents fail to do what they ought to do because, in spite of their best efforts, they fail to acquire the necessary means.

The fact that we cannot exclude, as impossible in principle, *most* things that justice may require favours a *modus ponens* interpretation of 'ought implies can' when it is addressed to humanity, that is to the collective 'us' over time. There is an epistemic reason for this: it is likely that we can establish with more precision what justice requires than what is in principle (im)possible. This means that, if we could determine with certainty what is feasible – that is, if we could define feasibility without including the epistemic component that I assume in this paper – the feasibility constraint would be more compelling than it is in the absence of certainty about what is feasible. A second reason has to do with the feed-back effects between feasibility and desirability: if we think we ought to do X we are more likely to take the necessary action that will put us or others in the position to accomplish X.

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[28] And, according to Wayne, this is how Kant, who has famously formulated the principle, employed it in a number of examples.

If we reject the feasibility constraint, what are we then to make of the troubling conceptual gap between characterising a society as unjust and acknowledging that there are no perpetrators of injustice? I have argued that the problem with the gap is not that it entails a rejection of the 'ought implies can' principle – since it does not. I also pointed out that the gap may be necessary to fully explain why situations that we cannot remedy are nevertheless so regrettable that it is sometimes legitimate to devote resources to learning how to remedy them, while we could have instead used those resources to address injustices that we *can already* remedy. Rejecting the feasibility constraint does not render a conception of justice less, but more action-guiding than that conception would be if the feasibility constraint was correct. If states of affairs that are not feasible are nevertheless desirable as a matter of justice, then human agents are under a duty (often defeasible) to look for ways of making those states of affairs achievable.

Finally, is not always intuitively implausible to call a society where we cannot identify perpetrators and victims 'unjust' – because, for example, everybody is equally harmed by injustice that nobody in particular is inflicting. Consider the following, stylised, picture: In society S, everybody is equal in front of the law. However, due to a *past* history of hierarchical gender relations, everybody in society S has internalised arbitrary gender norms that prescribe different lifestyles as appropriate for women and for men. For instance, employers in S may suffer from implicit biases that make women's access to some kinds of intrinsically valuable, and socially valued, work, difficult, while making men's access to other types of intrinsically valuable, and socially valued, work, equally difficult. As it happens, there are no more gender hierarchies: neither women nor men are dominated, marginalised or exploited and, overall, the gender norms prescribe equally good lifestyles for both sexes. All individuals in S have the same degree of valuable freedoms, they have equal access to opportunity for advantage etc. – except that men and women have different freedoms, opportunities for different kinds of advantage etc. S is a spotless illustration of the 'different but equal' slogan as far as gender goes. Nobody in this imaginary example suffers *more* gender injustice than anybody else. Yet, all individuals in S are oppressed: in the absence of the arbitrary gender norms they would all be equally better off, enjoying more positive freedom and access to a wider variety of lifestyles.

Is imaginary S a case of injustice without perpetrators?[29] To be able to criticise S as unjust one needs to drop the assumption that there cannot

[29] I discuss this example and the nature of the injustice at length in A. Gheaus 'Gender Justice', *Journal of Ethics & Social Philosophy*, 6 (2012).

be injustice without perpetrators. Dropping this assumption would, in turn, deprive the feasibility constraint of its most important ground.

VII. CONCLUSION: WHERE THE IMPORTANT DISAGREEMENT IS

I would like to suggest that it is precisely their action-guiding potential that make conceptions of justice which ignore the feasibility constraint at once appealing and repelling. On the one hand, utopia is appealing: a rejection of the feasibility constraint lends significant legitimacy to our attempts to find solutions to yet-unresolved problems. On the other hand, if the feasibility constraint holds, than we should collectively apply ourselves to remedying the very many injustices that we can remedy here and now. This is also appealing, to the extent to which we focus our attention on instances of injustice that are at once urgent and important – such as the eradication of curable diseases or of child poverty. Dreaming about improvements in, say, fairness, that are both relatively trivial *and* infeasible, is part of what makes utopia irritating[30]. Even when the urgent and the important are divergent, it is tempting to resist utopia because it always invites some gamble: if we take the chance of trying to solve an important issue instead of attending to an urgent one, we may end up with two failures.

How important are conceptual issues such as those concerning the proper delimitation of the concept of 'justice'? If they are mostly semantic, not very – at least, they are a lot less important than knowing what we should do, for what substantial reasons, and in what order of priorities. 'Justice', however, has a particularly compelling rhetorical ring – especially so in the mainstream, liberal, tradition that identifies it as *the* sovereign virtue. We are used to see distinctions being drawn between 'reasons of justice' and 'mere' other reasons. (Sometimes this is odd, such as in cases when reasons of justice are opposed to reasons of humanity – suggesting that being inhumane may be a lesser fault than being unjust.) The implication is that, given scarcity of resources, we should give priority to matters of justice. But it is not obvious, and even less a necessary truth, that justice has to be the first virtue: one can think of reasons for pursuing, for instance, a more peaceful world before worrying about a more just one. A plausible explanation for putting justice first – at least

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[30] And, I assume, this is one of the main motivations for recent criticism of political philosophers channelling their efforts into working out the last details of principles of justice and their application.

when it comes to collective action – is the tendency to take for granted that it is legitimate to *coerce* individuals only in order to realise justice, and not for the sake of other values. To return to an example discussed in this paper, if efforts to find cures for currently incurable diseases – that may, or may not become curable in the future – is a matter of justice, then tax-funded research towards such a cure is a lot more legitimate than if such efforts were not a matter of justice.

Given the widely shared assumptions about the primacy of justice and about justice as the only value in the name of which people may be legitimately coerced, it is important whether infeasible actions or states of affairs can be correctly described as requirements of justice. If they are not, there is no case for dedicating scarce resources, and even less for engaging in coercion, for the sake of a mere hope to push further the limits of feasibility, when, as it is always the case, we could instead use our resources to address all the injustice we *can* remedy. The assumption here is that we never dispose of all the resources to fully address the injustices that we know how to eliminate and be left with additional resources to spend on trying to push forwards the limits of feasibility. The (tax-funded) research towards the cure in the example above could be spent instead on tackling more trivial injustices that we know how to eliminate. By contrast, if the feasibility constraint on the concept of justice is mistaken, the quest for justice may and sometimes should make space for visionary strivings – with the attending risks.

Therefore, a conception of justice that drops the feasibility constraint is more generous in its prescriptive force than an understanding of justice restricted to honouring rights. Imagine a situation in which the proponents of these competitive conceptions agree on how to use scarce resources because the important and urgent goals are reachable, and all other improvements with respect to fairness are comparatively trivial. In such a lucky situation a proponent of the feasibility constraint will have to say that full justice has been achieved once the important, urgent and feasible goals have been reached. The opponent of the feasibility constraint, by contrast, will believe that a complaint of justice persists, which generates a practical reason to try push the limits of what is feasible even further.

How tempting is it then to reject the feasibility constraint on the concept of justice? This bears on the balance between attention to current problems of justice and attention to problems of justice that can become addressable in the future. The arguments proposed here against the feasibility constraint are not decisive; hence particular answers to the question of how the ideal of justice relates to feasibility may itself, ultimately, reflect

the answerers' broader normative commitments. Such commitments can, for instance, have to do with one's willingness to take risks for the sake of maximising future gains or, by contrast, to first make sure that feasible goals of justice are fully secured before gambling for more.

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