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PUBLIC REASON

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Just International Normative Structure

Chong Un Choe
Georgetown University

Abstract. This paper offers a solution to the global justice challenges presented by the power and influence of global governance institutions and other international actors. The international situation suffers from a fundamental lack of the sort of normative structure common in the domestic context to provide for justice and the protection of human rights. My solution involves an alternative justice-based account of legitimacy that requires substantial compliance with what I call a “Just International Normative Structure” grounded on the principles of natural justice, specifically due process and formal equality. It is due process and formal equality when specified with the relevant details that provide the rules of order and procedure, judgment and review, impartiality, transparency, accountability, and fair dealing. I argue that any adequate theory of legitimacy must overcome objections concerning effective application. I briefly discuss Allen Buchanan’s two proposed accounts for international legitimacy and identify weaknesses related to effective application in these proposals. I then offer an alternative account of international political legitimacy and explain how it addresses the weaknesses in Buchanan’s proposals and provides a solution to the structural problems in the global context.

Keywords: international legitimacy, global justice, procedural justice, fair dealing, accountability, global governance institutions, and human rights.

This paper offers a solution to the global justice challenges presented by the power and influence of global governance institutions and other international actors. The international situation suffers from a fundamental lack of the sort of normative structure common in the domestic context to provide for justice and the protection of human rights. The difference can be demonstrated by comparing the transactions of an international institution such as the World Bank when it makes a loan to a developing country and the transactions of a local bank in the United States when it makes a loan to a client from a disadvantaged socio-economic group. With the local bank, there are state anti-predatory laws, federal laws such as the Truth and Lending Act,¹ and state and federal constitutions to protect the client from unfair lending practices and discrimination. The World Bank, however, despite its own bylaws and conventions when it makes a loan to a developing country and imposes conditions on that loan, is not constrained by the same or similar normative structure necessary to allow for justice and fair practices.

In this paper, I offer an alternative justice-based account of legitimacy that requires substantial compliance with what I call a “Just International Normative Structure” grounded on the principles of natural justice, specifically due process and formal equality. Under my account, an international entity is legitimate only if its laws and institutions are consistent with a just international normative structure, and an international normative structure is just only if its laws and institutions include these key elements of justice. Other justice-based accounts of legitimacy, such as the ones offered by Allen Buchanan, include some requirement of justice, but they fail to include any mechanism for effective

1] Title 15 *US Code* sections 1601 et seq.

implementation. My approach features what I take to be the universally applicable heart of the rule of law, namely, due process and formal equality. It is due process and formal equality when specified with the relevant details that provide the rules of order and procedure, judgment and review, impartiality, transparency, accountability, and fair dealing. An international entity may provide for the protection of all the right substantive norms, but, without these key elements of procedural justice, there would be no fair and effective mechanism for achieving compliance with those norms.

What follows is divided into three parts. In the first part, I briefly identify the problem targeted in this paper. In the second part, I argue that the standard of justice necessary for legitimacy must overcome objections concerning practical application. I then describe Buchanan's two proposed accounts for international legitimacy and identify weaknesses related to practical application in these proposals. In the third and final part, I offer my own alternative account and explain how it addresses the weaknesses in Buchanan's accounts and provides a solution to the structural problems in the global context. As this project concerns an evolving field with different actors and changing rules, the goal is not to provide a definitive account, but to offer critiques and insights that may move the dialogue forward with new ideas and strategies. I offer and defend my own account of international political legitimacy in large part to express the need for greater emphasis on procedural justice as a source of norms to limit the exercise of authority and a theoretical basis for developing mechanisms for implementation and enforcement.

I. THE PROBLEM

In addressing the subject of legitimacy, my target is global governance institutions and what may be akin to 'arms of the state' in some domestic contexts, namely, other international institutions and organizations and the rules promulgated by these institutions and organizations that wield significant power in governing or regulating international political and economic transactions.² The problem that I want to focus on are the ones that arise in transactions with certain international actors, particularly, those with charters focusing on economic functions such as poverty relief or securing economic stability, including the World Bank Group, the International Monetary Fund (IMF), the World Trade Organization (WTO), and, regionally, institutions of the North

2] What I would suggest and what may be helpful in thinking about promulgating rules and enforcing them is to consider the concepts "arms of the state" and "public function" in the domestic case, as in the United States. Some public entities are not officially part of the state, but are authorized by the state to promulgate rules and regulations or perform certain functions. There are also private entities that have no connection to the state, but are engaged in activities previously or traditionally performed by the state, such as providing public services. Such quasi-governmental actors in the domestic context are treated like the state both in wielding power and in being held accountable for the just exercise of that power. In the international case, international institutions and corporations wield power in a way that sometimes outstrips the power exercised by some states, but the problem is, they do so without similar limitations.

Atlantic Fair Trade Organization (NAFTA).³ As international action and intervention into domestic affairs by these and others actors become increasingly common, the worry is whether they themselves are legitimate or whether their governing laws and institutions are sufficient to ensure that they are using their power and influence in ways that are just and fair.

While some who would advocate a free market system may reject the need for additional rules and regulation, the events of the past few decades have cast doubt on the legitimacy of these actors and their ability to regulate themselves or take into account other important interests, such as national and environmental interests, and other considerations of justice (Mason 2003; Stiglitz 2002, 2003). Currently these international actors are not under the same standards found in the domestic case. They are not created and maintained through any democratic process or other processes involving substantial public participation, there is a lack of accountability, transparency, and review of their decision-making activity, and there is little in terms of enforceable norms to allow for fair dealing. International actors operate much like private businesses beholden only to their shareholders,⁴ despite their enormous impact on national and international affairs. What is lacking and different in the international context, in contrast to the domestic one, is the absence of an appropriate normative structure necessary to secure at least minimum justice and the protection of human rights.

As mentioned at the beginning, the difference can be brought out by comparing the transactions of an international actor such as The World Bank's and the IMF's transactions when it makes a loan to a developing country and the transactions of a local bank in the United States when it makes a loan to a client from a disadvantaged socio-economic group. With the local bank, there are state anti-predatory laws, federal laws such as the Truth and Lending Act, and state and federal constitutions to protect the client from unfair lending practices and discrimination. The World Bank's and the IMF's transactions, however, despite their own bylaws and conventions when they makes a loan to a poor developing country and impose conditions on that loan, are not constrained by the same or similar normative structure necessary to allow for justice and fair practices.

This is not only possible, but arguably it is what we have witnessed in recent years with The World Bank's and the IMF's activity in places like Latin America. The World Bank's and the IMF's efforts in these counties have not only failed to stabilize their economies, but also have acted in ways that have intruded on the sovereignty of these states, forced upon them foreign economic policies, and possibly contributed to greater instability and civil unrest, as in the case of Argentina in 2001 and elsewhere.

3] I do not specifically refer to multinational corporations, but, to the extent that these corporations function in ways similar to global governance institutions, the same analysis also would apply to them.

4] Some may be accountable to a broader group of stakeholders, but nonetheless without accountability adequate to ensure fairness, particularly those without a stake or without much of a stake.

The picture in Argentina, of course, is only the most dramatic. Throughout Latin America and throughout much of the world the prevalent view is that globalization and reform have failed. In countries like Bolivia people ask the question, “We have done everything that you told us to do. You were right that there would be a large amount of pain. We felt that pain, but when do we get the benefits?” And they are waiting. Not only do those in the developing countries see the policies that were imposed on them as ineffective. They also see an *unfair* agenda.” (Stiglitz 2002, 50.)

Although the situation is complex and, with public criticism, international actors are moving toward changing their rules and practices to allow for greater accountability and conformity with human rights norms, this does not obviate the need to develop a solution to address current and possible future situations in a principled and consistent way. As international actors are evolving and responding to criticism, the role of the political or legal theorist is to evaluate the situation against existing norms, and when these norms are inadequate, to offer new solutions and strategies.

II. CRITERIA AND PROPOSALS FOR A SOLUTION

In the absence of a world government or adequate centralized mechanism of international law enforcement, any solution that is offered must be able to achieve substantial voluntary compliance and contain sufficient resources for its own implementation and enforcement. It is not necessary to achieve universal voluntary compliance, but it must provide sufficient moral justification to garner wide acceptance by most states and international actors, so that unreasonable dissenters could be persuaded or compelled to comply at risk of exclusion or sanction. With regard to possible solutions and, specifically, accounts of international legitimacy, the skeptic of a just global structure could raise a number of objections or family of objections.

Some common objections include the following: the account fails to apply universally and assumes or relies on certain features of a particular political community (“the parochialism objection”); the account would lead to splintered and divisive sources of authority producing results that lack uniformity, consistency, and predictability (“the fragmentation objection”);⁵ the account lacks moral weight or moral justification sufficient to garner wide acceptance by the international moral community (“the moral justification objection”),⁶ and the account fails to address the political realities in the

5] Subsumed in what I am calling the “fragmentation objection” is the related concern over the relationship between our international laws and institutions and the sovereignty of states (Tasioulas 2010, 112).

6] The moral justification objection, which may disqualify certain accounts of legitimacy, raises a fundamental disagreement on the concept of legitimacy. Even if we focus on legitimacy in the normative sense, there is disagreement as to what counts as moral justification to exercise the power to adopt and enforce rules and the corresponding moral reasons to conform to those rules. I would argue that, at least in the international case, the moral justification should be based on justice even if not full-blown justice. While those under authority may act for moral reasons other than reasons based on justice (see, e.g., Joseph Raz’s content-independent theory of legitimacy), I agree with the view that the primary goal of international

actual world (“the realist objection”) (see Buchanan 2010b; Tasioulas 2010; Nagel 1990).⁷ What I would add to this list of common objections, and what goes hand-in-hand with the realist objection, is the objection that the account fails to include sufficient theoretical resources to facilitate its implementation and enforcement (“the enforcement objection”) (see Blake 2008; Tesón 1998). While it may be argued that a solution that satisfies the moral justification objection also would address the enforcement objection, the skeptic would demand more from an account than some intrinsic quality of justice in the rules themselves. The skeptic could draw an important distinction between something that is compelling to warrant assent and something that is compelling to prompt action. Moral justification to act (e.g., recycling is good for the environment) may provide sufficient reason for action, but there is nothing in the justification itself that compels a person to reform his or her behavior. There are many ways to prompt action, for example, giving specific directions, providing incentives, attaching costs, promulgating rules to establish procedures and mechanisms to ensure compliance, all of which are aimed at achieving certain objectives. What theories often neglect is this second sense of being compelling, in that, they contain neither resources nor practical guidance for shaping or reforming the global structure.

The enforcement objection is critical if our concern is with practical application in the international context. Domestically, when a new law is passed or enacted, most states have mechanisms already in place to implement the law and give it its force and effect. Internationally, when a new law or rule is proposed, unless it is parasitic on existing state mechanisms, there usually are no adequate international mechanisms to secure its force and effect. While the enforcement objection may not be as relevant in the domestic context, any solution offered to address global injustices succeeds or fails on the basis of whether it comes ready-equipped with resources for implementation and enforcement.

law is peace and stability and that the justice-based approach gives us a better chance for lasting peace and stability, as it provides for stability for the right reasons (Rawls 1999, 12-13; Tesón 1998, 9-14). Under a justice-based approach, those under authority comply with the rules because they are just and not simply because they are advantageous under the circumstances (the normative condition in content-independent theories may not be satisfied for certain actors, giving rise to the problem of exceptionalism). Also, under a justice-based approach, the rules can be reinforced with just social and political institutions designed to cultivate a community that understands justice as a sufficient reason for action. Because the moral reasons are intrinsically compelling and capable of being reinforced in this way, a justice-based theory allows for lasting peace, which presumably is what we need in an international theory of legitimacy.

7] The objection that the theory is unrealistic or unworkable given our current political realities is another common criticism. Always lurking in the background as we attempt to develop a theory of international legitimacy is the realist view that the very notion of global justice is a illusion because ultimately states and other international actors will act in their own interest and do what they have the power to do. This goes not only for authoritarian regimes that for one reason or another disregard human rights, but also for democratic regimes and institutions whose activities around the world often are perceived as reminiscent of the old colonial age of imperialism, in which states used unfair advantage for purposes of military expansion and economic domination. Malcom Fraser observes, “The rule of law, if it is to mean anything, must apply to the powerful as well as the weak – to democracies as well as dictatorships” (2005, 174).

As a result, such proposal must at least include norms of procedure and the theoretical resources for developing mechanisms for implementation and enforcement. My focus in this paper, as space prevents me from addressing each of these objections, is on the realist and enforcement objections, as my main concern is with the challenge of making our theories work in practice. An adequate theory of international legitimacy must meet at least the following two criteria: first, the proposed account must address the current political realities, and, second, that the account must contain at least the theoretical resources to facilitate its own implementation and enforcement. Before offering my own account, I discuss the proposals offered by Allen Buchanan and briefly explain how they fail to satisfy these two conditions. I then present my own solution and attempt to show how it addresses the weaknesses in Buchanan's proposals.

Allen Buchanan, who is the most prominent defender of a justice-based approach to legitimacy, seems to offer two different proposals, one for international law-making institutions that includes necessary and sufficient conditions (hereafter "Strict Justice-Based Legitimacy") and another specifically for global governance institutions that does not provide necessary and sufficient conditions, but instead proposes a set of substantive and epistemic criteria (hereafter "Multiple-Criteria Legitimacy") (Buchanan 2004 & 2010a). Both are justice-based accounts and take "legitimacy" to mean that international actors are morally justified in making rules and attempting to secure compliance with them and that those to whom the rules are directed have moral, content-independent reasons to follow the rules or not interfere with the compliance of others. The question is, what condition or conditions must be satisfied for an actor to be morally justified in exercising political power in this way.

Under Strict Justice-Based Legitimacy, an actor has political legitimacy if and only if it is morally justified in exercising political power (Buchanan 2004, 233). Buchanan explains that an entity is morally justified in exercising political power (i.e., exercising supremacy in making, applying, and enforcing laws) only if it meets a minimum standard of justice. Buchanan's standard of justice includes the following two necessary and sufficient conditions: (1) the entity must protect at least the most basic human rights of those involved, and (2) the entity must provide this protection through processes, policies, and actions that themselves respect the most basic human rights (2004, 247; 1999a). It is not clear whether Buchanan himself still endorses such a strict account of legitimacy,⁸ but I use it nonetheless to point out weaknesses in an account with such strict requirements.

I offer three main criticisms to Strict Justice-Based Legitimacy. First, a strict requirement of justice may be too restrictive and incompatible with the current political

8] Buchanan also endorses what he calls "broad accountability": "By ['broad accountability'] we mean that these institutions must cooperate with external epistemic actors—individuals and groups outside the institutions in particular transnational civil society organizations—to create conditions under which the goals and processes of the institution as well as the current terms of institutional accountability, can be contested and critically revised over time, and in a manner that helps to ensure an increasingly inclusive consideration of legitimate interests, through largely transparent deliberative processes" (2010a, 147; Buchanan & Keohane 2006).

realities. Ideally, every international actor in every transaction should protect the most basic human rights norms, but, including a strict requirement of justice as a condition for legitimacy may prematurely disqualify many as illegitimate and provide insufficient grounds for intervention or exclusion. While Buchanan probably intends something like substantial compliance,⁹ nothing in the account itself explicitly includes any such accommodation. The second and related criticism, as also noted by Chris Naticchia (1999), is that Buchanan's account fails to accommodate other pragmatic considerations, including deep disagreement on basic human rights norms and pervasive problems with compliance. Buchanan addresses pragmatic considerations in his writings but these considerations also are not reflected in his account of political legitimacy.¹⁰ Third, Strict Justice-Based Legitimacy, and the norms subsumed in this account, may present a model for states and an international system, but the theory does not generate any mechanisms to make those norms a reality. Michael Blake (2008) also points out that Buchanan's approach is incomplete for this reason and suggests that what is needed is more guidance for modern states-- and, I would add, other international actors-- in implementing Buchanan's norms. For these reasons, each of which can be explained in greater detail, Strict Justice-Based Legitimacy fails to overcome the realist and enforcement objections.

In introducing a second account of legitimacy specifically for global governance institutions, "Multiple-Criteria Legitimacy," Buchanan and Keohane explain: "Because both standards and institutions are subject to change as a result of further reflection and action, we do not claim to discover timeless necessary and sufficient conditions for legitimacy. Instead, we offer a principled proposal for how the legitimacy of these institutions ought to be assessed" (2006, 106).¹¹ Addressing a specific list of desiderata for a standard of legitimacy, including the feature of providing a reasonable public basis for supporting an institution on the grounds of publically accessible moral reasons in spite of the problems of moral disagreement and uncertainty, Buchanan and Keohane offer three substantive criteria: minimum moral acceptability, which requires compliance with the least controversial human rights; comparative benefit, which concerns the institution's ability to effectively perform its function; and institutional integrity, which involves whether the institution's performance is consistent with its values and commitments. In addition to these substantive requirements, Buchanan and Keohane identify three

9] In the synopsis to his 2004 volume, Buchanan describes his account of legitimacy as requiring only "reasonable approximation of minimal standards of justice, again understood as the protection of basic human rights" (2004, 5).

10] Naticchia offers two reasons for favoring a pragmatic account over a justice-based account: (1) the extraordinary high stakes involved in securing long-term peace and justice demand that determinations be based on consequences for peace and justice, and (2) pragmatic considerations probably influence the content of justice-based accounts anyway (see also Naticchia 2005). Buchanan responds to these and other reasons in his rejoinder (1999b). Naticchia's account, like that of Raz, would not survive the moral justification objection, as well as others.

11] Page references are to the reprinted version in *Human Rights, Legitimacy, and the Use of Force*.

epistemic conditions for legitimacy necessary to satisfy the requirements of accountability and transparency with respect to the three substantive norms.¹²

Multiple-Criteria Legitimacy addresses certain weaknesses in Strict Justice-Based Legitimacy. Because the above conditions are “counting principles,” such that the more of them the institution satisfies, the greater its claim to legitimacy, the approach is not a strict approach, but rather leaves room for special circumstances (Buchanan & Keohane 2006, 120, citing Rawls 1971). Also, in adding to minimal moral acceptability other substantive and “epistemic” criteria, Buchanan and Keohane seem to address the need for norms of procedural justice.

Multiple-Criteria Legitimacy nonetheless has its own problems. For instance, while Buchanan and Keohane take their account as identifying criteria for legitimacy, one question is whether they have moved beyond legitimacy to providing something that looks more like an account of good governance with conditions such as comparative benefit and institutional integrity. While a well-governed institution that conforms to Buchanan and Keohane’s criteria may more likely be legitimate than not and may have rules an organizational structure sufficient for legitimacy, good governance involves more than is necessary for legitimacy (e.g., for justifying economic and political interaction and nonintervention).¹³ If our aim is to isolate legitimacy and identify criteria for determining whether an international actor is or is not legitimate, however, this account is not as helpful. Multiple-Criteria Legitimacy answers the realist objection, but at the cost of leaving us without a clear standard for assessing whether an international actor is or is not legitimate.

Second, and maybe more importantly for our purposes here, Buchanan and Keohane’s account of legitimacy includes certain norms of procedural justice, but still does not do enough to address the enforcement objection. This is true for two reasons. The first is that Multiple-Criteria Legitimacy includes certain important components of procedural justice, but leaves out others. For example, there is nothing in this account that directly requires fair dealing or impartiality,¹⁴ such as requirements of fairness in an

12] “Legitimate global governance institutions should possess three epistemic virtues. First, because their chief function is to achieve coordination, they must generate and properly direct reliable information about coordination points; otherwise they will not satisfy the condition of comparative benefit. Second, because accountability is required to determine whether they are in fact performing their current coordinating functions efficiently and effectively requires narrow transparency, they must at least be transparent in the narrow sense [i.e., the information “must be (a) accessible at reasonable cost, (b) properly integrated and interpreted, and (c) directed to the accountability holders”]. They must also have effective provisions for integrating and interpreting the information current accountability holders need and for directing it to them. Third, and most demanding, they must have the capacity for revising the terms of accountability, and this requires broad transparency; institutions must facilitate positive information externalities to permit inclusive, informed contestation of their current terms of accountability. There must be provision for ongoing deliberation about what global justice requires and how the institution in question fits into a division of institutional responsibilities for achieving it.” (Buchanan and Keohane 2006, 123-24).

13] I think Buchanan and Keohane’s account is more accurately described not as a standard for legitimacy but a standard for determining whether a legitimate actor is more or less just or well-governed.

14] Buchanan and Keohane may intend to include impartiality in their conception of accountability,

international actor's transactions with a client state or procedures for impartial review of an international actor's exercise of its decision-making authority. Buchanan and Keohane admit that accountability per se is insufficient for legitimacy, so they suggest a broader notion of accountability that takes into account their substantive criteria (2006, 122). I would add, however, that what is also needed, beyond accountability, is greater emphasis on the other fundamental norms of procedural justice.¹⁵

Multiple-Criteria Legitimacy also does not fully dispense with the enforcement objection because it includes as epistemic criteria requirements to ensure accountability and transparency, but these requirements alone also are insufficient to secure compliance with their substantive criteria, including minimum moral acceptability. Their account, as others, consists mostly of rules, but does not provide specific mechanisms for implementation and enforcement. So Buchanan and Keohane may have diagnosed the problem, but Multiple-Criteria Legitimacy is still thin with regard to practical guidance in solving the problem. As quoted above, Buchanan and Keohane describe their efforts as a proposal, and indeed, their proposal includes several extremely helpful insights on global governance. But there is, as they would acknowledge, more work to be done.

III. MY PROPOSAL

The solution that I propose attempts to do some of this work and addresses weaknesses in Strict Justice-Based Legitimacy and Multiple-Criteria Legitimacy by offering an alternative justice-based account that differs from Buchanan's in two important ways: expanding on the requirement of justice to feature procedural justice (i.e., addressing the enforcement objection); and providing a more nuanced definition of legitimacy to account for pragmatic considerations (i.e., addressing the realist objection). An account of legitimacy, as a minimum normative threshold, should include at least the conditions necessary for an international actor to qualify as legitimate. My account, Applied Justice-Based Legitimacy or Applied Legitimacy, does this, and provides, as follows:

An international actor (IA) is legitimate only if (1) the IA is in substantial compliance with a just international normative structure (JINS), and (2) the IA satisfies the requirement of good standing. JINS consists of laws and institutions that satisfy the requirement of justice.

As to the first condition, the IA satisfies (1) only if it is in substantial compliance with a set of laws and institutions that meet the requirement of justice.¹⁶

but the concept itself does not entail this additional normative requirement.

15] Elsewhere Keohane refers to the "accountability gap," but the problem may be better characterized as the 'enforcement gap' as other safeguards are necessary to ensure fairness and equality (Keohane 2004, 139).

16] This current formulation involves an added layer of complexity, but it allows me to maintain that JINS complies with the requirement of justice, while legitimacy requires only substantial compliance with the requirement of justice. So my account provides both the gold standard and the accommodation. I use

The requirement of justice, condition (1), refers to a minimum standard of justice involving both procedural and substantive rights, stated more precisely: an IA satisfies the requirement of justice if and only if its laws and institutions respect basic procedural and substantive rights. Substantive rights refer to basic human rights, such as the right to life, physical liberty, bodily integrity, and the other conditions of a minimally decent life. Procedural rights refer to the rights of due process and equality.¹⁷ While many legal theorists have discussed due process and equality either as an element of natural justice or as included in a list of basic human rights (see, e.g., Finnis 1980; Rawls 1999), the failure to recognize procedural justice as foundational to any law-governed system and to develop it effectively as a theoretical basis for laws and institutions is not only a missed opportunity, but also the source of a critical flaw in international jurisprudence. Due process is the basis for our rules of order and procedure, judgment and review, impartiality, fair dealing, transparency, accountability, and other theoretical tools for implementing justice.¹⁸ Without due process, an international system of justice may involve all the right substantive norms, but have no effective and just mechanism for achieving compliance with those norms.

As mentioned above, Applied Justice-Based Legitimacy differs from Strict Justice-Based Legitimacy by specifically accommodating pragmatic considerations in the account itself. One way that I do this is by attempting to provide a more nuanced approach to the condition of justice, by requiring only substantial compliance. In a non-ideal theory of legitimacy, it is not enough simply to begin with a minimalist or bare conception of justice that can be applied across cultures (i.e., that justice requires respect for only the most basic rights necessary for security and subsistence), but what also is required is some accommodation for imperfect compliance with even the most basic norms (i.e., that justice requires respect for some right to a certain measure).¹⁹ My solution

the word “laws” here to refer to any formal set of rules, which would include internal regulations in the case of non-state actors.

17] Formal equality requires that similarly situated persons be treated alike. I would agree with others that what is necessary for legitimacy is this bare formal conception of equality, rather than a substantive conception like Rawls’s domestic equality of opportunity or Ronald Dworkin’s equality of resources (Rawls 1971; Dworkin 1981). The problem with formal equality lies not with its conception, but with its application. For example, Rawls includes formal equality in his short list of human rights but understands this to allow unequal treatment of women in decent societies. I would question, however, how men and women are not similarly situated in a morally significant way so as to justify different treatment, at least insofar as it concerns being entitled to certain basic rights. While some theocratic societies may not view men and women as equals, this is where we can say that toleration does not require deference to others in their reliance on certain basic assumptions, particularly when they are inconsistent with well-settled facts. When applied correctly, the formal principle of equality can be a robust tool for securing a greater degree of justice, and addressing inequalities in our treatment of individuals and collectives.

18] Many theorists offer a list of what should be included as norms of procedural justice (see, e.g., Hayek 2007, 112; Mason 2005, 125; Tasioulas 2010, 115).

19] As mentioned above, in his synopsis of his chapters, Buchanan describes his account in this way: “political entities are legitimate only if they achieve a reasonable approximation of minimum standards of

attempts to address both by including a minimalist conception of justice and requiring only substantial compliance. By “substantial compliance” I mean that the international actor’s act complies with JINS by respecting basic procedural and substantive rights in substantial part, even if it falls short of strict or full compliance, and does not result in any egregious violation of human rights.²⁰ This approach allows for some flexibility to address the realities of the international situation, for example, a developed state that temporarily lapses into committing isolated violations of some basic human right or a developing state that is limited in resources and yet making good faith efforts to advance justice with its limited resources. This is not to say that some violation of justice, for example, the torture of prisoners of war, is morally acceptable, but only that it may not by itself provide grounds for losing legitimacy and intervention by the international community. The requirement accommodates certain political realities, but at the same time makes no concession for egregious human rights violations.

The requirement of good standing, condition (2), is another way in which my account accommodates the political realities without compromising justice.²¹ The international actor satisfies the requirement of good standing based on a combination of factors including relevant aspects of the actor’s historical identity, record, reputation, and relationships. The requirement of good standing takes into account certain practical considerations and provides a supplemental basis for grounding legitimacy on other circumstantial indicators of justice rather than some pure determination of an actor’s present compliance with basic human rights norms. Some of the practical considerations include that our judgments are often based on other factors such as the actor’s reputation and relationships. These other status factors provide additional evidence of legitimacy, as considerations of justice often are a part of the reason for an international actor’s good reputation and long-standing relationships with other legitimate states and non-state actors.

justice, again understood as the protection of basic human rights” (2004, 5). The phrase, “reasonable approximation,” however is not included in his definitions, as stated above. It seems, then, that this language reiterates only the fact that his account of legitimacy requires a minimalist account of justice, rather than full-blown justice. Even if it is Buchanan’s intent to apply this accommodation to his account, my approach makes this sort of qualification explicit and relies specifically on the language of ‘substantial compliance.’

20] I define “due process” in terms of a relation of justice, where the goal is fairness or balance: in a particular situation involving an injustice between two parties, x and y , any procedure or set of procedures necessary to bring x and y into a relation of justice R , such that Rxy entails that x has no outstanding moral or legal obligations to y and y has no outstanding moral or legal obligations to x . Based on this conception, one can imagine scenarios where there is some part left outstanding, but substantial compliance would allow for some deviation so long as no egregious human rights violations results.

21] Although the second condition is less relevant given the focus of this paper, I provide it here for the sake of completeness. Requirement of good standing: an international actor (IA) achieves good standing if and only if those who are subject to the IA’s authority or those who interact with the IA recognize it as being in substantial compliance with the requirement of justice based on relevant factors including the IA’s historical identity, historical record, national and/or international reputation, and past and present relationships with other legitimate states and non-state actors.

More importantly, in addition to addressing the realist objection with these pragmatic accommodations, my account specifically addresses the enforcement objection by introducing JINS. JINS refers to a set of laws and institutions that respect basic substantive and procedural rights. My focus here is on the right to procedural justice, which provides the basis for both (i) specific norms of procedural justice and (ii) mechanisms for implementation and enforcement. While some theories recognize the importance of certain norms of procedural justice, such as impartial review and accountability, such norms, just as with the substantive norms, are not self-efficacious. They require mechanisms consisting of structural designs and directions to facilitate their realization.

The first aspect (i) refers to due process and formal equality and, with respect to due process, norms pertaining to order and procedure, judgment and review, impartiality, fair dealing, transparency, and accountability. Formal equality requires that similar cases be treated alike, which can be construed as requiring that each case be afforded neutrality in the negative sense and equality before the law in the positive sense. As applied to the example provided at the beginning, when the World Bank makes a loan to a developing country, the norms of due process and formal equality together would have the practical effect of affording the developing country fair consideration of its interests, meaningful participation in the deliberations and decision-making process, and the opportunity to have decisions impartially reviewed. Equal consideration of the developing country's interest also would include neutrality in selecting the appropriate economic policies and equality in hearing and taking into account the developing country's interests, thereby respecting the citizens of that country in the same way as it would respect the citizens of the world's most affluent countries. The disparities in power and resources between the parties may be significant, but due process and formal equality at least provides the procedural safeguards necessary to allow for fair dealing.

The second aspect (ii) of procedural justice involves mechanisms for implementation and enforcement. As discussed above, in the domestic case, when a local bank makes a loan to a client from a disadvantaged socio-economic group, there are layers of rules to allow for fair dealing. But, with each rule, there also are mechanisms for its adoption, execution or implementation through various administrative agencies, and enforcement through internal procedures and external review. While the same normative structure does not currently exist internationally, as the international structure develops, what is needed in addition to identifying the right norms are solutions that include mechanisms for implementing those norms. Maybe the best way to accomplish this is by establishing models consisting of structural designs and directions that are consistent with the norms of procedural justice. The structural designs and directions would include procedural steps for ensuring due process and formal equality such as the steps necessary for the adoption of rules, the appointment or election of officers, the public availability of rules and records, fair negotiations with clients, impartial decision-making, and internal and external review.

While some may argue that such structural design and direction should be left to particular international actors as they implement the norms of procedural and substantive justice, this objection fails to recognize two important considerations. The first is that, in the same way as the norms themselves involve justice, the means by which the norms are implemented also should involve justice. The long-term benefit of achieving certain political and economic ends should not be achieved by adopting strategies that perpetuate unfair asymmetries of power and in the long-run result in a more unjust global structure. The second consideration is that we may leave international actors with inadequate guidance for implementing norms of procedural justice, which could lead to inaction or the implementation of unjust or inadequate procedures. While some discretion is due to those international actors with the requisite expertise in selecting the appropriate models to suit their particular institutional needs, political or legal theorists can do much more in terms of practical guidance in evaluating procedures and offering models that comply with the requirement of justice.²²

If I am right that an adequate account of international political legitimacy must provide the resources for its own implementation and that this is best done through model rules and mechanisms, then there remains further collaborative work to be done in developing these international models. For example, in implementing the norms of impartial review of decisions by international actors, legal theorists may evaluate current review procedures, develop standards for impartiality (e.g., rules to protect against bias and conflicts of interest), and offer models of internal review procedures and, where necessary, external review procedures. External review may include proposals of models for additional institutions or forums for international judicial review.²³ A JINS would be comprised of an entire set of rules and models tailored to fit different institutional functions and different contexts.

In summary, what I have argued here is that our current justice-based theories of international legitimacy do not adequately address the realist and enforcement objections, particularly the problem that our theories do not include the resources necessary to generate

22] Legal scholars and jurists currently engage in this kind of work by providing model substantive rules (e.g., Model Penal Code and the Uniform Commercial Code) and rules of court. While some details must be left open to be specified in particular political communities, scholars and jurists can provide model rules and model mechanisms for order and procedure, judgment and review, impartiality, transparency, accountability, and fair dealing that could be tailored for application in different international contexts.

23] *Kiobel v. Royal Dutch Petroleum* (No. 10-1491), the case currently before the United States Supreme Court under the Alien Tort Statute (28 U.S.C. § 1350), which involves a foreign corporation and a cause of action for egregious human rights violations occurring on foreign soil, presents an interesting dilemma: on the one hand, the court could provide a forum for redressing egregious human rights violations despite the lack of direct connection with the parties or the events; and, on the other hand, the court could exercise restraint with our limited judicial resources and leave the victims without a remedy. This is a dilemma for the courts, but for legal theorists, the case presents a challenge to develop other alternatives and collaborative models of international judicial review that would not involve overreaching by any particular state and could provide a forum in the future for remedying injustices.

mechanisms for implementation and enforcement. While Buchanan and Keohane move us in the right direction with Multiple-Criteria Legitimacy and, specifically, the additional requirements of accountability and transparency. I argued that neither Strict Justice-Based Legitimacy nor Multiple-Criteria Legitimacy fully dispense with the enforcement objection. I offered an alternative, Applied Justice-Based Legitimacy, which requires that international actors adopt a version of JINS, which, when fully developed, would include model rules of procedural justice and models of mechanisms for the implementation and enforcement of both substantive and procedural norms. Applied Justice-Based Legitimacy is aimed at greater compliance with our substantive human rights norms and, also, at realizing a greater degree of procedural fairness in our international transactions.

cuc2@georgetown.edu

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Understanding the Global Ethic Project

Mats Volberg
University of York, University of Tartu

Abstract. There are various global problems we find ourselves faced with and those problems necessitate a new kind of ethic, a global one. I will argue that while there are several ways of understanding it one is more adequate than others. That claim has implications for the kind of basis suitable for global ethic, namely that we need a political ethic, such as liberalism. I will also take up some general objections which this kind of global ethic is able to give good replies.

Key words: global ethic, foundation for global ethic, institutional approach.

One would need to be living in complete isolation to be ignorant of various issues that haunt our world on a global scale, some examples being the state of the environment and world poverty. Also one would need to be blind-folded not to be aware of the vast range of interconnections in our current world on a global scale, three obvious examples being the internet, trade relations, and tourism.¹ It has been argued (Nussbaum 1994, Parekh 2005) that due to these two reasons—existence of global problems and global relations—we find ourselves in a wholly new situation, and thus there is a need for a new kind of ethic, a global ethic.²

The existence of global problems, like the declining state of the environment and poverty, points to two reasons why we should adopt a new kind of ethical reasoning. First, humans (whether individually or collectively) have the power to influence things on a global scale (as demonstrated by the mark our economic endeavours have left on the environment), thus we should think about what ought to be our responsibilities concerning those things (e.g. What should we do to remedy the situation, if anything? or How ought we curb our activities, if we are unable to remedy the situation?). Second, these issues have a direct influence on our well-being and since ethics is, at least partly, about how to live well, we should think about what we ought to do about these issues.

Also it is fair to say that in more ways than one every person in the world is now connected to other persons unlike ever before, whether the contact is direct by meeting face to face or indirect by being linked to the same chain of trade. Since ethics is also in the business of giving guidance on how we ought to conduct our relations with other people this new situation of interconnectedness indicates that a certain change (an addition to or

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1] It might be argued that concerning trade there is nothing new, but given the degree of change it is not a huge exaggeration to say that we find ourselves in a new situation.

2] I take questions of socio-economic justice on a global scale, i.e. global justice, to be part of the global ethic project.

a revision of) in our ethical thinking is needed to meet the demands of our complicated relations. This is what could broadly be called the global ethic project.

And within that project of global ethic we can distinguish four subfields: *the conceptual* (e.g. What do we mean by “global ethic?”), *the justificatory* (e.g. What is the proper basis for a global ethic?), *the substantive* (e.g. What kind of principles/rules should be in a global ethic?) and *the sceptical* (e.g. What might be the reasons this whole project does not work?).

This paper explores some questions in three of those fields, remaining relatively general and abstaining from making any very specific substantive claims. I will begin first by looking at the conceptual background of the global ethic project, more specifically I try to spell out what is the nature of a global ethic, as well as what kind of understanding of global ethic I think to be the most adequate. I will then take up some of the justificatory basis of the project by exploring what kind of normative ethical theory is needed for a global ethic. I will conclude by looking at some problems the global ethic project faces and needs to solve before any kind of meaningful work can be done and I will argue that the kind of global ethic put forth here is able to give good replies to those problems.

Before I go on with the discussion, couple of remarks. First, I will not say anything about the kind of character people ought to have or the kind of virtues they ought to possess for them to accept a global ethic. I am taking what might be called a pessimist’s approach, i.e. I assume that most people most of the time will not have the ‘right kind’ of character or possess the ‘right kind’ of virtues, and therefore I will lean towards (local) institutions to do the job. Second, whenever I talk of principles, rules, duties, rights and so on, then they should be taken as placeholders for whatever are the proper elements of an ethical theory. The points I make in this paper should be general enough that they hold irrespective of the fact whether an ethic is made up of principles or rules, whether it prescribes duties or gives rights.

I. WHAT IS A “GLOBAL ETHIC”?

In this section I will take up the question of what I mean by global ethic. I assume that the *ethic* part needs no deep explanation, it simply refers to the fact that we are talking about a certain set of ethical principles, so it needs to be distinguished from ethics, which I take to be the discipline of thinking about such principles.³ At the same time the *global* part does require some discussion. It should be asked “Global in what sense?”, and it seems to me that there are three possible ways of understanding it:

- (1) Global in the sense of content;
- (2) Global in the sense of application;

3] The same point applies more or less to justice, as Thomas Nagel (2005, 113) has noted: on the domestic arena justice is fairly well understood with “multiple highly developed theories offering alternative solutions to well-defined problems.”

(3) Global in the sense of status.

As the following discussion will show satisfying the first two conditions are the minimum requirements for something to count as a global ethic.

An ethic can be considered to be global in the sense of content when its principles concern the globe, so to speak. In other words, the wider the scope of moral significance the more global an ethic would be and within a properly global ethic the set of morally significant beings would be maximally large. It should be noted here that, first, this enlargement of morally significant beings is not restricted only to humans, meaning it could also include non-human persons or ecosystems or cultural entities and so on. Secondly, the enlargement does not apply only to space but also to time, meaning that including future generations would make an ethic more global. The point here is that nothing is said about who is required to follow these norms. In this sense the kind of utilitarianism Peter Singer presented in his famous 1972 (231–32) article is a great example of an ethic with global content: “It makes no difference whether the person I can help is a neighbor’s child ten yards away from me or a Bengali whose name I shall never know, ten thousand miles away.” As example of an ethic with non-global content we might think of some kind of nationalistic or patriotic ethic according to which there are certain duties owed to only one’s compatriots.

An ethic can be considered to be global in the sense of application when its principles apply to the globe, so to speak. In other words, if the ethic includes principles which irrespective of their content apply to all moral agents irrespective of their location or relation to the object of moral significance, then the ethic is properly global in its application. The point here is just the reverse from the previous one: nothing is said about what follows from the norms. So for example we can imagine some kind of familial ethic which prescribes a norm to honour one’s parents: it applies to all (or at least in principle to all) but its content only concerns two very close persons (one’s parents) rather than all the people in the world who happen to be parents.

An ethic can be considered to be global in the sense of status when it is acceptance is global. If we were to read this statement in the strictest possible sense, that is: accepted by *every single* moral agent, then it would be very hard to find an ethic which has global status or which could be reasonably expected to achieve it. Because this criterion is more empirical it is harder to give good examples, but there is some evidence (Hauser 2006, 32) suggesting that there are some very general moral principles which seem to be shared by all cultures:

- (1) People judge intended harms worse than merely foreseeable harms;
- (2) People judge actions leading to harm worse than omissions leading to harm;
- (3) People judge harms with physical contact worse than those with no contact.

Given that the study involved thousands of subjects from over one hundred different countries and the demographical characteristics were “insignificant” in relation to the principles above, we could view them as one, albeit not perfect, example of a global ethic.

But once we allow a more looser reading we are faced with a version of the problem of the heap: having defined a certain number or percentage of people who need to accept the ethic, someone could easily propose that one person less could not possibly have impact on an ethic not being global in its status anymore. Eventually we would be left with just one person and that clearly would no longer count as global acceptance. So it seems that the only possible way of reading the global acceptance would be a vague one. That is by leaving the issue open where the exact line should be drawn. Ideally, of course any global ethic should strive for being global in its status, but the global content and global application seem to be primary and thus merit more of our attention.

Beyond this very broad description, I think it is worth considering the reasonable expectations of any global ethic project. When we look at a modern liberal democratic society it is very easy to recognize what John Rawls (1996, 3–4) called the fact of pluralism: “a diversity of opposing and irreconcilable religious, philosophical and moral doctrines.” But Rawls (37–38) did not think this is a contingent fact about the democratic societies, he thought it is necessary due to “free practical reason within the framework of free institutions” and so the only way we could get rid of it is by consistent and pervasive state coercion (this is the fact of oppression). Thus we must be prepared to meet diversity of different comprehensive doctrines also on the global level, probably even more so. This is an important point to keep in mind when starting to construct a global ethic which strives for global acceptance. If anything close to that is ever to be achieved then it has to focus on certain kind of content and making claims of a certain status.

In other words, I think we should focus on issues we have real chance of agreeing upon due to their general status or due to their practical immediacy. Thus the problems I referred to in the introduction—the environmental degradation and poverty—were not chosen randomly: I, as do many others (e.g. Sen 2009), believe the latter to be something which is clearly unjust, the former on the other hand will have very serious consequences if no agreement or consensus is reached on how to best deal with the issue.

So based on the discussion so far I take global ethic to mean a set of ethical principles which are (1) global in their content and (2) application, and (3) have a realistic aspiration to be global in their acceptance.

But further clarification is now needed on what kind of principles ought we to look for when starting to construct a global ethic (or a theory of global justice). Building on

the work of Nigel Dower (2010, 4) it seems that there are three dimensions we should be looking at when we talk of global ethic:

- (1) To which kind of agents it applies;
- (2) To which sphere of our lives it applies;
- (3) Who is the unit of concern.

All of these dimensions have two options. First, global ethic can be viewed as prescribing individual or state actions. Granted, both approaches will have implications for the other: in many cases I will be unable to discharge my personal duties without trying to make my state to act in a certain way, but the distinction here is on *primary focus*. Second, global ethic can also be viewed as prescribing ethical or political actions: guidance concerning either individual acts or specific proposals for institutions. Third, global ethic can be concerned with individual persons or with collectives, groups of persons (states). This results in an eight-fold division.

Since some of these understandings of global ethic rule out the use of others, and at the same time some seem to have certain overlap with at least one other. Our aim would be to determine which best capture what it is we are trying to do and/or what it is we ought to be trying to do. And I think that there are considerations which give us reason to think that some understandings are more adequate than others.

First, when it comes to the second dimension then I would claim that a global ethic prescribing political actions, i.e. how institutions ought to be organized, is superior to ones which prescribe individual acts. Especially when we are talking about social justice. This is because justice is a political matter, and while charity is a good thing, it is unable to adequately address the problems which motivate the global ethic project in the first place. Suppose that there is an affluent state which citizens always come to the aid of tsunami victims across the globe, this is certainly laudable, but if it turned out that the cause of all the tsunamis in the world is that same state's offshore oil platforms then the more appropriate action would be to redesign the oil platforms to be safe or stop the drilling all together. In other words individual contributions to various charity organizations to provide aid for impoverished countries is a very nice thing to do, but if at the same time the contributors have the power to redesign the institutions that are the cause of the impoverishment, then that would surely be the better thing to do.

There is also a second reason to think that any global ethic project should be focused on political institutions rather than individual actions: efficacy. Any global ethic will have some view of a life worth living and presumably it would be better to have more rather than less people achieve that kind of life. Given the scale of the contributions that would have to be made in order to achieve that aim, it seems that any ethic prescribing certain political institutions will be more effective since states are actors who are more able to change the situation of people than individuals. For example individual decisions in energy conservation might turn out to be of little value if the state does not change its

policy on energy production. Or as Sen discusses the ability of private charities to relieve famine is outweighed by the power of states to do the same (2009, 341).

A further reason in favour of political rather than individual approach in the global ethic project could be found in our psychology and the evolution of morality. People normally have the kind of psychological attitudes and reactions which lead them to care more (or care only) about their immediate surroundings and intimate relations. It has been suggested (Hauser and Singer 2005) that this is due to the evolutionary nature of morality: it evolved at a time when each person's world included at most few hundred people and has not changed since. Since people, for whatever reason, do not perceive the world in general or other people across the globe as part of one's immediate relations or surroundings then they do not tend to consider others within their ethical deliberations. It cannot be denied that there have been cases where people on a mass scale do get engaged and emotionally invested in issues across the globe, but that is usually after they have been brought into some kind of contact with the issue. Just think of Nick Ut's famous photo of taken in Trang Bang during the Vietnam War or Kevin Carter's photo of the starving Sudanese child, or more recently Jason Russell's Kony 2012 film. But it is not feasible to use such aids in every single case, meaning that any individual approach would likely be unconvincing for many of us.

Furthermore, even if we take an individual based approach, in order for those kinds of theories to work people ought to have an individual relation with other individuals across the entire world or at least think of themselves as having one. But Thomas Scanlon (2008, 139) has made a conceptual point that when we think of relationships we usually think of some kind of *particular* (personal) relationship and this not something we seem not to have nor be able to have in any meaningful sense with all the people, given that the world's population is over 7 billion.

This leaves us with only four of the original eight senses to consider further:

- (1) Global ethic with norms applying to individuals prescribing political action concerned with other individuals;
- (2) Global ethic with norms applying to individuals prescribing political action concerned with collectives (states);
- (3) Global ethic with norms applying to states prescribing political action concerned with individuals;
- (4) Global ethic with norms applying to states prescribing political action concerned with collectives (other states).

Now it seems that the fourth sense of global ethic is something that, if taken seriously, is likely to lead to a pursuit of a world state. What else could come out of a set of norms which tell states how to organize political institutions where states are the smallest actors. Whether this is a worthy project, with some reasonable probability of success and something we should devote our time to, is an open question, although I doubt that it is,

given the state-centred approach of today's politics. But this is the kind of project that we are not interested in when we think of global justice and the problems that motivate us to take up a search for principles of a global ethic. Also in addition to the feasibility we should consider its desirability: is a world state something we want? Without a straightforward obvious "yes" answer to that question we have even more reason to bench that kind of understanding of global ethic.

Next, considering whether to focus on individuals or collectives as our units of concern then the first instinct is probably to lean towards individuals. This is because within the domestic justice we are concerned with individuals rather than collectives: a theory of justice usually describes what is the just lot for each person and if that is achieved then the state as a whole is just, rather than trying to conceive the big picture from the start. The same is true for non-global ethics, which usually concentrate on how we ought to act concerning this or that particular moral agent. But I feel that this move would not be justified.

First, because the context is very different: in the domestic case all the individuals under consideration form a single community (usually a state), but this is not the case on a global scale. There is no one single set of political institutions of which every person is a member of and which would give us a frame of reference about justice. And second, the issue of efficacy comes into play once more: it would be much harder to make an effective change in the state of impoverished persons when we would try to engage with them on an individual basis. As I explain in section 3 of the paper, this is required to reply to the worry of pervasiveness: how is it possible for agents to live up to the moral demands put on them by global ethics with individuals as units of concern.

This would leave us to conclude that the most adequate understanding of the global ethic project must be one which sees it as a set of norms which apply to individuals prescribe norms on how to organize political institutions with the primary unit of concern being collectives or groups of people.

II. WHAT KIND OF BASIS IS NEEDED FOR A GLOBAL ETHIC?

Having established which is the most adequate understanding of a global ethic project it would be prudent to ask how we could construct a global ethic. Given the previous discussion it seems to follow that some kind of political ethic is needed. What I mean by a political ethic is a theory that does not prescribe norms about specific individual acts (e.g. Under what circumstances is it acceptable not to keep promises?), but how we should organize our political institutions (e.g. What are the legitimate limits of state authority?).

An individual ethic is ethical theory which is *primarily* concerned with individual actions and has implications for political institutions only derivatively, as a means for achieving the individual aims. A political ethic on the other hand is ethical theory which is *primarily* concerned with organization of political institutions and has implications for individual actions only derivatively, as a result of certain political arrangements. So

for example an individual ethic might prescribe a norm to care for and of one's family and one can deduce from that a certain individual act (choosing to spend weekend with one's family rather than working) is the right thing to do. A political ethic with the same norm would more likely lead one to deduce that certain arrangement of social securities is preferable to another. While the end result, having cared for and of one's family, will be the same in both cases, the focus of the choice will be different: individual act versus political institutions.

Of course there are such ethics which do not neatly fall under either category: utilitarianism is one example of an ethic that has been applied both to individual actions and to the design of institutions. But the crucial difference here is that for utilitarianism a certain set of institutions is just a means for achieving an end (e.g. increase of happiness or satisfaction of preferences in the society). But a political ethic, such as liberalism, has political institutions as its aim: according to liberalism certain things are of value (e.g. individual liberty) and our political institutions ought to be organized such that they take that fact into account.

This idea of focusing on institutions embodies the spirit of the saying "Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime." Namely that fostering certain kind of institutions can be a more effective way of providing assistance than the direct supply of resources.

III. REPLIES TO COMMON OBJECTIONS

There are several objections to the whole global ethic project, but I think that the kind of global ethic proposed here is able to give good replies to at least two of them.

The first is the *problem of pervasiveness*. Any global ethic will be a very demanding theory: the duties it puts on us take over our everyday life. If there truly are moral responsibilities, which stretch across the globe, and if those duties include positive duties (such as providing help to the extremely needy at low or little cost) then, the consequences of that to an individual's psychology are devastating. How can I justify sitting here and writing this paper, if there are billions of people out there who would need my help and who I could in principle help? One of these options seems to follow:

- (1) I would spend most of my time trying to justify why my specific action directly or indirectly counts as a discharging of my duties, which, while in some cases wholly reasonable (writing a book like *The Life You Can Save* helps to draw attention to various issues and gets more people involved), would lead in most cases to absurd results (by buying groceries I can feed myself, so I can study to finish school, so that I would get a degree, which allows me to get a good job, so I can make money to help those in need of helping);
- (2) I would live in large part unethical life (because I would not be engaging in discharging my ethical responsibilities);

(3) I would do my best to discharge my responsibilities towards others and end up spreading myself out too thin.

In other words, assuming that ought implies can, any global ethic would need to show how we can actually follow the norms with global content or, failing that, give up the particular global ethic.

Under the understanding of global ethic proposed here there is a simple reply to this issue. Since the norms of global ethic would concern individuals and their relation to political institutions, they would not need to conceive any relation beyond their local political institutions. In other words nothing more of them would be required than under any other non-global (nationalistic?) ethic.

On the other hand the problem of pervasiveness could be taken to mean the pervasive interference into local communities and the way they operate, causing a backlash, because people feel that outsiders are telling them what to do and how to live. But that would also not be a problem, because under the understanding of global ethic described here there would be much less direct involvement by people than under a more individual centred approach.

The second is the *problem of efficacy*, and I touched upon this earlier. Given the way people are used to act and think global ethic does not seem to be able to motivate people properly. Often there is such a huge distance, both geographically and culturally, between those in need and those who are able to help them that it is very hard for people to actually get something done. Another side to this is that there just seems too much that needs to be done, the overwhelmingness is very demotivating, "I will never be able to get this done or make a real difference" might be a common reaction to the environmental and poverty issues.

The reply to this problem is very similar to the previous one: when we think of global ethic in the individual political sense then it is as easy to motivate people for action as it is in the case of non-global ethics concerning their local political institutions. Also, while the job that would need to be done might still be great, it should be much lesser than trying to solve the whole of the world.

IV. CONCLUSION

In this final section I just want to recap the points made in the paper. I began first by noting that the current situation in which we find ourselves necessitates certain ethical developments, namely a new kind of ethic, a global one. After discussing the general notion of global ethic, I explored it further by noting that there are various dimensions along which different global ethic projects could differ. I argued that the most adequate version is one which applies to individuals and prescribes political action with collectives as its units of concern.

I then moved on to the question of how we might construct or arrive at such global ethic. Given the previous discussion some ethical theory which is primarily political would be needed, such as liberalism.

Finally I looked at two very general possible objections to the global ethic project—the problem of pervasiveness and problem of efficacy—first of these claims that a global ethic pervades too much of our lives, second of these claims that a global ethic is unable to effectively achieve its aims. Based on previous discussion I showed how the kind of global ethic put forth here is able to give good replies to both worries: since the main focus is on one's political institutions rather than the whole world it would be much more manageable to be follow the principles of a global ethic in both respects.

While I certainly do not feel that the whole of the global ethic project was somehow finished, I do think that some steps were made in the direction of arriving at a coherent and practically applicable idea of global ethic.

mv541@york.ac.uk

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The Limits of Design for Cosmopolitan Democracy

Jonathan W. Kuyper
The Australian National University

Abstract. Most scholars and practitioners agree that world politics suffers from a democratic deficit. In response, proposals for cosmopolitan democracy are not in short supply. Indeed the meaning of the term cosmopolitan democracy is now incredibly broad, encompassing a wide variety of institutional and normative prescriptions intended to foster more democratically legitimate standards at the transnational level. However, there is a distinct irony to these proposals. The increased interdependence and cooperation of actors at the transnational level – spurred on by globalization – make cosmopolitan democracy a necessary vision. Simultaneously, globalization amplifies power imbalances and thus skews the interests of different agents. Hence, globalization makes cosmopolitan democracy a necessary but distant prospect. This article seeks to address the empirical institutional constraints against building cosmopolitan democracy using historical institutionalism to stress the limitations of design. A normative argument is also built focusing on the relative merits of democratic experimentalism as a way to advance the cosmopolitan project whilst undercutting the complications noted in the analytical section of the article.

Key words: Cosmopolitanism; global governance; historical institutionalism; democratic experimentalism; global democracy.

Projects of institutional reform must take as their point of departure the actual conditions, not blueprints based on institutions that have been successful elsewhere.
Przeworski 2004, 527

Proposals for cosmopolitan democracy are not in short supply.¹ Indeed the meaning of the term cosmopolitan democracy is now incredibly broad, encompassing a wide variety of institutional and normative prescriptions intended to foster more democratically legitimate standards at the transnational level. However, there is a distinct irony to these proposals. The increased interdependence and cooperation of actors at the transnational level – spurred on by globalization – make cosmopolitan democracy a necessary vision. Simultaneously, globalization amplifies power imbalances and thus skews the interests of different agents. Hence, globalization makes cosmopolitan democracy a necessary but distant prospect. This article seeks to address the empirical institutional constraints against building cosmopolitan democracy using historical institutionalism to stress the limitations of design.

Despite the burgeoning literature, cosmopolitan democracy is often disparaged as being an unrealistic or unfeasible vision for the postnational system. Certainly, detractors are far more numerous than advocates (Miller 2009).² And these criticisms are, in many

1] In the section below on cosmopolitan democracy, the bounds of different cosmopolitan proposals are delineated in order to sharpen the focus of the critique.

2] Robert Dahl, Ralf Dahrendorf, Philippe Schmitter, and many others have noted their criticisms of democracy beyond borders.

ways, quite well-founded. Advocates of cosmopolitan democracy have generally failed to deal centrally with tough, empirical issues surrounding the ways and means that such a scheme could arise. As Archibugi and Held (2011, 433) recently noted, one of the recurrent criticisms of the project of cosmopolitan democracy is that it has not examined the paths and agents that might have an interest in pursuing this programme. Compounding this neglect is a failure to synthesize adequately proposals for cosmopolitan democracy with international relations (IR). As a discipline, IR has extensively examined the conditions under which international organizations (IOs) and agreements arise, and how (or even if) they are effectual.

This article is divided into four sections. First, the project of cosmopolitan democracy is expounded. It will be contended that democracy is both necessary and possible at the transnational level, but that we should think about the actual institutional processes/mechanisms required to induce such a scheme. Second, the nexus between cosmopolitan democracy and IR is drawn out. It will be argued that cosmopolitan democracy should grapple with foundational IR issues to tackle questions of institutional design. An argument is launched for employing historical institutionalism (HI) in a more rigorous and systematic way in IR, with questions surrounding institutionalizing cosmopolitan democracy being apt for such an assessment (Fioretos 2011). The third section then moves towards generating this historical institutionalist framework of analysis. This section focuses upon three core elements derived from HI, namely *negotiations before design*, *path dependence of the design*, and *the pathological development/unintended consequences long-term development entails*. There is some natural overlap between these criteria. This tri-fold set are then mapped on to generalized suggestions for cosmopolitan democracy to show the obstacles such proposals face.

These three sections constitute the substantive explanation and critique of the article. In the final section a more positive argument is developed. Because the article recognizes the importance of engendering forms of transnational democracy, but decries versions of strong institutional cosmopolitan democracy, a prescriptive analysis must be presented. It is argued that we should focus upon institutions *as well as* an institutional scheme that cultivates flexibility and adaptability. This should take the form of *democratic experimentalism*. This scheme focuses upon short-term, issue-specific institutional designs. I sketch a feasible proposal to exemplify the potential of democratic experimentalism to postnational democracy.

I. COSMOPOLITAN DEMOCRACY: THE PROJECT

How should we conceptualize cosmopolitan democracy? Cosmopolitanism, at its core, is concerned with the moral (and hence political) equality of all persons. Work is now quite common emphasizing the ways in which globalization creates sites of public power beyond the reach of nation-state control that cut against this ideal. The ensuing 'global democratic deficit' has become a major area of sustained academic and activist interest

(Nye 2001). Whilst not everyone is in one mind as to the extent (or even veracity) of such a diagnosis (Moravcsik 2004), the cosmopolitan project is geared towards ameliorating the disjunction between the exercise of transnational public power and the preferences of citizens who are affected. Aside from cosmopolitans, deliberative democrats, world government proponents, political theorists, international lawyers and many others have contributed to this vast literature.

Adopting a definition explicated by Simon Caney (2005, 149), a “cosmopolitan political programme [is] one in which there are democratic supranational institutions charged with protecting people’s civil, political and economic rights.” Cosmopolitan democracy is defined by Mary Kaldor as a layer of governance that constitutes a limitation on the sovereignty of states. This layer of governance is composed of supranational institutions which coexist with states, but can constrain state activity in certain areas. The pertinent aspect of this definition is the connection with nation-states and jurisdictional authority. In many, if not most instances of building cosmopolitan democracy, nation-states must shift the locus of power towards an IO through international agreement and make it costly for other nation-states party to the IO to renege on the agreement.

Specific proposals for cosmopolitan democracy can be arranged along a continuum. At one end are world government (WG) scholars who argue for a centralized, global political authority which manifests itself in the form of a world state (Cabrera 2004; Marchetti 2008). At the other end of the spectrum we find deliberative democrats and civil society advocates who, in general, stress the democratizing potential of transnational discourses (Dryzek 1999; Scholte 2004). Interspersed between these poles are a variety of institutional prescriptions. Limited institutional proposals have been offered by many proponents, which include developing global tax programmes or democratizing already existing IOs (Brock 2008). Much of the impetus for cosmopolitan democracy stems from the work of David Held (1995) and Daniele Archibugi (1995). These two academics are somewhere towards the center of the spectrum and call for a network of interconnected and overlapping transnational institutional arrangements with jurisdiction over certain specified issue-spaces. These institutions cut both vertically and horizontally.

Against which proposals is this article directed? Quite simply, the article is concerned with mid-range and strong versions of cosmopolitan democracy that *require the building or recalibration of formal institutions and agreements by nation-states*. The article is concerned with how IOs are designed and their development over time. Because this article also seeks to establish a bridge between cosmopolitan democracy and IR (and as IR scholars focus centrally on inter-state relations), this is a plausible limitation. As such, those proposals which emphasize the role of transnational discourses (which do not require formal institution building) are excluded. The civil society organizations (CSOs) which funnel and promote these discourses are, in some sense, IOs. They could potentially be subject to the HI analysis of this article. However, the lack of nation-state involvement puts them beyond its scope. Similarly, the democratization of multinational corporations (MNCs) is outside this scope.

This article is predominantly concerned with the empirical possibility of forging cosmopolitan democratic agreements. There is not space to analyze cosmopolitan democracy with respect to a battery of democratic principles such as popular control, transparency, accountability and so on, although they are surely all important. Rather, it is assumed that political equality is a fundamental virtue of democratic institutions (Beetham 2004; Erman forthcoming). A key argument of the article is thus that unless the process of design is taken seriously, these strong models of cosmopolitan democracy risk reinforcing the democratic deficit by institutionalizing egalitarian power imbalances. The analysis focuses upon equality between states as a proxy for equality between persons. If a state wins or loses in an international negotiation, this has a knock-on effect to its citizenry. Negotiated agreements that promote equality between states will generate more equality between their respective citizens.

The article has a two-fold dimension. First, it seeks to explore how bargaining problems can be overcome to build democratic institutions at the global (or even transnational) level (an empirical precondition). Second, the article speculates as to how different stages of the design process would affect the egalitarian commitment of these democratic institutions (a normative issue). This requires sustained attention to the initial design phase as well as development trajectories of different institutions.

In recent literature, the empirical prospects of cosmopolitan democracy have been interrogated (Koenig-Archibugi 2010). This work has focused upon the social conditions necessary to generate a 'demos' capable of underpinning an institutional scheme (Koenig-Archibugi and List 2010; Miller 2009). This work largely takes place under the assumption that global/cosmopolitan democratic institutions should resemble statist institutions. For instance, Mathias Koenig-Archibugi (2010) declares that global/cosmopolitan democracy would require "a process of concentration of power capabilities and authority in the international system, that is, a shift from anarchy to polity" (Koenig-Archibugi 2010, 524). Similarly, the argument of Christian List and Koenig-Archibugi (2010, 78) is explicitly statist in nature when they suggest that a collection of individuals only constitutes a 'demos' when they can be ordered in a democratic manner "so as to function as a state-like agent." Daniele Archibugi and David Held have focused upon the paths and agents necessary for institutionalizing cosmopolitan democracy, and have given special privilege to the role states and state-like institutions (parliaments, judicial bodies, etc.) should hold in democratizing cosmopolitan architecture.

Although some have condemned this statist fetishism in thinking about cosmopolitan democracy (Brown 2011), it gives this article a strong justificatory rationale for examining how nation-states could reach agreement for building formal cosmopolitan democratic institutions (such as a global parliament). We should not lose sight of the importance of nation-states (and the undergirding principle of sovereignty) in cosmopolitan theorizing as they are, and will remain for some time, central in world politics. This article advances the theoretic debate along two axes. First, it engages deep IR questions surrounding the nature and quality of international agreement and imports

them to cosmopolitan democratic theory. Second, the article begins to connect HI with both IR and cosmopolitan democracy by probing how different transformative pathways might hinder or promote the ideals of democracy (equality) upon which institutional proposals are based.

II. INSTITUTIONAL DESIGN IN INTERNATIONAL RELATIONS: THE POTENTIAL OF HISTORICAL INSTITUTIONALISM

We must begin here with a brief exploration of HI. In essence, historical institutionalists seek to examine and explain the development of political institutions over time. There is a substantive focus on how timing and sequences of institutional design affect patterns of institutional change. Central to the HI perspective is the notion that institutions guide decision-making which reflects historical experience (Campbell 2004, 25). Two central theoretical tools with which HI scholars work are path dependence and increasing returns (Pierson 2004).³ Path dependence essentially means that, once a decision down a particular path is chosen, the subsequent decisions reflect and reinforce this initial choice. As such, the choice at time t becomes increasingly locked-in by decisions made at time $t+1$, $t+2$, $t+3$ and so on. In other words, path dependency should be seen in terms of specific historic sequences in which “contingent events set in motion institutional patterns or event chains which have deterministic properties” (Mahoney 2000, 507). The fact that decisions are path dependent gives rise to the importance of unintended consequences. Issues that may have seemed unimportant at time t can become hugely important at time $t+1$ depending on how institutions interact, which alternatives are removed over time, and how the normative priorities of society evolve.

Path dependence helps explain how institutions develop and why they remain stable. However, it only account for change exogenous to the institution under analysis. In recent years, historical institutionalist scholars have recognized the importance of explaining institutional stability and change endogenous to institutions (Campbell 2004). This requires moving beyond a static understanding of path dependence, in which all institutions are seen to induce increasing returns and positive/negative feedback. A more dynamic view of institutional development and stability requires understanding how the fabric of different institutions gives rise to varied degrees of institutional change and stability. Such a view is provided by the notion of path plasticity. As Simone Strambach (2008) has noted, path plasticity does not contradict path dependence. Rather, plasticity derives from the elastic stretch of an institution and institutional arrangements and their interpretive flexibility through actors. Determining how institutions change through institutional entrepreneurs (agency), the positioning of veto points, cognitive framing,

3] Increasing returns is a dichotomous concept, having both a negative and positive variant (also called positive and negative feedback by others).

and strategic gaps between rules have become central to recent HI theory (Mahoney and Thelen 2010).⁴

There are good reasons to begin employing HI in IR generally. Koremenos et al. suggest that in IR theory “institutions play only a modest role. It is, after all, cooperation under anarchy” (Koremenos, Lipson, Snidal 2001, 766). This quote is surely an overstatement. Whether and how international institutions matter are issues that cut to the heart of IR theory. However, the quote does reflect the importance of thinking about institutional design and development *under anarchy*. Traditional realist thinkers stressed how anarchy – analogical to a Hobbesian state of nature – would affect inter-state interactions and produce friction (Morgenthau 1948). And this assumption has become a staple of IR theorizing. Structural realists (Waltz 1979), neo-liberal institutionalists (Keohane 1984), and even constructivists (Wendt 1992) all attempt to make sense of international cooperation without centralized control.

Given the adherence to anarchy in IR theory-building, it is especially ironic that HI has remained on the sidelines (Fioretos 2011). HI, more directly than rational choice and sociological institutionalist theory, highlights the difficulty of designing and controlling institutions. The impact of anarchy on institutions is deeply profound, and deserves a theoretical lens which underscores the battery of problems designers face. In a recent review paper, Orfeo Fioretos (2011) noted that comparative politics and American Political Development (APD) have featured a tripartite division between the logic of consequences, logic of appropriateness and HI. Fioretos (2011, 368) suggests that the “absence of historical institutionalism in IR is evident in many contexts.” In some ways, this is undeniably correct. HI has not drawn special or sustained attention from IR scholars, and as a result, no clear methodological standards have been forthcoming.

There are, though, many major pieces of IR that are directly correlated with HI. Standard neo-liberal institutionalist thought held that a long shadow (the repeated interactions between two or more agents over time) lowered transaction costs, helped to build trust, and generated future pay-offs. These factors are supposed to make cooperation more likely. Fearon (1998) challenged this assumption and formally demonstrated that a long-shadow can actually decrease cooperation because, as the shadow lengthens, uncertainty increases, states bargain harder because they are locked-in to the effects, and the benefits of holding out in a negotiation also rise. In other words, under a long shadow, it is relatively less important for states to reach agreement today than tomorrow, and if agreement is reached, it is more important to gain institutional advantage. For Fearon to be correct that “a long shadow of the future” decreases the likelihood of cooperation, states must recognize the importance of uncertainty and path dependent development

4] In a slightly different vein from Mahoney and Thelen, Paul Pierson (2004) specifically treats institutional resilience as a variable and seeks to understand how veto points, start-up costs, and other mechanisms contribute to institutional change/stability.

ramifications of bargaining under a ‘long shadow.’ Although this argument is framed in rationalist terms, the HI underpinnings are clear.

And many more examples can be uncovered. Martha Finnemore and Kathryn Sikkink’s (1998) argument that norms track a specific pattern (or life-cycle) characterized by norm emergence and a norm cascade (following a tipping point) can be read from an HI perspective. These authors even recognize that their argument ties closely with an adjacency/path dependence analysis (Finnemore and Sikkink 1998, 908). To foreshadow an article explored in greater depth later, the institutional pathology of international bureaucracies explored by (amongst others) Michael Barnett and Finnemore (1999) is purported as an analysis sourced from sociological institutionalism. However, such an argument is perhaps even more forceful if developed in conjunction with a broader historical institutionalist framework. These are just a handful of examples from myriad more. Although HI has been peripheral in IR scholarship, some IR scholars are beginning to ground their work explicitly within this institutional theory. The next step is to develop a more rigorous standard of analysis – a step to which this article contributes.

If the project of cosmopolitan democracy is understood as one of transnational institution building between nation-states (as limited to in this article), then a closer connection with IR is essential. We can begin by asking several questions.

- (1) How can nation-states negotiate under conditions of deep uncertainty (anarchy)?
- (2) How will path dependence impact upon (i) a nation-state’s bargaining position during negotiations, and (ii) short and long-term institutional development with respect to equality between contracting parties?
- (3) How will unintended consequences bear upon institutional design and development?

If we are serious about building – or even moving towards – more democratically legitimate institutional standards at the transnational level, coordination and transformative issues should be put front-and-center. All of this falls under a general rubric of ‘limitations of design’.

III. THE LIMITATIONS OF DESIGN

Path dependence highlights the way that institutional structures become rigid over time as the initial decision becomes locked in place. This can make change increasingly costly and difficult to attain. All designers operate within predetermined structures (formal institutional rules, informal discourses, societal norms). These structures are both constraining and enabling, and the range of option from which designers have to choose are conditioned by path-dependent processes. Recognition of the importance of path dependence helps to de-idealize the process of cosmopolitan institutional design.

But before moving forward, a caveat is in order. This article takes no explicitly normative position on how path dependence and democracy intersect. The article seeks to critique proposals for cosmopolitan democracy on predominantly empirical terms – hence the limitations of design. As such, it is not assumed that path dependence is *prima facie* good or bad for democratization. A type of path dependence in which accountability continually increases would certainly be democratically valuable (Goodin 2010). However, path dependence might also reinforce power imbalances. As David Kennedy (2008, 22) notes of the U.S. Constitution, “a great deal of injustice has been routinized or legitimated” since the foundational moment. “The inequality in education for citizens in side by side suburbs, one wealthy, the other poor, remains a scandal and it is rooted in legal arrangements and ideas.” Just as importantly, path dependence and unintended consequences often remove institutions from their original purpose. If the purpose was to engender more democratic legitimacy by fostering equality, understanding how unintended consequences affect this normative prospect is essential.

In an attempt to derive a parsimonious theoretical framework, this article advances a tripartite division to understand the limitations of design. The first section focuses explicitly upon *bargaining* in the lead-up to the moment of design. The second section analyses *path dependence and sunk costs* that the initial decision-making entails. The third section delves into how *unintended consequences and institutional inertia* drive institutional rigidity over time. This tri-fold division loosely maps the temporality of institutional design (agenda-setting, decision-making/implementation, and then enforcement) and helps to highlight different problems encountered in the development of transnational institutions. Each section will analyze different aspects of institutional design, ranging from transaction costs, the bargaining position of states, institutional pathology, comparative benefits of cooperation, and uncertainty in reaching agreement. These points are connected with a broader HI analysis. These are all empirical issues with which designers of cosmopolitan democracy need to grapple squarely.

Bargaining and the Moment of Institutional Design

Institutional design in the anarchical global system is an arduous and complex task. The ability to bargain and negotiate in anarchy has been a central theme of IR work; much has been written on how nation-states reach agreement under deep uncertainty (Koremenos 2005). Realist scholars have long emphasized the ability of nation-states to engage in cooperation through ‘coordination games’, but that Prisoner Dilemma-like structures animate the international system, making meaningful cooperation unfeasible (Fearon 1998). Cooperation theorists, drawing upon Folk Theorem, showed that repeated games of interaction can lead to mutually beneficial arrangements (Pareto-optimal solutions) being established (Keohane 1984).

Koremenos, in her article “Contracting around International Uncertainty,” specifically tackles how nation-states can make credible commitments in the absence

of centralized control. Koremenos (2005, 549) argues that hand-tying – the specific process of institutionalizing rules which bind future actions – provides a credible commitment which helps to make agreement possible. The connections between hand-tying and institutional design is closely scrutinized by HI scholars. Paul Pierson (2000) suggests hand-tying leads to problematic consequences. Under a long shadow of the future hand-tying is crucial to initial agreement. This is because the longer the shadow, the more important it is to mitigate uncertainty. However, hand-tying has two negative consequences. First, it forces actors to have short time horizons and focus on immediate power gains rather than long-term ideals. Second, these short time horizons give rise to strong path dependence, in which it is essential for states to extract maximum value out of the initial agreement.

The ability to tie one's own hands (and thus tie those of a successor in the same position) might make initial bargaining and agreement more plausible: other actors are more likely to accept institutional terms if power is circumscribed. Parliaments are almost always created to limit the power of parliamentarians and give each party a chance to win power. However, precisely by hand-tying locks-in the initial choice, states will take the initial bargaining more seriously and throw their weight around in negotiations.

How does this correlate with cosmopolitan democracy? Essentially, the problem of uncertainty makes institutional agreement very cumbersome. Theorists of cosmopolitan democracy have not thought through how agreement could be reached to recalibrate or fashion IOs in a more democratic fashion. There are real limits to international institutional design which stress the favorable conditions of bargaining and negotiations which require melding. Current treatment on 'favorable' or 'necessary' conditions for cosmopolitan theorists (such as that by Koenig-Archibugi [2010]) has analyzed the possibility of building cosmopolitan democracy with respect to statehood, cultural homogeneity, economic levels and so forth. This article does not disagree with Koenig-Archibugi's conclusion; some form of cosmopolitan democracy may well be possible. However, discussions of possible conditions can be distracting. They remove us from the gritty questions of how and why nation-states and their leaders would negotiate for the democratic institutionalization/reform of IOs, and how this impacts upon the process of democratization.⁵

In a world in which sovereignty is still a guiding principle of international relations, liberal states cannot force other nation-states to become democratic. Given that some international leaders (for example, President Hu Jintao of China) come to the bargaining table not normatively committed to democracy, there is little incentive for them to join or build democratic institutions because their national empirical legitimacy is not enhanced through cosmopolitan democracy. If the long term goal of cosmopolitan democracy is to

5] To his credit, Koenig-Archibugi (2010, 536; his emphasis) does note that "any account of how global democracy *might* come about would need to explore potential combinations of structures and *agency*."

create equality for all persons, yet initial bargaining entails a commitment to hand-tying, then short-term gains become the priority in negotiations. States will attempt to leverage their power in bargaining, and long-term ideals are jettisoned in favor of short-term gains. Even if states such as China or Russia could be convinced to join a globally democratic body, the gains they would receive may be so marginal that they simply provide 'take it or leave it' options to other states. Thus, as agreement becomes more feasible (through hand-tying and credible commitments), it puts a premium on states to maximize initial gains. Within a democratic institution such as a global parliament, international court, or tax scheme, we would see more powerful states posture and only agree if their power was maintained or even enhanced. China and India would only accept a one-person, one-vote Parliament, but the U.S. and Japan would likely counter this by demanding veto power. These bargaining problems cut against the norm of equality.

Insofar as cosmopolitan democracy is supposed to equalize life-prospects for all people, this aspect of negotiation and path dependence complicates the project. And this is not a problem that can easily be undone by attempting to build or reform IOs through piecemeal or large-scale redesign, or excluding some countries. As will be explored below, attempting to design for long-term goals entails its own complications related to unintended consequences.

Path Dependence and Sunk Costs

This article has already briefly sketched the fundamental mechanics of path dependence. Once (or, more accurately, if) an agreement is reached and an institution implemented/amended, this choice becomes reinforced over time. This path dependence may well cut both ways for cosmopolitan democracy. As Goodin (2010) argues, the sphere of accountability in terms of reform-act democracy almost always increases, and rarely ever shrinks. This is provided as a positive argument as to how path dependence may affect global democratization.⁶ However, path dependence is the virtual antithesis of flexibility. If we want designers to have control over subsequent decisions, then strong path dependence is not desirable. This is especially true – as highlighted in the next section – when unintended consequences pull the institution away from the democratic standards that were originally sought.

Just as negotiations are beset by problems of power imbalances, the implementation of the 'rules' will also reflect those differentials. One need only look at the codification of veto power for Russia (then USSR), the USA, China, France and the UK in the UN Security Council (UNSC) following World War II to recognize the path dependent ramifications of initial bargaining positions and the importance of veto points. Ikenberry (2001) explicitly shows how victors use post-war settlements to lock-in stable and cooperative arrangements. This analysis carries weight in other areas of agreement, not just post-war

6] However, Goodin's argument is explicitly tied to reform-act (voting) mechanisms against which this article is directed.

negotiation. We need to realize that the path dependent ramifications of design may often carry and propel a burden which is inegalitarian (and thus anti-democratic).

This argument provides a sizeable problem for many institutional prescriptions that cosmopolitans advocate. As Archibugi and Held (2011, 446-47) maintain, there is a “wealth of proposals” aimed at creating citizen participation in world politics. The most straightforward way to achieve this participation would be to create a World Parliamentary Assembly similar in composition to the European Parliament. Such a formalized body could be independently created through a multi-lateral treaty approach, or could be attached to the UN (see also Falk and Strauss 2001).⁷ These theorists often recognize that such a proposal would start as a weak, reflective body rather than a decisive one. However, there are several obvious problems with this. The initial arrangement will have long-term effects over the subsequent institutional evolution of a world parliament. As such, the initial inegalitarian codification will become locked-in. This reinforcement occurs through a variety of mechanisms. Not only are the start-up costs very high, but it would be accompanied by a wide-range of bureaucratic and institutional adjustments. Other actors would need to adjust to the new arrangement. NGOs, other IOs, MNCs, nation-states and even individuals need to learn the new ‘rules of the game.’ This would lead to a type of path dependence fostered through cognitive framing as actors work within the rules. This limits the ability of even purposeful actors dedicated to democratic egalitarianism inducing this change.

Gerard Alexander (2001) has persuasively argued that formal political institutions – such as those discussed by liberal cosmopolitans – cannot and do not play the role in democratic consolidation that many theorists and practitioners ascribe. This cuts to the core of why the path dependence of strong cosmopolitan institutions should be scrutinized closely. If a global parliament that lacked egalitarian qualities was introduced, and it then failed to provide (or even move toward) more equality (a very real prospect given initial bargaining problems), support will fall. The credible commitments (hand-tying) often thought necessary to reach agreement make institutions sticky (read path dependent). However, this path dependence may actually reinforce an institution even as it fails to generate empirical support.

In order to avoid this concern, there are ways to think about a variety of short-term, unilateral institutions for cosmopolitan democracy that minimize the problems of locking-in the inegalitarian power arrangements whilst also making initial bargaining more feasible.

Institutional Inertia and Unintended Consequences

Perhaps most problematic for cosmopolitan democrats is the correlation between path dependence and unintended consequences. Barnett and Finnemore (1999, 699)

⁷] A Global Parliament is a staple of much cosmopolitan/world government thought. See also the UNPA campaign available at <http://en.unpacampaign.org/index.php>.

ask a poignant question: “[D]o international organizations really do what their creators intend them to do?” The rationalist tradition has explained IO design as a response to problems of incomplete information, transaction costs, and other barriers to Pareto efficiency. The design of democratic institutions is a qualitatively different project to that of economic bodies; the former driven by a search for legitimacy, the latter by a search for profit. However, the pathology or inertia that accompanies institutional development is very similar – political bodies usurp power, economic firms usurp markets. Whilst this article is careful not to make a reductionist claim, path dependence and unexpected outcomes certainly afflict both political and economic institutions in similar (albeit not identical) ways.

Barnett and Finnemore argue that IOs typically stray very far from their original goals. As such, IOs exercise power autonomously in ways unintended and unanticipated by states when forged. Although this argument takes a sociological shape, the connection with HI is clear. These two authors show clearly that bureaucracies in IOs are typically pathological, unresponsive to their environment, obsessed with their own rules at the expense of their original purpose, and often fall prey to self-defeating behavior. Pierson (2000) has also extensively developed the problems associated with unanticipated outcomes.

These problems are exacerbated by principal-agent (P-A) relationships. Hawkins et al. (2006) argue that it is not inherently more difficult to design political institutions at the international than the domestic level. However, we must keep in mind that it is very difficult to design effective domestic institutions. Unintended consequences are ubiquitous, irrespective of the level of analysis; anarchy can only augment this problem. Pierson shows how developments with state relations under the US Constitution and the highly centralized Canadian federalist system generated unanticipated (and deeply important) effects. Many other empirical examples are forthcoming.

Again, problems of unintended outcomes would afflict the equality of persons sought by cosmopolitan democrats. Take again the example of creating a global parliamentary body. As noted, there are two main ways to go about this – creating a stand-alone body through treaty agreement, or by amending the UN. Drawing on principal-agent theory, we can recognize a couple of initial problems. Creating an independent body is costly, signals of credible commitments are difficult to send, and thus bargaining is problematic. However, creating a new ‘agent’ (parliament) will likely produce one closer to the principal’s (nation-state’s) preferences. This cuts down the divergence between a principal’s and agent’s preferences. This minimizes the likelihood that an agent’s actions run contrary to the initial goals of the principal, but also makes the institution more prone to exogenous shocks.

However, the high start-up costs of such a scheme make it quite unfeasible. Most cosmopolitan democrats suggest that we should begin with a weak global assembly that emerges from the UN. However, this leads to dangerous consequences for democratic institutional design. When an existing agent is chosen for a P-A relationship in order

to reduce costs, the principal will be unable to find an agent that “perfectly mirrors her preferences and is optimally designed to perform the appointed task” (Hawkins et al. 2006, 25). Thus, if nation-states attempt to employ the UN to create a global parliament, then the parliamentary body will be laden with normative qualities already existing within the UN. The preferences of states who seek to design a democratic parliament and the goals and ambitions of actors already within the UN would deviate quite sharply. This makes long-term development highly prone to unintended consequences as states would employ their veto position to maintain their control of the institution. The bureaucratic arm of the UN would likely lead to pathological institutional development as UN and Parliamentary rules clashed, crafting space for bureaucratic agents to make their own decisions (Tsebelis 2000).⁸

It also seems clear that a world parliament would entail the formation of many other institutions (of which a bureaucracy would be no exception). The pathology of such an institution, and specifically the bureaucracy of that institution, should give us pause to think about whether a democratic IO would live up to designer’s standards of creating equality between states (and thus between citizens of those state) or may simply reproduce the global democratic deficit through a different organizational scheme.

Building institutions of cosmopolitan democracy may indeed be possible, but there are empirical constraints which need to be addressed. Bargaining over long-term agreements reduces the likelihood of reaching agreement; but the option of hand-tying forces short-term thinking, incentives states to gain strategic advantage, and redirects focus away from the long-term goal of equality. Once an institution is built, path dependence undercuts a designer’s ability to change directions, which gives salience to unintended consequences and institutional pathology. These factors also undercut the democratic foundation of equality cosmopolitan institutions are purported to uphold. However, there may be ways to begin institutionalizing cosmopolitan democracy that mitigate these problems. Such a project could best be expressed as one of democratic experimentalism.

IV. DEMOCRATIC EXPERIMENTALISM

There are good, empirical reasons to focus on establishing short-term, flexible agreements which move world politics in a democratic direction (Victor 2011). These agreements should be made ‘minilaterally,’ only involving a small group of similarly-minded state. Michael Dorf and Charles Sabel (1998) describe their vision of democratic experimentalism. This involves a decentralization of power so that citizens and other actors can use local knowledge to solve problems. At a global level, mechanisms must

8] Tsebelis (2000, 466) argues that “many veto players creates space for bureaucrats to play their principals against each other.”

be in place to connect those citizens with cosmopolitan institutions. This approach is explicitly grounded in an attempt to create equality between persons.

Archon Fung (2006) has also advocated a type of experimentalist approach to democratization. This, he states, uses the comparative empirical investigation of institutional outliers to explore and re-elaborate normative issues. Instead, Fung holds that we should focus upon democratic experiments which act as ‘particle accelerators’ for theorists. These experiments can come about in very different institutional locations, with the diversity of possibilities providing guidance for how to move towards greater democratization. Starting with these experiments gives cosmopolitan democrats a chance to test how international agreement can be reached, shift the normative discourse towards democratization, and hopefully trigger a form of path dependence that eventually generates more democratic institutions.⁹

These experiments should be framed as short-term institutions open to revision. This makes initial bargaining and negotiation easier, and limits the dangers of path-dependent (or even pathological) development. Escape clauses can be employed to give an institution only short-term mandates and power. Escape clauses are defined as any “provision of an international agreement that allows a country to suspend the concessions it previously negotiated without violating or abrogating the terms of the agreement” (Rosendorff and Milner 2001, 830). Although discussing the role of escape clauses with respect to international trade agreements such as the GATT (now WTO), Rosendorff and Milner (2001, 831) argue that escape clauses provide the flexibility that allows them (states) to accept an international agreement. They further show that “the use of an escape clause, a flexibility-enhancing device, in institutional design increases institutional effectiveness wherever there is domestic political uncertainty” (Rosendorff and Milner 2001, 831). This article also takes a different tack from Rosendorff and Milner’s rational choice analysis by arguing that escape clauses can be seen as one piece of a larger HI puzzle concerned with path dependence and democratization. Escape clauses could be supplemented by sunset provisions, which fix pre-determined dates for institutional renegotiation or conclusion.

Escape clauses make initial agreements for cosmopolitan democracy more tangible without the need for hand-tying (the escape clause necessarily fulfils that function). This reduces transaction costs over time and mitigates uncertainty by providing flexibility for actors to change course in the event of strong path dependence or unforeseen challenges. Although initial attempts to create institutions of cosmopolitan democracy will be beset by path dependent problems of inequality, escape clauses and short term agreements undercut this problem by being committed to renegotiation over time.

9] Exactly what institutional scheme we should move towards is not something that can be planned out in advance. Many authors have stressed the democratic value of a pluralist configuration of world politics over a central, cosmopolitan structure. This article remains provisional on longer-term aspirations. However, beginning with democratic experiments will help provide knowledge for future designers.

Before moving on to the proposal, a clarification is necessary. This article – as with most historical institutionalist work – has stressed the limitations of design. As such, a critical reader might ask whether it is unproblematic to design international institutions with escape clauses, especially if unanticipated consequences are prevalent. The brief answer is that short-term agreements (with escape clauses) minimize a raft of unintended outcomes because agents need not find un-institutionalized methods of avoiding the agreement. Bureaucrats and other actors can go through proper channels to voice concern and call for renegotiation or even exit the institution in extreme cases.

Expanding Participatory Budgeting

This suggestion may, at first glance, seem quite radical. It is proposed that different IOs, such as the World Bank and the IMF, should adopt measures derived from participatory budgeting (PB).

PB began in the city of Porto Alegre in 1989 when the left-wing Workers' Party was elected on a mandate to empower social movements and individual citizens (Abers 2000). PB, at its roots, shifts the decision over a certain portion of a local budget to a system of neighborhood and city-wide popular assemblies. The process of PB endeavors to increase accountability, transparency, understanding and social inclusion in local government affairs. In Porto Alegre, the PB is an annual event; large assemblies are convened across each of the city's 16 districts to discuss and review the extent and implementation of the projects from the previous year's budget.¹⁰

PB is malleable in terms of its location and operation, having spread to fora across the globe, and has been widely successful. PB has altered its structure in each location. These alterations do not entirely reflect cultural or structural conditions in which they are employed – although there is surely an element of this. Rather, this reflexivity is indicative of the agency afforded to those initiating and running the mini-publics. For instance, the UK's PB unit reports that PB is an innovative project that is being experimented with on new budgets, new partners and new themes all the time. This shows that PB is both possible and beneficial for a wide range of services and areas.¹¹

This proposal fits well within the mould of democratic experimentalism. The World Bank, in 2007, surveyed the implementation and implications of PB in many different local, national and regional contexts (Shah 2007). In this report, the World Bank explicitly recognized the importance of having democratic checks and balances as the core aspect of good governance. Likewise, the International Monetary Fund (IMF) increasingly holds as vital accountability to member-states and other stakeholders. These financial institutions, while often hostile to losing power, are concerned with accountability and

10] Much of this discussion is derived from Fung (2003, 360-61).

11] The UK Participatory Budgeting Unit, available: <http://www.participatorybudgeting.org.uk/case-studies> (accessed 7 January 2012).

ransparency. Given that PB typically takes control over a very small portion of a budget (say, one to two per cent), the process may seem more reasonable for contracting parties.

This proposal contains many benefits in terms of the HI analysis expounded above. First, it is easier for states to negotiate an initial agreement. The IMF Board of Directors is drawn predominantly from nation-states, and has delegated much formal power to the Executive Board, which comprises 24 members designed to represent all 187 countries. Any change in governance structure to include PB will hinge on nation-state support. This support can be enhanced by employing escape clauses or using PB on specific issues, rather than ingraining it long-term. Nation-states, and indeed bureaucrats within these organizations, would be more amenable to the usage of PB if it was temporary, or exit options were available. In order for escape clauses to be effective though (to stop states from exiting for no reason or threatening exit to leverage their bargaining position), exit options needs to be costly. The IMF or World Bank could run a PB program in which nation-states could exit, but exercising exit would remove that state from all subsequent discussion on the loan in question. As the PB process would only have jurisdiction over a small percentage of a loan, nation-states would think carefully before rejecting a PB decision and thus removing themselves from further debates over the entire loan.

Because the IMF and the World Bank often make decisions on local and national issues, and because these institutions wield large sums of money, the resources necessary to hold PB processes are already in existence. Moreover, because the IMF frequently holds governance reform, putting this sort of proposal forward may be quite feasible.

PB engenders two broadly egalitarian consequences. On the input side, the structure of PB is open to all members of a community. In most cases, those from the lower stratifications of society are actually over-represented. The process is transparent, insofar as participants know the percentage of the budget at stake and they are able to deliberate on free yet structured terms. Participants either vote for a representative to take their opinion to the next round or vote for a specific use of the funding.

On the output side, the effects of PB within local areas have been profoundly egalitarian. In Porto Alegre, for example, the percentage of neighborhoods with running water has increased from 75% to 98%; additionally, sewer coverage has risen from 45% to 98%. When the IMF loans money (through the lending process and/or technical assistance program) to low- and middle-income countries, it would be relatively easy to draw citizens at random to discuss, vote and allocate a small percentage of the loan. Even for transnational issues, the resources of the IMF and World Bank make PB-like fora a distinct opportunity. These processes equalize both opportunity for participation and social structures in a broader sense.

The usage of a small-scale, short-term PB program in global financial institutions undercuts the problems associated with path-dependent and unintended development. The proposal connects the local with the global in a way that is sensitive to context at both levels. Large-scale institutional projects (such as a global parliament) would entail

equally large-scale bureaucratic institutions. The more power these bodies have, the more path dependent the institution. This is because actors have a tendency to gain power and defend it against change. Those who 'win' from a parliamentary arrangement (likely powerful states because institutional designs typically reflect initial power relationship) are unlikely to give up their position of privilege. Even if they do, actors within the institution (parliamentarians) or related bodies (bureaucrats or managers) will mobilize to defend their lot, as we see with domestic bureaucracies.

Once (or rather if) nation-states begin to accept the employment of cosmopolitan or democratic mechanisms beyond the state, expansion into other dispersed areas or towards a more centralized cosmopolitan system may be more feasible and less prone to unanticipated outcomes. However, prior to this, we should commit to a learning process of experimentalism. These short-term, experimental institutions make reaching initial agreement more plausible, whilst also granting institutions a degree of revisability necessary to correct for initial power discrepancies and mitigate problems with unexpected outcomes which may be injurious to democratic equality and the project of cosmopolitan democracy.

V. CONCLUSION

Those leaning upon empirical evidence of democratic transition within the state, to explore the possibility of cosmopolitan democracy, should look more closely at democratic transition in fragile states (Koenig-Archibugi 2010). As Jack Goldstone (2010, 5) aptly notes,

[A]n increasing body of empirical literature suggests that transitions to electoral democracy that occur in the context of unresolved factional differences, or in a state with weak rule of law [...], leads to further political instability and negative impacts on economic growth.

We should not think that institutionalizing electoral or strong models of liberal democracy will always have the desired effect.

Path dependence and unintended consequences are a ubiquitous outcome of institutional development. Although they cannot be avoided, we can think meaningfully about how to roll our understanding of these processes back in to our choices for institutional design. Through democratic experimentalism, this article has provided one way to move towards more democratic standards at the global level. Many proposals for cosmopolitan democracy – grounded in the democratic equality of peoples – posit the redesign or establishment of IOs. These proposals must deal centrally with questions emanating from HI and IR. How agreement can be reached under uncertainty, how nation-states could credibly commit to such a scheme, what types of institutional design should be sought, and other questions must be analyzed in depth.

This article has provided a first cut at this type of analysis, and argued the importance of escape clauses in building more democratic standards and institutions at the global level.

jonathan.kuyper1@gmail.com

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Global Economic Justice: A Structural Approach¹

Elizabeth Kahn
University of York

Abstract. This paper aims to make a contribution to the debate concerning the moral obligations which follow from the facts of the pervasiveness of acute poverty and the extent of global wealth and income inequality. I suggest that in order to make progress in this debate we need to move beyond two dominant ways of thinking about when the demands of distributive justice apply. The first approach focuses solely on the global distribution of resources, regardless of background social relations and institutions. This approach, exemplified by Simon Caney, identifies positive ‘humanity based’ obligations to promote or support institutions that fulfil the socio-economic rights of other humans. The second approach concentrates on the justice of the coercively enforced institutional arrangements governing access to resources. This approach, shared by theorists like Thomas Pogge, focuses on negative obligations not to harm other humans by imposing upon them resource regimes which avoidably fail to secure socio-economic human rights. I use Iris Young’s concept of *structural injustice* to suggest that vulnerability to deprivation can be understood as a social structural position which results from the cumulative effect of a variety of global and national actions, norms and institutions. I draw on the concepts of social responsibility and civic duty to outline an account of social obligation. This obligation requires that individuals critically assess their social structures for any systematic injustice, and make efforts to work with others to establish and maintain legitimate means for avoiding or mitigating any structural injustice. I use this analysis to suggest that individuals who contribute to global social structures must make efforts to work with others who are similarly connected to global poverty towards preventing the continuation of extreme poverty and growing inequality.

Key words: global justice, social responsibility, civic duties, cosmopolitanism, structural injustice, Iris Young, Thomas Pogge, Simon Caney.

I. GLOBAL ECONOMIC JUSTICE: A STRUCTURAL APPROACH

Cosmopolitan political theorists Thomas Pogge and Simon Caney, argue that the current global situation concerning the production and consumption of resources is grossly unjust. Some people have great wealth and enjoy access to a host of resources for enhancing their comfort and advancing their plans, whilst others face difficulties in securing shelter, sufficient nutrition and the basic goods needed to maintain a healthy existence. Some people spend the vast majority of their time working for subsistence wages to produce goods which are predominantly consumed by those who enjoy a high standard of living and opportunities for advancement, respect, achievement and power. Some people have wealth and incomes that allow them to determine production, whilst

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others have very little bargaining power and lack the ability to determine where they live, the work they do and the food they eat. 50% of the world's population share just 3% of global household income. In 2008 2.47 billion people living in countries classified as 'developing' by the World Bank lived on less than could be bought with \$2 in the USA in 2005. That equates to 37% of the global population at the time. This consumption figure includes all foods or services they provide for themselves through their own efforts as well as what they purchase from others.² Meanwhile, the richest 10% of the world share 71.1% of global household income (Pogge 2010, 5; Chen and Ravallion 2012).

Political philosophers working on global poverty are united in their condemnation of the continuance of a situation in which a significant sector of the world's population lack secure access to the basic resources required to maintain minimally decent lives. Cosmopolitan social justice theorists argue that at least some of the demands of social justice concerning control and consumption of resources should apply globally.³ This paper aims to make a contribution to the debate concerning whether justice makes demands in relation to the global distribution of access to resources and opportunities. I suggest that in order to make progress in this debate we need to move beyond two dominant ways of thinking about when demands of distributive justice apply and about the moral obligations we have to promote distributive justice. The first approach focuses solely on the global distribution of resources, regardless of background social relations and institutions. This approach, exemplified by Simon Caney, identifies positive 'humanity based' obligations to promote or support the fulfilment of the socio-economic rights of other human beings (Caney 2005). The second approach concentrates on the justice of coercively enforced institutional arrangements governing access to resources. This approach, shared by theorists like Thomas Pogge, focuses on negative obligations not to harm other humans by imposing resource regimes which promote avoidable socio-economic human rights deficits (Pogge 2010).

I endorse an alternative approach to identifying global economic injustice and obligations to oppose such injustice. I use Iris Young's concept of *structural injustice* to suggest that a sort of *injustice* can emerge from the combined effect of a variety of actions and institutions (Young 2011). I argue that when portions of the global population are predictably and avoidably placed in positions of disadvantage where they lack the means to secure access to sufficient resources to fulfil their capacities they suffer from a form of injustice. This is true even when the structures that place them in such positions are not the result of an identifiable regime of coercively imposed institutions but rather the result of multiple actions, laws, policies, trends and practices. I argue that in many cases some of these actions originate far away, many of the trends cross borders, and some of

2] 37% is the authors own calculation based on Population Reference Bureau data estimating the global population to be 6.7 billion in 2008.

3] I deliberately avoid using the term distributive justice because I agree with Iris Young that there are significant shortcomings with understanding social justice purely in the terms of a distribution of goods (Young 1990; Forst 2007).

the institutions involved are global. This means that the social structure that places agents in vulnerable positions is contributed to by agents throughout the world both directly and indirectly through participation in norms, institutions or practices. Hence these structures are in an important sense global.

I argue that *one* obligation to bring about the just regulation of social life emerges from the fact that agents collectively have a pervasive impact on each other's life chances and relative bargaining positions. I seek to establish that agents who live in social contexts (and thereby contribute to social structures) have corresponding social responsibilities. These social responsibilities require that they critically evaluate social structures and actively establish and maintain just solutions for avoiding and mitigating structural injustice. I will argue that those who contribute to social structures have such a social responsibility which currently requires they work towards the just and legitimate alteration of global practices, institutions and trends so as to lessen structural injustice. More specifically, I propose that obligations to bring about a just global structure of production and consumption emerge from the fact that agents from around the world participate and contribute to a global structure and that this structure systematically places some agents in positions of serious disadvantage which cannot be justified. As a result of this disadvantage, even otherwise permissible interactions between agents can be unfair.

The structure of my paper is as follows. I first discuss in turn the two aforementioned approaches to social justice and detail the problems associated with each. I then suggest that there may be additional forms of global economic injustice and obligations of resource justice. Next, I introduce Iris Young's concept of *structural injustice*. I explain why the combined effects of human action and institutions may be considered unjust rather than simply unfortunate. I proceed to argue that there is a general obligation requiring agents to monitor their social structures for injustice and work towards the lessening of any structural injustice. This is followed by a brief explanation of what this proposed obligation requires when it comes to global economic justice. I conclude by explaining how this approach and obligation relate to other proposals in the global justice literature.

II. HUMANITY BASED COSMOPOLITANISM

The first of the aforementioned approaches focuses solely on the global distribution of resources, regardless of background social relations and institutions. This approach suggests that certain distributions of resources between persons are unjust regardless of whether or not people share a common institutional background, coercive regime or substantive social community. This approach is characterised by cosmopolitans like Simon Caney who claim that individuals have rights in virtue of having moral personality. These rights include rights to access a certain level of resources. Caney proposes that demands of distributive justice follow from the fact that persons have moral personality. Thus, any plausible domestic case for distributive justice also applies globally. Arbitrary factors, such as nationality or state of residence, do not affect this moral personality based

claim. Caney proposes four principles for global distributive justice. They include a right to a basic level of subsistence, a right to equal opportunities, a right to equal pay for equal work and a proviso that says that benefiting people is more important the worse off they are. For the sake of this paper I am not concerned with the nature of demands of social justice. I am simply concerned with when certain demands of social justice apply and what obligations agents have in relation to these demands. Caney suggests that individuals have an obligation to *support* the institutional arrangements which best promote global distributive justice.

This is a positive 'humanity centred' obligation to support distributive justice. It is important to note that Caney insists that establishing distributive justice requires establishing 'institutional arrangements' which effectively secure justice rather than through individual transactions that aim to bring about a more just distribution of resources (Caney 2005, 109, 121-23; Caney 2011). One key difference between Caney's approach and other humanity based accounts of obligations to the global poor is that Caney argues that everyone has a right to an institutional set up that guarantees one does not live in poverty. Caney's account recognises the need to establish a global order which secures peoples freedom from poverty and fulfils demands of distributive justice. He believes that our humanity based obligations demand that we support those institutions that effectively secure these rights. However, by identifying a *humanity based* positive duty to support just institutions Caney still treats distributive injustice as one species of misfortune.

III. CRITIQUES OF HUMANITY BASED COSMOPOLITANISM

Humanity based approaches to cosmopolitanism can be criticised for failing to draw a distinction between injustice and misfortune. Caney's theory states that demands of distributive justice apply between all people no matter what their relationship. This means that if two isolated groups of people enjoy different levels of opportunity or different levels of pay for the same work, this is an injustice. However, according to a rival understanding of injustice, this difference in conditions cannot be identified as a case of injustice. This rival understanding of justice claims that whilst it is unfortunate that some people live in poverty, it is *unjust* when a government passes and enforces laws that condemn some people to live in poverty. Injustice is distinguished from misfortune because it is a species of negative circumstance for which someone or some group is responsible. Where differences in wealth exist between independent societies it is difficult to see why this should be considered a case of injustice. As parents tell their children: 'Life isn't fair!' However, children can and do demand that their parents and other authorities act fairly. This political account of distributive justice suggests that we cannot demand that the world be just, but we can demand that we are treated justly by those with power over us.

The easiest cases of injustice to identify are ones in which laws discriminate between people in a way that cannot be justified. For example a law which prevented members of a

certain ethnic group from owning property would be a prime example of injustice rather than misfortune. However, sometimes a combination of laws leads to a situation of injustice. Thus, a more sophisticated approach explains that states enforce a set of rules determining use and control of resources and that it is the regime of law enforced by an authority (or coercive body) which should be judged as just or unjust. Hence, distributive justice applies when such a body enforces a property rights regime. This view suggests, contra-Caney, that there can *only* be distributive justice or injustice within a coercively enforced property regime.

Many political theorists share the view that critiques of distributive *justice* should only be applied to coercively-enforced institutional orders. They argue that egalitarian demands of distributive justice only apply in specific circumstances. Some reject the idea that there is global distributive injustice because there is no global authority claiming a monopoly of legitimate violence. Thomas Nagel argues that strong demands of distributive justice apply within a state because co-citizens share a coercively enforced property regime. He argues that demands of social justice only apply in a very specific set of circumstances. He quotes Dworkin to explain that when there is an effective leviathan making a plausible claim to legitimate authority, this leviathan must treat its subjects as equals. Nagel explains that demands of justice only apply in circumstances where agents share such a political authority. He follows Rawls in asserting that demands of justice are norms for the basic structure of a nation state and should be distinguished from the appropriate normative demands for international relations or individual conduct (Nagel 2005, 121-23).

Where there is no such leviathan, Nagel explains, demands of distributive justice simply do not apply. Further, Nagel suggests, in such a situation there is no obligation to enter in to the political relation of sharing an authority (Nagel 2005, 121). He supports what he calls the 'political' conception of distributive justice whereby authorities are not a means by which to discharge pre-existing duties of social justice. Rather, to live under a shared authority is to have a special relationship with others. Entering in to such a relationship, where no such relation currently exists, is by no means compulsory. However, when agents do share a government which makes a plausible claim to a monopoly of legitimate violence, that government may only enforce a regime of access to property which treats people as equals and this requires fulfilling norms of distributive justice.

Simon Caney argues that although these coercive accounts may successfully establish that claims of distributive justice do apply within a coercively enforced regime they do not establish that demands of distributive justice *only* apply within coercive regimes.⁴ It is possible that there is both a duty not to impose an unjust regime on others and an additional duty to support the establishment of a just and secure property regime. Whether in both cases the same demands of justice apply is a further question, which I will leave aside for the sake of this paper.

4] As voiced in a presentation July 2012.

Those committed to a “coercive imposition” account (as I will refer to it) deny that justice demands the establishment of just shared institutions where none exist. They insist that duties to support the establishment of just regimes or to create a more egalitarian distribution where there are no regimes are humanitarian duties. They believe that requirements of justice only emerge within a coercively enforced regime (Nagel 2005, 121).

IV. INSTITUTIONAL COSMOPOLITANISM AND NEGATIVE DUTIES

In response to the objection that cosmopolitans identify only obligations of humanity based aid rather than justice many cosmopolitan theorists have sought to identify features of the global situation that could justify making demands of global distributive justice. Various ‘institutional’ cosmopolitan approaches have been developed which cite features of global interaction and organisation and argue that these features make it appropriate to apply demands of social justice to the global order (Caney 2005, 106). Thomas Pogge suggests that the current global economic institutional order is coercively imposed by the affluent states (Pogge 2010, 21). Pogge claims that this global institutional order is unjust because it knowingly and avoidably perpetuates human rights deficits (Pogge 2005).⁵

Pogge explains that there is a global institutional order to which demands of social justice should be applied. He defines an institution as a social practice governed by publicly known rules which stipulate roles and responsibilities. The central social practices of a society, which have a pervasive impact on people’s life prospects, make up the *basic structure* or *institutional order* of that society (Pogge 1989). Pogge argues that the global institutional order is imposed by the governments of powerful and affluent states in the interests of their business and finance elites (2010, 16-25).

Pogge suggests that there is a moral obligation to refrain from coercively imposing (or making uncompensated contributions to the coercive imposition of) an institutional order which is deeply unjust. This, Pogge argues, is a negative institutional duty and part of the duty to refrain from harming others. Pogge does not claim that we have a negative duty to refrain from making uncompensated contributions to the imposition of an institutional order which falls short of maximal justice. What he does argue is that our negative duty only requires we refrain from imposing any order that knowingly and avoidably perpetuate human rights deficits (2010, 29).

Pogge’s account faces a number of criticisms. At present there is no global agency or centralised power that effectively enforces the current regime through a claim to the monopoly of legitimate violence. The current global economic order is based on negotiations and agreements. In these negotiations economic and militarily dominant states dictate terms because they have a better bargaining position. However, no individual

5] Thomas Pogge’s emphasis is on the fact that there is a global institutional order which should be subject to normative assessment rather than on the fact that it is imposed by the affluent states (2010, 24).

government or cohesive bargaining block unilaterally determines policy. This fact means that the global institutional order does not perfectly fit the leviathan model on which the political approach to distributive justice is based. Many global economic rules and norms have emerged through bargaining and tradition rather than being imposed by a unified power centre. However, Pogge's account avoids this critique by giving a broad definition of what constitutes "coercive imposition" and "institutional order" so that his account can apply to the global economic institutions which are shaped by the larger global economies and major TNCs and from which smaller states cannot effectively opt out.

Pogge's account of global injustice and obligation is based on persons having a negative duty not to make uncompensated contributions to the imposition of the unjust global institutional order. However, there are substantial difficulties with identifying citizens of affluent states as culpable for *contributing* to the coercive imposition of the current global institutional order and therefore liable to moral censure. It is not clear that the relationship between citizens and affluent states is such that they may be held responsible for the actions of their states. The fact that citizens help to maintain the power of their governments through obeying the law and paying taxes is not sufficient grounds for claiming they are culpable accomplices in the actions of their governments. The relationship between citizens of affluent liberal democracies and the actions of their governments is a complicated one. The citizenry of a state cannot be considered members of an organised collective with makes decisions and takes action. Individuals often lack an intention to be part of such a collective. More needs to be said in order to show why citizens of a state may be understood as morally responsible for a state's actions.⁶ Even if it can be established that the people as a collective are responsible, what this means in terms of individual culpability is a further question.

Furthermore, under an orthodox understanding of harm, negative duties are only violated by those who are morally responsible for contributing to harm. If the connection between citizens and the actions of their states is too weak to establish culpability, further explanation is required in order to explain why compensatory behaviour is owed (Kahn 2011).⁷

In standard understandings of the negative duty to refrain from harming others, harm cannot simply be offset by compensatory actions. Pogge insists that it is only *uncompensated* contributions to the imposition of injustice which violate our negative duties. His claim is that we do not violate the negative duty if we compensate for any contributions we make by campaigning for institutional change or making donations to poverty charities. Compare this to a circumstance in which an individual intentionally violates a negative duty not to harm others. We wouldn't say that only uncompensated contributions to an

[6] Avia Pasternak proposes an account under which citizens can be held morally responsible for the actions of their states in certain circumstances (Pasternak, *The Collective Responsibility of Democratic Publics* 2011).

[7] See Uwe Steinhoff: "Why 'We' Are Not Harming the Global Poor: A Critique of Pogge's Leap from State to Individual Responsibility" in this volume.

assault violate negative duties. Imagine if one member of a gang who physically assaults a woman compensates by paying for some of the woman's medical treatment. In such a case we would not say that the gang member had not violated the negative duty to refrain from harming others. It is unusual to assert that only *uncompensated* contributions to harm violate the negative duty. Which is what Pogge claims is the case when it comes to contributions to the imposition of injustice.⁸ A more plausible account might insist that individuals become *liable* to provide compensation when they make contributions to harm and they cannot reasonably be expected to avoid making contributions. Such an account may be based on strict liability rather than culpable violation of a negative duty.⁹

A further objection to Pogge's approach is levelled by David Miller. Miller argues that the global institutional order cannot be identified as the cause of human rights deficits because national institutions also have an effect on whether human rights are secured. Miller explains that national institutions and cultural factors significantly affect the levels of poverty within any state. He demonstrates that these factors have an effect by comparing different development outcomes within the same global economic system (D. Miller 2007, 236-41). Miller is right that the global economic institutional order is not the *only* factor which affects the extent and acuteness of poverty. The difficulty with Pogge's position is that the global institutional order is significantly different to the idealised notion of basic structure within a closed society described by Rawls (Rawls 1971). In "Realizing Rawls" Pogge develops Rawls' conception of a "Basic Structure." He explains how the central social and economic institutions have a pervasive impact on people's opportunities and outcomes. He explains that it is this institutional order which is the subject of accounts of justice. When we consider central global economic institutions, it is only in conjunction with local norms, laws and institutions that they *determine* people's opportunities and outcomes.¹⁰ Since the central global economic legal institutions do not effectively determine the entitlements of individuals we may not be able to hold them responsible for these entitlements.

One way to avoid the debate as to whether national or global institutions are primarily responsible for poverty is to adopt an account of poverty and obligation that holds when poverty results from the combination of a range of human factors.

Multiple forms of injustice and multiple duties of justice

The two approaches to global distributive injustice so far discussed identify a form of injustice and describe a moral obligation. Caney states that any situation where some

8] I discuss this in a paper tabled at the 6th ECPR general conference (Kahn 2011).

9] For more on this see Rob Jubb and Avia Paternak's discussion of liability for costs (Pasternak and Jubb 2011).

10] It is unclear whether the central social and economic institutions alone determine the outcomes and opportunities at the national level. Informal institutions and patterns of action also contribute to the positions agents find themselves in.

persons lack secure fulfilment of their socio-economic human rights is unjust. He suggests that there is a positive moral obligation to support institutional arrangements which secure the human rights of others and fulfil other principles of distributive justice (Caney 2005, 121). Thomas Pogge suggests that the current global institutional order is unjust because it foreseeably and avoidably gives rise to human rights deficits. He argues that there is a negative duty that prohibits agents from making uncompensated contributions to the imposition of any institutional order which foreseeably and avoidably gives rise to human rights deficits (Pogge 2010, 29).

There are difficulties with both these approaches. However, I do not wish to argue that either approach is wrong. Pogge notes that in addition to the negative duties he outlines there may be positive duties to secure the human rights of others (Pogge 2010, 28; 2005, 102). Simon Caney acknowledges that in addition to the positive obligations he describes there may be the sorts of negative obligations identified by Pogge (Caney 2011, 513). I think that Caney and Pogge are right to suggest that there may be a range of obligations relevant to the question of obligations to the global poor. I wish to suggest that in addition to positive obligations to promote the situation of others and negative obligations to refrain from imposing unjust conditions upon them there is a third sort of obligation which is relevant to global poverty.

What I propose is that there are demands of social justice that apply whenever individuals indirectly affect the position of others in terms of the resources available to them and their relative bargaining position. I wish to suggest that there are moral obligations that require people who contribute to the social position of others to work towards the secure fulfilment of demands of social justice.

V. STRUCTURAL INJUSTICE

I will now set out an account of global economic injustice and a corresponding duty to alleviate that injustice. I begin by outlining Iris Young's account of structural injustice. I then explain why this may be a useful way to understand global economic injustice. I then set out a corresponding account of social structural obligations. This account will suggest that individuals have a general obligation to critically assess the social structures to which they contribute and to work towards the lessening of any structural injustice they identify.

In *Responsibility for Justice* Iris Young develops an account of structural injustice. Young describes how various human institutions and social rules, along with past actions that have permanently altered the physical environment, serve to create a social structure which places agents in various positions. This social structure is experienced as an objective fact that determines the options available to an agent and the outcomes attached to different choices. Part of the effect of such a structure is to determine individuals' access to opportunities to acquire resources. This structure is experienced as both a physical constraint on what an agent can achieve and an enabling channel allowing them to achieve certain things. When the differences in options provided by a social structure are unfair

there is social injustice (Young 2011, 52-64). Young specifies that structural injustice can be identified when social structural processes place a *group* of agents in a position where they are *vulnerable* to domination or deprivation in comparison to others.¹¹

To illustrate this idea Young introduces the example of Sandy, a woman seeking accommodation for herself and her young children. In the story, Sandy works as a sales assistant in an out of town shopping centre. Sandy has to move because the owner of the apartment building in which she rents wishes to convert the building into a condominium. There is no cheap accommodation near Sandy's work. Sandy judges the cheap accommodation in town not to be sufficiently safe or decent for her family. She cannot find any housing which allows her access to affordable transport to work, so she realises she must get a car. She looks into subsidised housing but the waiting list is two years long. She finds a tiny place forty-five minutes from work but lacks sufficient funds for the deposit because she has spent all her savings on a down payment for a car. Sandy faces the prospect of homelessness (Young 2011, 43-45).

Young alleges that Sandy is suffering from structural injustice. The options available to Sandy place her in a position where her access to housing is insecure (relative to other people). However, Sandy's situation is not the result of an unjust law or immoral act (Young 2011, 47). Sandy's situation is one she shares with a significant section of her society. The causes of her problem are multiple, large scale and relatively long term. She is in a situation where she is vulnerable to being deprived of housing. She is part of a group which face a 'systematic wrong' whereby they are put in a position of relative and significant deprivation in terms of opportunities to develop and exercise their capacities compared to their peers (Young 2011, 72).

VI. BACKGROUND JUSTICE

One way to capture the idea of structural injustice is to consider one aspect of the Rawlsian concept of *background justice*.¹² In "The Basic Structure as Subject" Rawls argues against Robert Nozick's conception of social justice. He suggests that a series of transactions between individuals which involve no rights violations can nevertheless undermine the background conditions required for transactions to be fair.

"[T]he accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens' relationships and opportunities so that the conditions for free and fair agreements no longer hold." (Rawls 1977, 159-60)

11] For the sake of this paper I will bracket the issue as to how we determine the justice or injustice of social structures.

12] I am indebted to Miriam Ronzoni (Ronzoni 2009) for the suggestion that there may be a similarity between structural injustice and the erosion of background justice.

The idea expressed here is that over time the background justice required for deals to be free and fair is likely to be undermined. The reason why Rawls is concerned with the cumulative effects of actions and transactions is *because* they can undermine the conditions in which deals between individuals are fair. They lead to circumstances in which some agents can dominate and exploit others because their relative bargaining positions means that their agreements are not really free and fair. Rawls expands his account further by explaining that the distribution of wealth that follows from individual market transactions is only fair when the starting distribution is fair and the structure of the market system is fair. He explains that this fairness in the starting distribution includes that all individuals have fair opportunity to earn income and gain wanted skills. Rawls' discussion suggests that the prevalence or absence of such opportunities is properly considered part of the background in which individuals act and social practices take place. Rawls finds that background justice is absent when certain opportunities are denied to some (1977, 160). This account suggests that injustice can emerge whenever agents interact and not just in circumstances where agents share governing institutions or a cooperative scheme.

Rawls' account of the erosion of background justice conflates two separate issues. Namely whether background conditions are fair and whether the combined effect of many permissible individual actions can produce injustice. Rawls suggests that background conditions are just to begin with and become eroded by transactions over time.

It is not clear that in the real world background conditions begin just or that only transactions and human actions affect background conditions. However it is difficult to separate the socially caused from background conditions. This is another way of saying it is difficult to determine the baseline from which a social structure is to be judged.

Young is concerned with the cumulative effects of actions, institutions and norms *because* these can place certain groups in positions of significant disadvantage (2011, 41). The problematic disadvantages which Young highlights include positions where those disadvantaged are especially vulnerable to being deprived in terms of abilities to fulfil their capacities and live full lives. Young also highlights positions where groups of individuals are especially vulnerable to being dominated by others. Agents are vulnerable to domination when their bargaining position is comparatively weak, they lack options, they lack resources sufficient to defend themselves from violence or they lack sufficient resources to secure independence (34, 64).

Young's account of structural injustice identifies structural problems which should be of concern to those who are socially connected to a structure. Rawls' account identifies that over time transactions which are just when considered in isolation can lead to circumstances in which deals cannot be just even if both parties agree to them and in which individuals are disadvantaged in terms of opportunities. They are both accounts of how the cumulative effects of human action and policy can lead to unjust states of affairs. Rawls' suggests that a well regulated basic structure is needed in order to maintain background justice to ensure circumstances which make deals and distributions of goods just. Young demands that we work to prevent the establishment of structures which make

certain groups vulnerable to deprivation and domination relative to others. Both set of demands can be interpreted more or less stringently.

What is important for the sake of this paper is that both accounts open up the idea that the background or social structure which is the cumulative result of human actions and practices should be normatively assessed and can be a site of injustice. They suggest that in addition to states of affairs and coercively imposed institutional orders the social structure which is the cumulative effect of human actions can be unjust.

Mirriam Ronzoni has developed Rawls' idea of background justice to suggest that a global problem of background justice may emerge (Ronzoni 2009). She argues that if certain empirical conditions obtain then there may be problems of background justice at the global level. She suggests that if this is the case we may have a duty to establish supranational agencies with effective regulatory powers to end this injustice.¹³

Structural injustice or misfortune

At this stage it is worth discussing whether what Young describes as structural injustice is nothing more than a species of misfortune. Structural injustice is a concept that identifies groups of people who find themselves vulnerable to domination and deprivation which cannot be causally linked to a specific perpetrator and is not imposed by any identifiable actor or agency. If experiencing structural injustice cannot be distinguished from merely being in a difficult state of affairs, the only duty that applies is a humanitarian one. The only duties that apply are humanity based obligations to support institutions which can bring about just states of affairs. If this is the case, then the concept of structural injustice adds nothing to Simon Caney's understanding of injustice.

Crucially, Young suggests that injustice implies that there is something wrong with current *social* and *political* arrangements. The cases Young describes constitute injustice rather than misfortune because they are the result of a combination of actions, policies and social practices performed by people. This makes them social and political problems. The fact that the problem is in some sense a *social* or *political* one means that it appropriately attracts feelings of anger, disappointment, regret and responsibility which are not present in identifying misfortune or natural disaster. We see injustices as arising from a social set up. Injustices are things for which we hold society responsible. Hence, we believe them to press more urgently on the attentions of members of the society than outsiders. We feel that society could and should have been set up in such a way that the problem was avoided. The power of Young's account is to make us consider social structures as a human responsibility rather than as natural and inevitable. The power of understanding an injustice as the result of the combination of human action, institutions and social processes is that it makes us implicitly recognize an obligation to try to change social processes (Young 2011, 33-34). The point is that recognising a disadvantage as the result

13] Ronzoni's account (2009) predominantly concentrates on justice between states rather than between individuals living in different states.

of human factors gives us an additional reason to do something about it. Any account of a structural injustice must give plausible grounds for considering a systematic disadvantage to be the result of human action, institutions and practices.

Structural injustice and social obligation

Structural injustice is defined as injustice which is produced by the combination of various factors: trends, social institutions and past actions. This usually means that no one individual, agency or collective agent can be found causally responsible for a structural injustice. In the case of Sandy and her housing difficulties one might claim that her government is to blame for coercively enforcing a regime in which working class single mothers are vulnerable to being deprived of housing relative to other citizens. One might additionally suggest that people have a humanitarian duty to promote and support arrangements in which working class single mothers no longer face these difficulties. I wish to suggest that social obligations exist in addition to the two obligations identified so far. Such obligations require individuals to critically assess the social structures they contribute to and to work with others to lessen any structural injustice.¹⁴

Individuals often cannot be held morally responsible for social structural injustice on the basis of their contribution to the social structures which contain these injustices. The connection in question is insufficient grounds for attributing blame or responsibility (Kahn 2011).¹⁵ However, such individuals should not be considered as innocent bystanders, with no relationship to the injustice in question. This means that those who contribute to a social structure which contains structural injustice cannot reasonably reject an additional demand to work towards the alleviation of the injustice, or so I will suggest.

Social structural injustices are systematic and widespread. This fact suggests that they require co-ordination between actors. It is unlikely that all such injustices can be avoided by following a publicly agreed set of norms for interactions. As Rawls' explains, background justice is eroded despite no one acting unfairly. Rawls insists that it is unlikely that there is a set of rules that can be applied to individual behaviour which can prevent the erosion of background justice and that if there is they would be excessively burdensome (1977, 160). Rawls suggests that in order to secure background justice we need regulating bodies charged with securing background justice. These bodies need to do more than

14] Young suggests that there is a forward looking shared responsibility which requires individuals who are socially connected to structural injustice to work together to lessen structural injustice (2011). There are problems with this way of conceiving of the obligation (Kahn 2011). My account of social obligation is similar to Young's. I do not detail the differences here. Rather I seek to provide additional arguments for social obligation which is distinct from obligations of non-harm and duties of aid.

15] However, a case could be made for attributing liability to those who causally contribute to a social structural injustice. Pasternak and Jubb set out how such an account could function and discuss liability for cumulative harm in their paper from the ECPR conference in Reykjavik (2011).

enforce norms governing interactions. They need to monitor structures for any systematic disadvantages and intervene to prevent them.

The fact that background justice cannot be secured through respecting the rights of others means that in addition to norms appraising how we directly treat each other we need norms appraising the social structures that result from the aggregate of these interactions. Young's theory suggests that justice and morality serve different functions. Norms of justice apply to social structures, whereas moral norms apply to the behaviour of agents (Young 2011, 65). Young's understanding of the relationship between moral obligations and demands of justice is thus opposed to that proposed by Nagel. Instead of justice naming a set of norms for the basic structure of a state, justice names a set of norms that bear on the social structures that emerge from human action and interaction. In agreeing with Young that there can be structural injustice I am not denying that there may be additional norms that restrict what governments, for example, may do. However, I am insisting that there are norms of justice that can be used to appraise social structures even in the absence of a government with effective control of those structures. In the account I support there can be unjust laws, institutional orders and social structures. It is possible that the norms for these three different sites could be different.

Returning to the question of structural injustice, we must consider how to connect structural injustice to obligations. If norms assessing social structures are to have any use to people we need to link them to obligations or responsibilities that fall on agents. If we do not do this then talk of structural injustice has no connection to actions or obligations and no hope of provoking agents into eradicating that injustice.

My discussion above suggests that if individuals are to ensure the results of their interactions are fair they need to do more than obey a simple set of moral norms governing their interactions with others. They need to do more than avoid lying, cheating and violating agreements. They additionally need to work to establish and maintain agencies that secure structural justice. If we are to live amongst each other in a fair and just manner we need to be living in conditions of background justice. If we wish to ensure that we treat others fairly we must live within conditions of structural justice. This is because if there are no institutions monitoring and regulating social structures then over time structural injustices can develop and background justice can be undermined. Young's and Rawls' ideas are significantly different in some respects. However, they share a common feature which is the idea that just refraining from harming others, respecting rights, and giving aid is insufficient, we also need to be concerned with the cumulative effect of actions and interactions.

However, it is not reasonable to require any individual to (try to) *ensure* social structural justice. This is beyond what an individual can guarantee. Instead we can posit that each individual has an obligation to make *reasonable efforts* to work with others in order to establish and maintain a just and legitimate system of regulation which prevents social structural injustice in those structures to which she contributes. My suggestion is that, just as one must ensure one's behaviour does not directly harm or disrespect others,

one has an obligation to do what can be reasonably expected to prevent one's actions from indirectly contributing to an unjust social structure.

The distinctive feature of my account is the claim that an agent A contributing to social structure X which features social structural injustice Y in its treatment of B, is grounds on which B can reasonably demand more of A in terms of preventing the continuance of Y. There may be a positive obligation for A to work towards the alleviation of injustice Y as an act of humanity fulfilling the general duty to promote the wellbeing of others when they suffer from deprivation and one can help without significantly worsening one's life (R. W. Miller 2010, 9-31). However, the fact that B's problem is an injustice in social structure Y to which A contributes provides grounds for B to legitimately demand more from A.¹⁶ Notice that if B also contributes to the social structure that places her in a position of structural injustice she too has an obligation to work towards the reform of that structure.

This proposed duty captures the popular ideal of 'social responsibility,' which suggests that individuals should take an interest in the justice of the social relations they help to reproduce. Social responsibility suggests that members of a society must take responsibility for the justice of their society and work towards lessening any injustice. The reason usually given for this demand is that one's society is in some sense one's business. My account gives a more fully worked out account of why we have social obligations. A commitment to social justice could help prevent the risk of great social injustice emerging from behaviour and action which is morally permissible when considered in isolation.¹⁷ This fact gives some reason in favour of establishing such a norm, because it is in the interests of mankind, as a means to ensuring conditions in which people can flourish.

The demand to work towards the establishment of morally-permissible ways to avoid structural injustice will probably require the establishment of administrating agencies of some kind where such agencies do not exist or lack the power or inclination to fulfil this role. Such agencies can coordinate human action by regulating behaviour and directly intervene to prevent injustice emerging. If such agencies are to be morally-permissible they must be legitimate and the institutional order they impose must be just. Establishing such agencies will require collective action and mobilising such collective action will require cooperating with others and campaigning to get more individuals to support and work towards establishing institutions or regulatory agencies.

The obligation I have outlined is unusual because it is an obligation to work towards the achievement of a collective project. It demands individuals pursue outcomes which they cannot individually guarantee. Moral analysis usually considers what an individual should

[16] This account is similarly to one that is sometimes suggested in Thomas Pogge's work. It may be that participating in the global economy constitutes contributing to the imposition of an unjust institutional order. If this is the case, then such participation violates a negative duty to refrain from harm unless individuals compensate by working towards reform of the global economic institutional order. I would not support such an account of the obligation for the reasons stated above in the discussion of Pogge's view.

[17] There would still be a humanitarian obligation to lessen structural injustice. However, I think this additional obligation also applies.

do out of the options available given background assumptions about what others are doing. Instead this moral demand obliges individuals to take actions to interact with others in an attempt to alter what they do: it asks individuals to take action with others in an attempt to alter the society that is the aggregate result of their actions and those of others.

Considering the possibility of taking action together allows us to imagine possibilities which are not available whilst we only consider what can be achieved through unilateral action. There has recently been a wealth of work concerning backward looking collective moral responsibility. This literature predominantly considers moral blame for collective acts (Isaacs 2011; Kutz 2000; May 1992). What I am proposing is a moral obligation to try to join with others and perform collective acts. Contemplating collective action allows us to consider new solutions to problems that result from the aggregation of multiple actions and institutions.

VII. GLOBAL POVERTY AND OBLIGATIONS TO ALLEVIATE STRUCTURAL INJUSTICE

Having sketched an understanding of injustice and obligations I will now conclude by briefly outlining how this approach can help us make progress in the global debate concerning obligations to alleviate global injustice in general and global poverty in particular.

Thomas Pogge in *World Poverty and Human Rights* outlines in detail the plight of people living in difficult conditions: these people lack secure access to adequate nutrition, housing, health care and education (2005). Pogge aims to explain this situation as unjust rather than simply unfortunate. The power of this change in perspective is to convince people to stop considering famine as a misfortune requiring aid and to start think of it as an injustice requiring social and political change. Young's theory offers an alternative way to understand the plight of these people. These individuals are systematically placed in a position where they are vulnerable to deprivation and domination relative to others. These positions are part of a social structure which is the cumulative result of various human actions and institutions.

In the modern world many people are placed in positions of vulnerability to deprivation as a result of a range of sources which include global factors. There are global formal legal, political and economic institutions like the United Nations, International Criminal Court, World Bank and International Monetary Fund. Voluntary associations like the World Trade Organisation have been established (Pogge 2010, 14). These associations provide norms for trade and attach significant advantages to members and disadvantages to non-members. National economies and financial markets have become increasingly interdependent. Trends, laws and acts of government in one state can have a pervasive impact on conditions abroad. The latest evidence of this can be seen by the effects of the latest global financial crisis which have reverberated across the world. In the modern world there are transnational corporations that operate in multiple territories and link the fates of people in distant communities. These companies' policies have a huge impact on

the lives of their employees and the economies in which they choose to operate. Consumer habits, worker's rights and tax regimes in one state can have an impact on the life prospects of agents in other states. More informally, global communications technology has allowed global trends and fashions to develop. One result of these changes is that trends, patterns and laws in one state can contribute to instances of structural injustice in another state. The integration and interdependence created by these factors means that individuals living in one state can contribute to social structural positions in other states. From this it follows that there can be obligations to lessen vulnerability to deprivation and domination in country A which fall on agents in country B. This means that we cannot treat states as if they contain discrete social structures and we cannot assume that individuals only need be concerned with local social structures.

In order to show how a social structural account can help us understand distant poverty and obligations it may be helpful to consider one example of structural vulnerability to poverty and consider who has social obligation to alleviate that injustice by regulating or otherwise altering the social structure in question. In *Responsibility for Justice* Young describes the circumstances faced by workers in the global apparel industry (Young 2011, 125-35). Considering the position these workers find themselves in can help show how an understanding of structural injustice can assist the global justice debate. The social position inhabited by those working in factories to produce garments for the global apparel industry is one of extreme vulnerability to deprivation and domination (both relatively speaking and in absolute terms). These people (predominantly young women) lack other reputable employment options. This means they are wise to continue in their factory work no matter what conditions are imposed. They are unlikely to be protected by their government because bringing in regulations to improve pay and conditions is likely to result in the work being relocated to other states. Global competition for manufacturing contracts drives down wages and conditions. In this industry violence and intimidation is regularly used against those who seek to collectively bargain or form unions. These conditions are consistent across much of the global south, where many countries rely on external investment to provide jobs. The position such countries find themselves in means that they often cannot take unilateral action to improve conditions for their apparel workers without radically increasing unemployment and poverty (Young 2011, 126-34).

Young's analysis suggests that we understand the plight of these garment workers as a form of structural injustice. The structure in question is made up of national, global and transnational factors (or social structural processes as she calls them). This means that we cannot isolate particular global formal institutions or national governments as causally responsible for the position workers find themselves in. However, we can still identify the poverty of these workers as an injustice which should be alleviated. Many of the relevant factors are contributed to by individuals around the world. According to the theory I have proposed here, these individuals have an obligation to work with others to alter the social structure so as to remove the injustice by trying to establish effective and legitimate

ways to regulate global social structures.¹⁸ Individuals could discharge this obligation in a number of ways.

One way to do this may be to campaign for global regulation or international collective agreements that can enable state governments to effectively regulate internal social structures. Individuals could also work with others to build collective action networks and attempt to directly alter social structures through changing norms. Arguably this is what organisations that promote fair-trade or boycotts of particularly exploitative companies are attempting to do. Trade unions could also play a significant role in forcing better pay and conditions for those who work in the apparel industry.

Possible routes an individual trying to discharge their obligation could take include: campaigning for global minimum labour standards, lobbying politicians for legal changes and joining or showing solidarity with trade unions fighting for global reform. Individuals could also support alternative clothing networks which provide decently paid labour in good conditions as a means to demonstrating the effectiveness of different ways of organising the global economy. They could also draw attention to the problem and try to directly improve conditions by campaigning outside shops that use sweat shop labour.

The conception of injustice and corresponding moral obligation I have outlined oblige people to monitor their social structures and work towards the alleviation of any structural injustice within them. I am not suggesting that structural injustice is the only form of global injustice. Nor am I proposing that the obligations to assess one's social structures and work with others to lessen structural injustice is the only obligation people have in relation to global economic justice. I have argued that structural injustice is *one* sort of injustice that individuals can experience. I have stated that the obligation I propose can fit alongside positive humanity based obligations to promote justice and negative obligations to refrain from imposing sufficiently unjust institutional orders on others. I have not had room to address the various possible objections to the account I have proposed or to clarify the details of that account. If such an account is to be plausible more must be said to justify the reasonableness of the proposed obligation. In addition, more needs to be done to show that it is intuitively plausible that contribution to a problem can ground an additional obligation to work towards overcoming it. My aim in this paper has been to show how a structural approach to global economic injustice and obligation can help us to understand the obligations the affluent have in relation to global poverty.

ek579@york.ac.uk

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¹⁸ They also have an obligation to inform themselves on the justice of their social structures and consider any claims of structural injustice made by others.

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Challenges for a New Global Order: A Two-dimensional Approach to Global Justice

Iván Teimil García
University of Oviedo

Abstract. The solution to global problems requires an effective extension of the universal Human Rights. Apart from demanding a more important weight of the institutions that watch over the civil rights of world citizens, this paper takes seriously into account the necessity of recovering the ambitious project included in the Human Rights Declaration as well as in the UNO Charter.¹ This project should make progress in the two egalitarian goals of overcoming economic inequalities worldwide and reducing the extreme difference in welfare within a highly stratified society. Therefore, the solutions have to attend so much to the inequalities of an unjust economic redistribution, as to the problems derived from an insufficient recognition of the people in a disadvantaged position. To all of that we must add a general context of undeniable unjust redistribution of the sources and the lack of effectiveness of the transnational institutions to correct this *status quo*. This paper underlines that the questions of global justice have necessarily at least two dimensions: redistribution and recognition.² Likewise, the project emphasizes that the Declaration of Human Rights contains two types of rights: civil and economic ones. For this reason, we must remark that the civil, political and individual rights cannot reach a complete development without the guaranty of the basic conditions of subsistence. This paper also considers, as Cristina Lafont has pointed out, that transnational institutions should be in charge of redistributive problems or, at least, they should restrict the unjust global redistributive measures, that prevent poor countries from reaching a stable and egalitarian economic order and, therefore, do not permit a complete development of the civil and political rights of all people in those countries.

Key words: civil rights, subsistence rights, supranational institutions, millenium goals, economic justice.

In this article I undertake some reflections on the two types of rights, whose mirror image is the classic distinction between positive and negative rights, the institutions that must promote them and the reach decisions from such institutions must have. To that effect I use the discussion over the Habermasian model of a reformed global order as a focal point (Habermas 2005). As Cristina Lafont (2008) correctly points out, there are two readings to this model: an ultra minimalist reading, which assigns supranational institutions (the UN, its Security Council, and the International Criminal Court) the single task of intervention in case of wars of aggression or massive crimes against humanity (that is, when a massive violation of negative rights occurs) and a more ambitious version, that entrusts supranational institutions with the task of correcting the regulations that perpetuate the situation of radical inequality between rich countries and impoverished countries.

In order to develop this matter, I firstly analyze the multi-level system for a reformed global order that Habermas proposes (I). Secondly, I take into account the possible

1] See Lafont 2008, 41-60.

2] See Fraser and Honneth 2003.

interpretations that can be made of this system, and the criticisms that could be formulated against its ultra minimalist interpretation, the one Habermas himself seems to opt for. I tackle all this making use of Cristina Lafont's analysis of the Habermasian model (II). And finally, I will complete the observations with some brief reflections on the growing importance of a sense of transnational solidarity, and the relevance of understanding the defense of negative and positive rights as two co-implicated parts of a same project (III).

I. HABERMAS "MULTI-LEVEL" MODEL FOR A REFORMED GLOBAL ORDER

In his "Eine politische Verfassung für die pluralistische Weltgesellschaft" (2005) Habermas presents his global political organization model.³ This model adapts the concept of popular sovereignty to the new forms of governance beyond the nation state. Habermas advocates a world society organized according to a hierarchical level system, in which world domestic politics must be implemented without a coercive world government. The German philosopher emphasizes that this world domestic politics must especially concern environmental problems and global economic policies. His design is characterized by a three level structure with three types of political actors assigned to each level. The supranational level is occupied by a single actor, the United Nations, an organization that has the capacity to act in well-defined political fields (ensuring peace and imposing human rights at a world level) without itself assuming the character of a state. However, although Habermas refers to a deeper way of conceiving the role of ensuring security, that includes the protection of the basic conditions of life, he understands at the same time that the core institutions of the United Nations must be exempt from tackling economic issues. For this reason, massive inequality is not a task to be undertaken, according to Habermas, from the nuclear institutions of the United Nations (the Security Council and the International Criminal Court) but that such institutions have as its fundamental aim ensuring safety and intervening in case of flagrant massive human rights violations.

Economic inequalities between industrialized nations and developing nations and proposing policies to palliate the extreme poverty of the latter fall outside the purview of the UN and constitutes the role of "world domestic politics," located at a lower level than that occupied by the United Nations: the level of the relations between "global players" current and future or transnational level. According to Habermas, all political negotiations concerning environmental and economical issues that go beyond the frontiers of nation states and beyond the purview of the UN and its nuclear institutions, take place within this level. The concept of global domestic politics refers to those issues that were once the subject of foreign affairs, but today, on account of globalization, must be integrated in

3] See Habermas 2005, 324-65. All translations of this work are mine, from the Spanish edition (2006[2005]).

broader transnational political units, despite the fact that the first basis for their legitimacy resides on nation states, from whose sovereignty arises the legitimacy of all regulations.

According to Habermas, in this transnational level, institutional formations intermingle, being in need of the kind of coordination that an increasingly complex world society also requires. Such coordination, only reaches certain problem categories, for instance, telecommunications regulations, catastrophe prevention, containment of epidemics or the fight against organized crime. All that is needed in these cases is smooth information exchange and good international relations, which is already an extremely difficult task, given the political differences that often emerge when tackling shared endeavors. However, the issues that involve a genuine political nature and not just good coordination and cooperation between states, are even thornier. These political issues evidently relate to the equitable distribution of global resources, energy, environmental, financial and economic policies. In relation to these problems that, ultimately, concern world domestic politics, there is a need for regulation and configuration for which, in Habermas' judgment, neither the actors nor the opportune institutional frameworks yet exist (2006). Current political networks are insufficient to address the demanding task residing at this transnational level and, according to Habermas, regional regimes wielding the necessary power for an implementation of their decisions at a continental scale would be required. From the Frankfurtian's point of view, "politics will only be able to meet its regulatory role at the transnational level, if the intermediate arenas are populated by a manageable number of global players," such as the United States of America which already is one (Habermas 2006, 327-28). Western democratic states participate at this level, but also in a very special way so does global citizenry through its organizations and movements.

The lowest ground in this multi-level system is occupied by nation states. Habermas points out that national states are under constant pressure in our time, in that global problems go way beyond the nation-oriented policies of each country. The interdependence generated by a global economy and the cross-border risks of a world society (climate change, massive migratory movements, the threat of pandemics) "go beyond the territorial scope of their action realms and overtax their chains of legitimation" (2006, 328). For this reason the protection of global citizens can no longer be restricted to the defense of negative liberties, but must be extended to guarantee essential material conditions "so that those who live in hardship can make effective use of the rights they are formally guaranteed" (2006, 326). In order to undertake such an enterprise on a global scale, Habermas establishes the following division of labor: a transnational order is necessary to promote economic equality policies; just as necessary is an effective supranational order, whose nerve center is the UNO, to ensure peace, liberty and security. Also, if civic solidarity was, at the nation state level, a necessary element to vertebrate the relationships and bonds involving all citizens in the shared democratic enterprise, it is equally necessary to extend this concept to the global order, in the shape of a transnational civic solidarity.

In my opinion, the Habermasian three-level division perfectly captures the political relations that occur in each sphere, and is a good general analysis on who the actors that currently intervene in every level and their roles are. Nonetheless, after a reading of the cited article by Habermas many ambiguities still persist that have left even some Habermasians uneasy.

The first of these ambiguities is derived from Habermas' own allocation of roles for each level. The difficulty is encountered when we focus on the role assigned to the United Nations at the supranational level. Habermas states that the role of the United Nations must be purged of economic issues, and its nuclear institutions clearly separated from the subsidiary organizations in charge of those issues under the auspices of the UN. Thus, the Security Council and the International Criminal Court must focus their efforts on ensuring security and promoting human rights worldwide.

The attribution of redistributive responsibilities at a transnational level, the one in which *global players* and their institutions act, brings within itself the following consequence: These *global players* are the only ones able to undertake redistributive measures, since only they could harmonize the decisions of nation states, backed by the sovereign people, into a higher integration level, just as, according to Habermas, do the United States and the European Union. Now, in the Frankfurtian's opinion, this transnational level still has an insufficient degree of articulation. In regard to global energy, environmental, financial and economical policies, "there is a need for regulation and configuration for which neither the actors nor the institutional frameworks yet exist" (Habermas 2006, 327). But, if that is so, is it appropriate to entrust this transnational level with issues as important today as global energy policies or world economy? It appears such intentions are postponed to an undefined future, in which this level might have the appropriate number of global players with enough decision power. However, would not it be more logical, given the urgency of these matters, to entrust their management to those institutions in the supranational arena that have already reached such a degree of organization and regulation? According to Habermas, redistributive policies are something to be left on the hands of the thorny negotiations of interests between states at the transnational level, as the UN must focus on the already rater complicated task of protecting human rights and ensuring security.

The second ambiguity I detect in the Habermasian multi-level design derives from the very role as protector of human rights worldwide assigned to the United Nations. Habermas argues that the UN must stand apart from redistributive issues. However, the protection of human rights extends, as already stated, beyond the subjective liberal rights to include subsistence rights. As Jeffrey Flynn (2009) points out, limiting the role of the UN to the traditional agenda of ensuring peace, security and liberty seems to contradict the millennium goal postulated by the UN, which calls for all people to meet the basic and essential needs for the fulfillment of the rest of civic and political rights.⁴ If we demand that the world organization closes ranks around the traditional mentioned agenda, we

4] See Flynn 2009, 59-77.

must then know that we are exercising a more liberal interpretation of the United Nations, which particularly focuses on negative liberties (Lafont 2008).

Finally, the third and last ambiguity that I could blame the Habermasian model for is the lack of a more precise articulation of the order the Frankfurtian calls transnational. His explanation raises questions like: what kind of agreements and negotiations would underpin the transnational balances Habermas speaks of? How must the institutions of these global players be designed or what institutional arrangement is meant to achieve this kind of scenario? What is the importance of these arrangements in non-governmental organizations and the so-called cosmopolitan citizenship? In this same article Habermas hints at a way to answer these questions. However, it should be noted that Habermas addresses this issues in other recent works and articles where he takes full care of his proposals for the so-called global players, particularly regarding the European Union and the constitutionalization of international law.⁵ Since this latter problem would take me very far from the goal of this article, I shall delve into the two first mentioned ambiguities.

II. TWO CONCEPTIONS OF HUMAN RIGHTS

In the article “Alternative visions of a new global order: what should cosmopolitans hope for?” Cristina Lafont (2008) reflects on the two possible readings of the Habermasian Cosmopolitan model.⁶ The first, more ambitious, aims to achieve peace and the human rights gathered in the United Nations Charter. The second, minimalist, is limited to advising that any obligation on the side of the international community is restricted to the negative task of preventing wars of aggression and massive violations of human rights, such as ethnic cleansing and genocide. Lafont defends, despite its “utopian” content, the more ambitious version of the Habermasian model, on the basis that there is no significant distinction between massive violation of rights caused by armed conflicts and those derived from unjust regulations in the global economic order. According to Lafont, the cosmopolitan challenges of the Habermasian project can only be met if the principles of transnational justice accepted by the international community are interpreted in accordance with the more ambitious reading, which addresses economic justice as well (Lafont 2008, 41).

In Lafont’s view, Habermas’ position oscillates between ultra minimalism and the more ambitious version of international politics. As this author points out, protecting human rights worldwide requires, among other things, ensuring the minimal necessary social and economic conditions for the exercise of civil and political rights. However, this interpretation is explicitly ruled out by Habermas’ assertion that the world organization should be independent from any “political” challenge, and for Habermas redistributive matters are included in the political challenges of a reformed world order. In Lafont’s

5] For a detailed exposition of these matters see Habermas 2001, 2004, and 2008.

6] See Lafont 2008, 41-60.

judgment, the result of this rigid division of labor between the supranational level and the transnational level is that none of the levels is charged, in the end, with the task of improving or palliating unfair social and economic conditions. The minimalist version results in the following scenario: on one side, the UN, at the supranational level, must limit itself to the traditional agenda of ensuring liberty, security and peace. On the other hand, the protection of human rights in the transnational arena does not directly concern “global domestic politics,” since the defense of those rights is a fundamental matter of the world organization at the supranational level. The establishment of a fairer economic order remains, according to Lafont, as a mere political aspiration and not as an obligation of justice. This crucial goal then depends on the negotiated compromises between the conflicting interests and value preferences of the different countries.

As a consequence, in Lafont’s judgment, one of the challenges listed by Habermas in the context of his vision on global justice, namely, that of “correcting the extreme differential in welfare within a highly stratified world society”, becomes a noble aspiration much in the style of “protecting coral reefs and promoting the arts” (Lafont 2008, 47). The eradication or at least the reduction of world poverty might or might not be the subject of global domestic politics, depending on the constellation of ethical-political values more in vogue at each time.

In Lafont’s opinion, the problematic distinction between positive duties and negative duties lays implicitly in this ultra minimalist vision, whose mirror image is a hierarchical organization of the different types of human rights violations: those that inexcusably trigger an immediate responsibility to act and those which do not. Negative duties are sufficiently specific and universal and therefore worthy of being attributed to a supposedly impartial world organization. In contrast, positive duties are intrinsically vague since they refer to the question “Who is supposed to do what?” and that makes a consensus over such duties very difficult among groups and nations of different ethical-political signs. Since the world organization must be neutral before these differences, it would be a mistake to attribute positive duties to it that would reveal a severe partiality in its procedures, because only it has the incontrovertible negative duty of avoiding by all means any armed conflicts that may place large segments of the population at risk (Lafont, 2008).

According to Lafont, this thesis involves two important problems. The first one is less relevant to the task of this article but not, nonetheless, of a lesser caliber in the general context of global justice. Lafont states this difficulty as follows: what needs justification in case of UN action in armed conflicts is precisely the positive obligation to act. Even if we guarantee the negative duties of a morality of universal justice, that is of no great help in our context, since what matters most in these cases are not the negative obligations of abstaining from provoking wars of aggression or perpetrating crimes against humanity, but the positive obligations of acting against such crimes, even considering the risks to soldiers and civilians and the high economic costs of such interventions. If what matters

most in these cases is acting, then it is necessary to have good reasons to back the positive duty of intervention.⁷

The second problem we face in accepting the ultra minimalist version refers, according to Lafont, to the nature and extent of human rights violations. As justification for intervention in case of wars of aggression and crimes against humanity, it is usually argued that such violations are massive, that is, they indiscriminately affect wide segments of society. Now, in Lafont's judgment, this would not be the distinctive feature of these attacks against humanity –since natural disasters also cause massive casualties- but rather their condition as undeserved crimes, unprovoked by the victims, who on top of it all remain devoid of any means to defend themselves from aggression. It is precisely this feature that generates the positive obligation of acting in order to protect the victims. Most important, therefore, is not if their defense is generated by a positive or a negative duty, but that their protection has to do with a decisive question of basic justice.

This takes us to the second and most important problem for the argument of this article. Lafont points out that there are other massive violations of human rights, also undeserved and by no means provoked by the victims. There is no need to remember the millions of people that die every day from easily curable diseases, if the proper means and resources were available, nor the billions of human beings that live under extreme malnourishment and poverty conditions, of which 3 out of 5 are children under five years of age. As Lafont reflects, the fundamental right to life is not protected for 18 million people that die prematurely and, of course, undeservedly, each year, due to curable diseases. Given this reality, it is of little importance if the redistributive measures are or are not political in nature (in fact, it is difficult to imagine they are not to some extent). In some cases, it would not even be necessary for a reformed world organization to undertake radical redistributive reforms, but just that it prevented the inaction of the global players taking advantage of a *statu quo* as beneficial for some as it is harming to others. Cristina Lafont cites several examples in this regard, from which I have selected one that I find particularly significant.⁸ As it is well known, HIV is one of the major causes of mortality in impoverished countries. Whereas in rich countries this painful disease has in many cases become a chronic condition thanks to antiretroviral drugs, governments in developing countries cannot afford them because they are bound by the international agreements ratified under the auspices of the World Trade Organization. These agreements, collected under the acronym TRIPS (“Trade-Related Aspects of Intellectual Property Rights”), allow pharmaceutical companies a monopoly in the production of drugs for a period of 20 years, during which they can increase the price as much as they want and write it down as previous investigation costs. Obviously, changing this blatantly unjust regulations will not solve all distributive injustices in the planet, but certainly would help, a lot, to palliate

7] See Lafont 2008, 48.

8] See Lafont 2008, 50.

some of the most serious. Carrying out effective changes in this regulations seems at least as reasonable as taking part in risky and costly military operations.

For Lafont, the only reasonable hope we can harbor in this regard depends on the international community progressively admitting that some economic regulations –from entities such as the IMF or the WTO- bring within themselves massive violations of human rights. And that cannot be left to the ventures of the domestic political wills that each country may impose in the transnational arena. A reformed world organization at the supranational level would have to set the basic directives for a fair economic policy, that is independent from the partisan interests of the most powerful and that guarantees for the “citizens of the world” the basic conditions for the exercise of their equal formal rights. This, effectively, grants the appropriate importance to massive violations of rights that deserve to be taken into account as much as genocide and ethnic cleansing. The last part of this paper links precisely to the challenge of opening avenues that lead to achieving this goal through a cosmopolitan solidarity.

III. TOWARDS A NEW COSMOPOLITAN SOLIDARITY

At the very least, the solution to the grave distributive injustices that plague the planet demands the establishment of an international road plan that focuses on the basic subsistence difficulties of people as well. Now, the other side of the coin is the gradual creation of an active transnational solidarity based on human rights. In Jeffrey Flynn’s opinion (2009), Habermas neglects this active side of cosmopolitan solidarity, in that he focuses on the reactive element which vertebrates this solidarity: for Habermas, the bases over which it stands are the emotional reactions of disapproval by the citizens to massive violations of human rights.⁹ However, in Flynn’s judgment, unless citizens and leaders in developed countries start moving towards making the social and economic rights of the poorest countries a reality, the latter will continue to see the spread of a human rights culture as a hidden form of cultural imperialism or economic exploitation.

On one hand, ensuring human rights demands taking action in the economic arena and not just preaching the need to extend the liberties of the traditional liberal flowchart. On the other hand, in order to foster a true cosmopolitan solidarity we need more than spontaneous reactions of disapproval to massive violations. We need, in the end, a more active form of solidarity possessed of a style similar to that which in nation states served and still serves as a vehicle for social integration.

Flynn notes that it is possible to pave this kind of feeling if we focus on the transformations we have tackled or are tackling from different perspectives. For this reason, this cosmopolitan solidarity must be created, more than reactively, as a positive construction that centers on trans-cultural dynamics and dialogic processes (Flynn 2009). The channels for this process are vague. But, that is no reason to interpret that the global public sphere moves

9] Flynn 2009, 68.

just in a reactive fashion, in its disapproval of massive violations. This public sphere is also constructive, self-referential and performative, it is configuring a series of political contexts tending towards eliminating exclusion and armoring a set of inalienable rights. Precisely, the spirit of human rights and the subsequent Declaration is the result of this constructive effort and such Declaration is postulated from the presupposition that this context of rights can be effectively carried out. Thanks to this spirit, global human rights policies, which groups like Amnesty International and Human Rights Watch have sought to endorse, have given rise to a certain cosmopolitan solidarity (Flynn 2009). Hence, information technologies have made visible those ignominies that remained silenced. Both factors have combined to recently launch campaigns for the elimination of the debts owed by the poorest countries and increase development aid, which are aimed at least to palliate some of the effects of extreme poverty.

Flynn emphasizes a kind of solidarity that is produced within public spheres through participation in a trans-cultural dialogue, largely generated thanks to the actions of this global social movements and the diffusion reached by the grave subsistence problems of underdeveloped countries (Flynn 2009). This solidarity not only arises from the reactions to human rights abuses, but is actively created in the interior of this global public discourse. It is built within the common project of a global human rights system that does not only focus in public and civil liberties, but in the means to guarantee the exercise of such liberties as well.

In short, this cosmopolitan solidarity, not just articulated on the basis of disapproval of massive crimes, is imperative to mobilize a transnational citizenry able to influence the policies of a global reformed state. In turn, supranational institutions must channel this solidarity by setting the directives for a more just global economic order, or at least de-legitimizing unjust regulations that get started under its patronage (Lafont 2008). As Thomas Pogge points out, we even sever the negative duty “not to harm” by imposing an unjust global economic order in poor countries (Pogge 2002). I suggest then that the distinction between civil and political rights and subsistence rights be contemplated under the light of the idea of co-originality formulated by Habermas in the context of his debate with political liberalism.¹⁰ In my opinion this idea is adapted to our problem at hand, we find that both kinds of rights are co-original or, at least, that they are closely co-implicated: it is not possible to exercise civil and political rights without having secured basic subsistence conditions, and inversely, the protection of this basic subsistence conditions is more difficult in a context where political and civil rights are not guaranteed. In the struggle for the protection of human rights, freedoms and the possession of the essential material means for a dignified life are two sides of the same coin. Therefore, the institutions in charge of promoting human rights (especially, the UN at the supranational level) should set the guidelines for the protection of both types, since, if we consider the information at our disposal, one cannot survive in a stable manner without the other.

10] See Habermas and Rawls 1998.

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Globalizing Recognition: Global Justice and the Dialectic of Recognition

Gottfried Schweiger
University of Salzburg, Centre for Ethics and Poverty Research

Abstract. The question I want to answer is if and how the recognition approach, taken from the works of Axel Honneth, could be an adequate framework for addressing the problems of global justice and poverty. My thesis is that such a globalization of the recognition approach rests on the dialectic of relative and absolute elements of recognition. (1) First, I will discuss the relativism of the recognition approach, that it understands recognition as being relative to a certain society or a set of institutions. The same is true for various forms of disrespect such as denigration or exclusion. The recognition approach is a form of internal reconstructive critique, which does not want to refer to absolute or ahistorical standards. (2) Second, I show that this relative understanding of recognition and disrespect rests on an absolute core of recognition, which transcends any given society. In short, this core is the possibility of undistorted self-realization, which is the main and universal element of a good life. Such an absolute core is necessary for distinguishing between justified and unjustified claims of relative recognition. It also serves as the normative benchmark for any society. (3) Finally, I will discuss the relation of these relative and absolute elements of recognition against the background of global justice. Claims of recognition can refer to this absolute core and demand that intersubjective conditions and social relations should change in order to make undistorted self-realization possible. This is the main point of reference for a recognition-based concept of global justice.

Key words: recognition, global justice, poverty.

Global poverty and injustice are some of the most pressing problems of our times. In recent years, academic philosophy has finally started taking them seriously and has produced a broad range of answers and theories (Boylan 2011; Mack et al. 2009; Pogge and Moellendorf 2008). Although there are many controversies about the content, form and range of global ethics and global justice, there is now more or less a consensus that the prevalence and severity of global poverty is morally wrong and that no one should live under such conditions. Still, there is dispute about the best or most viable means to accomplish the goal of alleviating this. If someone shifts away from the philosophical literature to social-scientific poverty research, unfortunately, the picture is not getting clearer. Different approaches and measures – from the World Bank to the United Nations, from social exclusion to absolute poverty, from participatory to monetary approaches – are producing different kinds of knowledge and data about poverty and the poor (Norton 2001; O'Connor 2001; Spicker, Alvarez Leguizamón, and Gordon 2007). The spectrum of possible and actual political interventions and strategies is equally patchy.

Surprisingly the recognition approach, which has become influential in recent years, especially in social and political philosophy, has been quiet about global justice or poverty and there are only very few attempts to change this. What is called here the recognition approach is not a fully elaborated theory but based on the works of Axel Honneth and its discussion and further development by other scholars within the last twenty years (Fraser

and Honneth 2003; Honneth 1996b; Petherbridge 2011a). That the issues of global poverty and global justice have not been extensively debated within this approach is a particularly conspicuous research gap as the recognition approach views and presents itself as a form of Critical Theory, which aims to uncover relations of injustice and to criticize capitalistic societies. I think that such a critical approach towards social and political philosophy – rooted in the broad traditions of Hegelian-Marxist thought – should not only deal with the topics of global justice, but should put them at the centre of its attention. Volker Heins, one of the very few who tried to link recognition and global justice, has argued that such a globalization of Axel Honneth is necessary, but it is only possible if the national context of this theory is transcended (Heins 2008). The perspective has to shift from fully developed capitalistic societies to underdeveloped societies, where the struggles for recognition have completely different forms:

Thus what is missing is the realization that the analysis of domestic conflicts that can be understood in the context of already institutionalized forms of recognition must be supplemented by the study of struggles over the very establishment (or indeed the undermining) of these forms of recognition. (Heins 2008, 149)

In this paper I want to take another route and think about the relation of global justice and recognition from a different perspective. My thesis is that such a globalization of recognition has to start by unfolding the global or universal claims of the recognition approach itself. I will call this the absolute core of recognition, following the wording of Amartya Sen, who wrote about such an absolute core of poverty in his discussion of the relative approach to poverty of Peter Townsend (Sen 1983; Townsend 1979). Similar to this discussion, I perceive a dialectic concerning a relative and absolute understanding of recognition. Likewise poverty is always relative and absolute, or to put it differently, as absolute poverty is relative to certain conditions, and relative poverty carries an absolute core, I think of recognition as the connection of relative and absolute elements. The normative benchmark of the recognition approach is the universal value of undistorted self-realization, which can only be realized in contingent historical, social or otherwise relative forms. Nonetheless, it can serve as the point of reference for the critique of global poverty.

I will unfold this thesis in three steps. (1) First, I will discuss the understanding of recognition as relative to a certain society or a set of institutions. The internal critique of social relations such as maldistribution, unemployment or poverty does not want to refer to absolute or ahistorical standards. (2) Second, I show that this relative understanding of recognition and disrespect rests on an absolute core of recognition, which transcends any given society. Such an absolute core is necessary to distinguish between justified and unjustified claims of relative recognition. (3) Finally, I argue that claims of recognition can refer to this absolute core and demand that intersubjective conditions and social relations should change in order to make undistorted self-realization possible. This is the main point of reference for a recognition-based concept of global justice.

I. RECOGNITION AND INTERNAL CRITIQUE

Honneth and others have described the recognition approach as a form of internal or immanent critique (Honneth 1996a, Honneth 2003, Honneth 2010; Kauppinen 2002). This means that it does not want to refer to external standards, but instead grounds its critique of social phenomena, relations or processes, that are deemed as unjust or otherwise harmful, in immanent norms and values:

Unlike external criticism, an immanent form of criticism presupposes that we can find a standard which constitutes a justified, rational claim within the criticized relations themselves. (Honneth 2010, 229)

Obviously such an approach rests on the assumption that such norms or values can really be found or reconstructed within the given social figuration. It also implies a form of historic process and unfolding of such values. In short, internal critique means that the given social relations are recognition loaded, as recognition is the underlying concept of such norms and values that can serve as a viable basis for social critique. Recognition is of such high value because it relates to three basic needs that all humans share: the need for personal relationships, the need for cognitive respect, and finally, the need for social esteem. These tripartite needs are mirrored by three basic forms of recognition: love or friendship, equal rights, and solidarity. In addition to their value in themselves, these three forms of recognition are also the necessary intersubjective conditions for the undistorted development of the self:

Taken together, the three forms of recognition – love, rights, and esteem – constitute the social conditions under which human subjects can develop a positive attitude towards themselves. For it is only due to the cumulative acquisition of basic self-confidence, of self-respect, and of self-esteem – provided, one after another, by the experience of those three forms of recognition – that a person can come to see himself or herself, unconditionally, as both an autonomous and an individuated being and to identify with his or her goals and desires. (Honneth 1996b, 169)

Because of this normative significance, Honneth thinks of the three forms of recognition as the normative elements or dimensions of social justice. A society is socially just if and when it enables and fosters such conditions that these three forms of recognition are possible for all its members. As Renante Pilapil states, the goal of social justice is to secure equal chances of self-realization:

What comprises a good and just society is its ability to guarantee the social conditions through which autonomous individuals are given the chance to realize their personality. Justice requires establishing and maintaining enabling social conditions for the formation of intact personal identity for *all* members of society. In this sense, social equality is tied to being given an equal chance for an adequate self-realization. (2011, 85)

Likewise, a society is socially unjust if such relations of recognition are hindered, distorted or withheld from groups of its members. Honneth calls such active forms

of withholding of recognition, or the denial of claims of recognition, disrespect or misrecognition. Disrespect can be differentiated in three basic ways: physical abuse and harm, the denial of rights and exclusion, and denigration. They are all morally harmful and serve as the negative starting point for internal critique. Such social phenomena that are disrespectful or experienced as harmful by those affected are to be criticized. In this regard, the recognition approach stays connected with its roots in the Critical Theory, which positioned itself alongside the social struggles of the oppressed:

To undertake an effective critique of society one must start by taking into account instances of injustice or violations of standards of justice. In contrast to its positive counterpart, the experience of injustice possesses greater normative bite. As such, for Honneth, no experience of injustice must be ignored even if its public expression is fraught with danger and difficulty. This approach to social justice and normativity is typical of the Frankfurt School, which grounds the motivation for social resistance and liberation movements not on grand theories of intellectuals but on people's everyday experience. (Pilapil 2011, 81)

Given this general setting, what can be seen as a genuine form of recognition? How are these three basic forms of love, rights, and solidarity realized in a given society? The recognition approach has no final answer to these questions as, adopting the perspective of this approach, recognition is an open concept which has to be filled by the unlimited possibilities of human modes of relations and social interactions. Recognition is historically and socially relative. Claims of recognition are likewise relative as they refer to such forms of recognition that can be found in a given social context or society. A few examples can make this point clear. Hugging can be an expression of love, as can be the institution of marriage. Work and employment, or the level of income, are important forms of social esteem in most modern societies. Political as well as social rights are taken for granted in many welfare states. People are likely to claim these forms of recognition and view them as important for their own lives. With a few exceptions, self-realization in Austria, Germany or Japan is bound up with having a well-remunerated job for which one is recognized as a valuable member of society. Honneth has explicitly linked his approach to the various functions of work and employment for the individual and the society alike (Creed and Macintyre 2007; Honneth 2007; Jahoda 1982):

A mere glance at studies of the psychological effects of unemployment makes it clear that the experience of labor must be assigned a central position in the model emerging here. The acquisition of that form or recognition that I have called social esteem continues to be bound up with the opportunity to pursue an economically rewarding and thus socially regulated occupation. (Honneth 2007, 75)

The relativism of recognition is also true for misrecognition and disrespect. Only in a "working society" which values employment and market success, will unemployment be perceived as denigrating. Likewise if no one is granted a public financed pension, the denial of it will not be experienced as an injustice in comparison with others, although it could be criticized for being unjust in itself. As a last example, if asking a father for his

daughter's hand is not common in society, then not asking is unlikely to be perceived as rude or impolite. So, when the recognition approach aims to uncover injustice and moral harm in social relations, it does so by reflecting on the structure of these relations, and the ideas and values incorporated in them. This is internal critique. In his response to Nancy Fraser, Honneth writes:

I always introduce the conflicts and struggles of capitalist social formations with reference to those principles of mutual recognition that are considered legitimate by the members of society themselves. What motivates individuals or social groups to call the prevailing social order into question and to engage in practical resistance is the moral conviction that, with respect to their own situations or particularities, the recognition principles considered legitimate are incorrectly or inadequately applied. (2003, 157)

Such an internal approach to social critique avoids the fallacies that necessarily come with the proposal for a universal foundation for moral norms and values. Rather than seeking such universal values and an ahistorical truth, it serves as a critical mirror for a society and shows that it fails its own standards and goals. This makes the critique more convincing than the application of mere external standards. Furthermore, internal critique is closely aligned to the critique brought forward by social groups, movements or individuals. Their claims for recognition, such as for equality, a living wage or for the possibilities of a registered partnership, can refer to the basics of a liberal and democratic society. It is important to stress that – as I have pointed out before – recognition can come in all different shapes and is not just about identity politics but also includes material and social forms such as income, housing or political participation. Although the recognition approach has a strong connection to social psychology, this does not impair its capacity for dealing with material claims and questions of redistribution. Crucial topics of poverty such as income, living wage, material deprivation, housing, education, health or unemployment are not outside its range, but can rather be reconstructed as materializations of recognition, which are embedded in social, economic and political institutions. Recognition-based social scientific research, especially within the sociology of work and labour, has proven this (Voswinkel 2012; Wagner 2012).

Hans-Christoph Schmidt am Busch has convincingly reconstructed this internal critique in Honneth's work in respect of his treatment of neo-liberalism (Schmidt am Busch 2010). Neo-liberalism fails its own promises to secure and apply what can be called the "achievement principle" and only benefits a small elite (Honneth 2003; Hartmann and Honneth 2006):

From the methodological perspective, Honneth claims to present a critique of neoliberalism that is "internal" insofar as its measure lies in relations of recognition that are constitutive for bourgeois-capitalist societies. Honneth illustrates this model of critique by referring to conflicts over distribution. According to him, such social conflicts are essentially struggles for recognition that are—or may be—carried out by reference to the principles of legal respect and/or of social esteem. In such cases, demands for the redistribution of economic goods may meet with society's

approval if they are based on proof that redistribution will remedy an infringement of claims that is identified as being based on these principles. In this context, the task of the Critical Theorist consists in furnishing this proof and making the connections explicit. Because he or she must rely on principles that are constitutive of bourgeois-capitalist society, the Critical Theorist can be said to engage in an “internal” critique in the above-mentioned sense. (Schmidt am Busch 2010, 260)

To sum up, the recognition approach wants to be an immanent form of social critique, which is situated rather within the criticized social relations than claiming a god’s eye view. Now, this form of internal critique has not gone uncontested, and although it is a major pillar of the recognition approach, it is not the whole story. Therefore, I want to turn to the critique on internal critique and to the absolute core of recognition.

II. THE ABSOLUTE CORE OF RECOGNITION

One main objection against internal critique is that a critical philosophy has to be able to distinguish unjustified from justified claims for recognition and that this task cannot be shouldered by the reference to a given set of institutions, values or norms. In the same manner, Christopher Zurn, along with Nancy Fraser, has advocated that the recognition approach cannot rest on subjective experiences of disrespect alone but that it needs some objective and also non-relative criteria. Some forms of disrespect and misrecognition are not only tolerable but necessary:

Thus, for example, a critical theory should be able to dismiss, on principled grounds, claims for expanded recognition put forth by racist hate groups. It should also be able to demonstrate that cultural stereotypes of feminine sexuality may subordinate women through legal definitions of rape – even when these definitions are not generally detected as harmful by women. In other words, a critical theory of recognition must be able to deal with what we could call the problems of the malevolent claimant and of false consciousness. (Zurn 2003, 532)

As I want to put it, internal critique always needs a linkage to an external, ahistoric and non-relative standard of recognition. Honneth himself recognized this problem and the necessity of presenting something like a universal benchmark for the evaluation of social relations or experiences of recognition and disrespect alike. He calls this the idea of a just society, which can serve as a point of reference for social critique:

The shift to the normative becomes necessary as soon as we are no longer discussing the question of how the social struggles of the present are to be theoretically analyzed, but instead turn to the question of their moral evaluation. Of course, it is obvious that we cannot endorse every political revolt as such – that we cannot consider every demand for recognition as morally legitimate or acceptable. Instead, we generally only judge the objectives of such struggles positively when they point in the direction of social development that we can understand as approximating our ideas of a good or just society. (Honneth 2003, 171–72)

This leads back to the recognition-based concept of justice. Whilst internal critique is mainly concerned with the relative and particular forms and modes of recognition, they again have to be judged against the general idea of recognition as the intersubjective condition of a good life. This is where the absolute core of recognition lies: undistorted self-realization. Michael Hardimon has rightly noticed in his review of Honneth's seminal book, *The struggle for recognition*, that most of the normative weight of his theory rests on this concept of self-realization (Hardimon 1997). The possibility of undistorted and authentic self-realization is the key element of a good life, both at the individual and the social level. Honneth himself calls it a "formal concept of a good life" (*formales Konzept der sittlichkeit*), which goes back to Hegel's idea of a successful integration – in his terms *Aufhebung* – of morality, rights and social norms in an individual life. To give this formal concept more substance, Honneth again refers back to the three basic forms recognition. A good life is, so to speak, one that is filled with experiences of love, respect, and social esteem for who we are, what goals we achieve and what makes us particular:

On the one hand, the three patterns of recognition – which now can count as just as many preconditions for successful self-realization – are defined in a sufficiently abstract, formal manner to avoid raising the suspicion that they embody particular visions of the good life. On the other hand, from the perspective of their content, the explication of these three conditions is detailed enough to say more about the general structures of a successful life than is entailed by general references to individual self-determination. The forms of recognition associated with love, rights, and solidarity provide the intersubjective protection that safeguards the conditions for external and internal freedom, upon which the process of articulating and realizing individual life-goals without coercion depends. Moreover, since they do not represent established institutional structures but only general patterns of behaviour, they can be distilled, as structural elements, from the concrete totality of all particular forms of life. (Honneth 1996b, 174)

This means that the task of social critique requires the evaluation of certain claims of recognition, social phenomena, relations or processes, against the idea of a widening and deepening of the possibilities of self-realization and the experiences of recognition for all members of society. This again is only possible if the notions of recognition and self-realization are "thick" enough to provide such standards. But the recognition approach argues this only as a "formal concept" and does not aim to fill it out with more substantial claims as, for example, Martha Nussbaum does with her prominent list. Danielle Petherbridge has recently called this a form/content divide as love, rights, and social esteem are the only universal forms that do not determine their content:

Honneth has therefore more recently acknowledged that the anthropological structures of social recognition alone cannot adequately provide justification for grounding a critical social theory. He now more strenuously attempts to maintain a form/content distinction, suggesting that only the form of moral expectations of recognition represents an invariant anthropological feature whereas their content depends on the different ways in which they become institutionalised and differentiated within in any given society. (2011b, 20)

This just seems to reproduce the problem with internal critique on another level. There is an absolute core of recognition, but it might be too vague and broad to serve as a real benchmark. It is still unclear how justified and unjustified claims for recognition are distinguished from each other, and how to judge social relations. This problem becomes eminently clear when we turn to the question of how seemingly legitimate claims of recognition can be valued against one another. Social reality is full of such clashes or tensions between different forms of recognition; for example, should we privilege someone we are friends with or the one who is the best person for the task. Similar conflicts can also be found in David Miller's approach to social justice, which also distinguishes three dimensions or principles akin to Honneth's three forms of recognition (Miller 1999; Honneth 2003). It appears as though there is no simple solution to this problem, which does not either undermine the absolute core of recognition or the strengths of a historic-relative internal critique. The context-sensitivity of the recognition approach necessarily comes with this vagueness. This also implies that the historic process of inclusion and the development of social justice are still going on. Honneth uses the old idea of the dialectic of the general and the particular to describe this:

For each of the three recognition spheres is distinguished by normative principles which provide their own internal standards of what counts as "just" or "unjust." In my view, the only way forward here is the idea, outlined above, that each principle of recognition has a specific surplus of validity whose normative significance is expressed by the constant struggle over its appropriate application and interpretation. Within each sphere, it is always possible to set a moral dialectic of the general and the particular in motion: claims are made for a particular perspective (need, life-situation, contribution) that has not yet found appropriate consideration by appeal to a general recognition principle (love, law, achievement). In order to be up to the task of critique, the theory of justice outlined here can wield the recognition principles' surplus validity against the facticity of their social interpretation. (2003, 186)

III. GLOBALIZING RECOGNITION

I now want to turn to the questions of global justice and a recognition-based critique of global poverty. These two are not congruent, but a convincing critique of global poverty appears to be one major task for a theory of global justice. From the perspective of internal critique, poverty or any other injustice is morally wrong if it violates any implicit or explicit values or norms within society or the social relations of those affected. This kind of critique is especially powerful in societies that are already highly developed and understand themselves as welfare states. The idea that at least a basic social security is needed for civil rights and duties to be assumed can be mobilized for a critique of poverty in such liberal and democratic societies. Henry Shue is one who has made this point explicit:

No one can, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonable healthy and active life. Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of

physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations. (1996, 24–25)

Honneth's critique of neo-liberalism points in the same direction and it can be further developed into a detailed internal critique of poverty, social exclusion and the unjust distribution of wealth, opportunities and education in bourgeois-capitalistic societies. But when it comes to the problem of global poverty, this critique is obviously limited. As Heins argued, there are many societies which are far from being "modern", democratic or welfare societies (Heins 2008). There are no adequate internal and immanent standards which could be used to criticize poverty. Also, the social reality of many poor people is dominated by unjust ideologies and beliefs. Sen has often argued for absolute criteria of poverty because many poor people do not perceive their poverty as harmful, or might even be happy with their situation. In such situation an internal critique is nearly impossible:

Consider a very deprived person who is poor, exploited, overworked and ill, but who has been made satisfied with his lot by social conditioning (through, say, religion, political propaganda, or cultural pressure). Can we possibly believe that he is doing well just because he is happy and satisfied? Can the living standard of a person be high if the life that he or she leads is full of deprivation? The standard of life cannot be so detached from the nature of the life the person leads. (Sen 1987, 7–8)

One possible solution to the limitations of an internal critique of global poverty could be to expand the understanding of internal from a closed society or nation state to the whole world. However, such a simple globalization faces at least two major problems. First, no comparable and consistent standards can be found within most societies which are organized as nation states. This begs the question, what standards should be followed? Those of Western societies? Second, the third form of recognition – social esteem – is explicitly conceptualized as being bound to a shared "value horizon" (Honneth 1996b). Social esteem is the recognition of such features or achievements that are judged as valuable by the shared community. There are not many such generally accepted values in societies, which consist of millions of members, but it seems to be unrealistic to identify even a few that are shared throughout a world, especially as such values are themselves contingent and depend on the historic development and formation of the society. The capitalistic "achievement principle" might be shared by many, maybe by even most members of such societies, but it is unknown or not so highly valued in many other countries. Jonathan Seglow has criticized Honneth in this regard:

Social movements' battles to get their esteem-worthy achievements on the public agenda evinces their belief in the normative power of a community of esteem. But again, contemporary globalized politics problematizes this picture. Areas marked by circular migration, guestworkers, refugee inflows and other movements of people may lack the settled population necessary for an ethos of esteem to develop through argument and advocacy. How far is the population numerically stable, and if it is stable how clustered is the constellation of esteem judgements which binds them? Other states are characterized by ethnic or religious groups subject to more

or less permanent subaltern status; they may be beyond the settled constituency of recognition, their attitudes discounted. (2009, 68)

One possible way to avoid this limitation of a globalization of recognition is to emphasize the dialectic of the three forms of recognition – love, respect, social esteem – itself and show that this can in fact serve as framework for global justice and for the critique of poverty and injustice. I have stated that a simple globalization of internal critique is not possible, but the further development and differentiation through the various struggles for recognition might lead to a globalization of at least basic rights. Rights are granted not for being a member of a specific society, nor are they bound to any form of achievement or merit (Honneth 1996b). They reflect the universal respect we owe every human for being an autonomous person. Honneth himself has suggested that the legal sphere is of utmost important, although it does not cover the whole of justice:

Rather, we must always reflexively examine the boundaries that have been established between the domains of the different recognition principles, since we can never rule out the suspicion that the existing division of labor between the moral spheres impairs the opportunities for individual identity-formation. And not infrequently, such questioning will lead to the conclusion that an expansion of individual rights is required, since the conditions for respect and autonomy are not adequately guaranteed under the normative principle of 'love' or 'achievement.' (2003, 189)

If the recognition approach does not want to limit itself to the globalization of rights, maybe on the basis of human rights it has to go in another direction, which transcends internal critique. This leads to the third option for a recognition-based concept of global justice. It draws on the absolute core of recognition and the idea of undistorted self-realization as the universal element of a good life. Can it serve a viable benchmark? Poverty is morally wrong according to this perspective if it is connected with severe forms of disrespect or the lack of any possibilities of undistorted self-realization. The conditions of absolute poverty can be adequately described with the terminology of disrespect: physical and psychological harm, no room for the development of relations of care and trust, the lack of basic rights, exclusion, denigration and degradation (Kaufmann et al. 2011). Or, to use a different category, which brings forward another core aspect of poverty: invisibility (Honneth 2001). In other words, poverty is wrong because it is harmful for the poor and violates their justified claim to live a good life. Instead, most of the poor of this world have to live their lives under conditions in which they lack basic commodities and capabilities (WHO and UNICEF 2010; World Bank 2011). I want to quote Amartya Sen again, who described these conditions of poverty, which are deeply wrong under any circumstances:

One element of that absolutist core is obvious enough, though the modern literature on the subject often does its best to ignore it. If there is starvation and hunger, then – no matter what the relative picture looks like – there clearly is poverty. In this sense the relative picture – if relevant – has to take a back seat behind the possibly dominating absolutist consideration. While it might be thought that this type of poverty –

involving malnutrition or hunger – is simply irrelevant to the richer countries, that is empirically far from clear, even though the frequency of this type of deprivation is certainly much less in these countries. Even when we shift our attention from hunger and look at other aspects of living standard, the absolutist aspect of poverty does not disappear. The fact that some people have a lower standard of living than others is certainly proof of inequality, but by itself it cannot be a proof of poverty unless we know something more about the standard of living that these people do in fact enjoy. (1983, 159)

No matter what the internal standards within such a society might be, absolute poverty limits the opportunities for self-realization so that they are negligibly small. In contrast, claims of recognition can refer to this absolute core in every society and under all circumstances – in a refugee camp in Africa, in custody pending deportation in Austria or in an automobile plant in the USA – and can demand that the intersubjective conditions and social relations should change in order to make undistorted self-realization possible. The anthropological and universal roots of the recognition transcend the borders of any given society.

To understand poverty with regard to self-realization might also be an important contribution to poverty research in general as it begs questions about the reliance on monetary measures and concepts of poverty. There is an increasing literature about the non-monetary dimension of poverty (Fahey 2010; Nolan and Whelan 2010), and to me it seems, as if most of this points in the direction of what the recognition approach describes as a good life and its social preconditions. These all bring to the fore a core understanding of the importance of being a valued and recognized member of society, and the ability to lead a life as an equal and respected citizen. The importance of belonging and social participation is more and more recognized in poverty research, and inherent in the shift to using concepts of social exclusion to describe poverty (Abrams, Christian, and Gordon 2007; Hills, Le Grand, and Piachaud 2002). Peter Townsend's concept of deprivation is a prominent example for these shifts to multidimensionality:

People are relatively deprived if they cannot obtain, at all or sufficiently, the conditions of life – that is, the diets, amenities, standards and services – which allow them to play the roles, participate in the relationships and follow the customary behaviour which is expected of them by virtue of their membership of society. If they lack or are denied the incomes, or more exactly the resources, including income and assets or goods or services in kind to obtain access to these conditions of life, they can be defined to be in poverty. People may be deprived in any or all of the major spheres of life – at work, where the means largely determining position in other spheres are earned, at home, in neighbourhood and family; in travel; in a range of social and individual activities outside work and home or neighbourhood in performing a variety of roles in fulfillment of social obligations. (1993, 36)

To put it in normative terms: poverty is the absence of the intersubjective conditions of a good life. But turning attention to the absolute core of recognition does not neglect the relative side of recognition or make internal critique irrelevant. As shown in the previous section, there is an internal dialectic of the general forms of recognition and its particular

contents. Also self-realization is a formal concept that has to be fulfilled by the individual, which is often shaped by social, economic, political and technological possibilities. The good life and its social conditions is as relative as is the “bad” life of poverty and social exclusion. The “customary behaviour” to which Townsend points is different from society to society. Also, programmes of poverty alleviation have to take these into account. One example can be the results of participatory work on poverty and well-being by the World Bank:

Respondents in rural areas placed a strong emphasis on food security in their definitions of poverty, ill-being and vulnerability, as well as lack of work, money and assets. They also emphasized the vulnerability of particular groups within the community: the old, the disabled, female-headed households and those living alone, isolated from social networks. The definitions of those in an urban setting place far more emphasis on the immediate living environment: crowded and unsanitary housing, lack of access to water, dirty and dangerous streets and violence both within and outside the household. (Brock 1999, 9)

This difference in the experience of poverty is the deeper reason for all relative approaches to poverty that conceptualize it as relative to the living standard of the majority (Fahey 2010; Townsend 1979). And I think that this relative approach is also crucial and powerful for global justice. It would certainly have massive negative consequences if we were to aim to just globalize the Western, consumerist and lavish way of living; but the mere existence of societies which grant their members a broad range of social security and rights, in which most people have access to education, housing and food, gives the critique of global poverty a particular severity. It is internal in another way: it reflects our failure to even globalize the minimum standards we set for ourselves and our societies.

Claims for global justice can always refer to the absolute core of recognition and demand that intersubjective conditions and social relations should change in order to make undistorted self-realization possible. This is the main and universal point of reference for a recognition-based concept of global justice. But these claims have to be filled with life and to do so the poor can always point to what the rich concede themselves.

gottfried.schweiger@sbg.ac.at

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Individual Membership in a Global Order: Terms of Respect and Standards of Justification

David Álvarez
University of Vigo

Abstract. The present paper examines alternative conceptions of what it means for individuals to be considered legitimate members in a global order. First, I will adopt a convergence view that takes the Universal Declaration of Human Rights as a *de facto* cosmopolitan reference for a wide plurality of conceptions. Within this framework, I will contrast two main cosmopolitan conceptions, each of them pivoting around a referential article in the Declaration. On the one hand, conceptions based on alternative interpretations of article 28 emphasize the role of global institutions in setting and implementing the conditions for just membership but differ on whether the baseline for the justification of the global order should rest on subjunctive or contingent standards (Pogge/Risse). On the other hand, conceptions of human rights based on article 15 emphasize the right to be a member in a self-determining political community. Here different accounts of basic conditions for local membership differ between terms of “due participatory respect” and those of “equal participatory respect” (Cohen/Benhabib-Forst). In this paper I hold that: (1) a contingent account of human rights (Risse) is compatible with a conception of membership as “due participatory respect” (Cohen) but incoherent with the justificatory premises of a conception of the common ownership of the Earth; and (2) that a practice of “democratic iterations” starting from existing conditions (Benhabib) requires a subjunctive justification of the global institutional order (Pogge) if the right to equal participatory membership is to be reconciled with an account of legitimate membership in the global order. Finally, (3) I defend that both conceptions are compatible with the support of a political status of global residency that offers an alternative to national membership and to global statehood.

Key words: cosmopolitanism, membership, human rights, global justice, citizenship, self-determination.

15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Universal Declaration of Human Rights

I. A CONVERGENCE APPROACH

To be sure, membership is a divisive issue. For some, the UDHR is the cornerstone of cosmopolitan morality, while this same list is depicted by others as a moral corner store where anyone can pick and chose rights according to convenience. I will take in this paper a “convergence” view on the articles of the UDHR. I hold that the Declaration is a widely accepted moral reference, while I am completely aware of the factual history of its framing and its historical limitations. I will not suppose the factual declaration has full and complete normative value, but it stands as a useful proxy of what can we realistically expect for a normative guide for our global order. Consequently, I will not

assume that the UDHR constitutes a real global overlapping consensus. What I hold is that the UDHR entails a “convergence view” that encapsulates some common concerns shared by a plurality of moral cultures. While the normative deficiencies of its framing are widely known, its real-world factuality presents some attractive features for connecting theoretical abstractions with political realities.¹

While some philosophers felt the need to embark on a foundationalist enterprise that would give HR the philosophical pedigree they lack, others undertook a more practical or political approach. Given that the peoples of the Earth reached this level of consensus, let’s take these widely recognized milestones as focal points for the political implementation of cosmopolitan projects. The plausibility of the latter would be backed by its confluence with the charter or some core articles within it.

One of the several attempts at reformulating the language of human rights draws heavily on the notion of membership. This is an old idea, being these rights originally conferred on the basis of “species membership.”² However, the articles selected at the opening of this paper suggest two alternative readings of membership:

According to Article 15, individuals have a right to national membership, and it should be interpreted as being a member of a political community, that is, a nation-state.

According to Article 28, individuals have a right to an international order that enables the realization of the conditions stipulated in the declaration. That means that the content of article 15 cannot be self-defeating: the terms of political membership have to be compatible with the realization of human rights, and so individuals and their nations may require a broader order that secures their fulfillment. Conversely, *de facto* members of a global order may require functional national polities for the full implementation of their rights.

Art. 15 Based: Members of a Polity in a Global Order

The views encompassed under the A-15 case share a common concern about the conditions for domestic legitimacy and political self-governance. This view collects the tragic memories of the twentieth century and the fate of those peoples and individuals that were deprived of political membership in a community where their rights could be enacted, respected, protected and fulfilled. This tragic realization was that when lacking proper membership, individual life was denied the basic ground to flourish. Consequently, it became imperative that every individual could be ascribed to a polity charged with the responsibility to grant the conditions for the realization of her basic interests. States emerge

1] The meaning of “convergence” in this context is mainly descriptive and may be closer to a “practice based view” than to the particular kind of “agreement theory” that Beitz calls “progressive convergence theory” of human rights. For the purposes of this article, I do not need to presuppose its hidden evolutionary logic (Beitz 2009, 73-95). “Convergence” here is closer to what Thomas Pogge would call “an ecumenical approach.”

2] See for instance Nussbaum’s conception (2006, 2011), although I will leave aside in this paper the discussion of capabilities as a metric (Pogge 2002) and the problem of specifying the terms of due “respect” when applied to natural qualities possessed in different degrees (Williams 2005, Carter 2011).

as the key actor for the implementation of basic freedoms worldwide. In a related way, this interpretation relaxes the attention on the specific content of a single list of universal rights and shifts the focus to the conditions of effective inclusion in self-governing communities. Personal flourishing depends on the conditions for national independence, so the determination of the content of individual rights is mostly a matter of collective self-determination. This interpretation poses three main problems for our analysis:

1. The paradox of democratic legitimacy (Benhabib 2004).
2. The problem of democratic boundaries and the politics of admission (Whelan 1983).
3. The question of the human right to democracy (Cohen 2004, 2006; Benhabib 2007).

The first question deals with whether individual rights transcend their democratic recognition by a self-governing community, and to what extent they pose an external limit to political sovereignty.

The second question is related to the allocation of membership, which is an issue that can't be democratically determined. This is so because determining democratically who is entitled to be a democratic member implies an infinite regress.

This third contested issue deals with the degree of admissible pluralism among the possible varieties of polities that fulfill the minimum core of human rights among their members. Some authors argue that it is enough if a polity takes into account all her members' interests even if it does not do it on equal terms. "Due recognition" is enough to honor proper membership (Cohen 2004, 2006). Critics reply that lacking equal political participation and the adequate channels to exercise political voice and powers, there is no guarantee that a political regime realizes the member's true interests. Consequently, critics argue that proper membership requires democratic rights (Benhabib 2007).³

It is a key element in this conception that there has to be an acceptable variety of realizations of human rights according to the domestic conditions of political deliberation and self-government. Cosmopolitan standards are not applied straightaway but adapted and adopted through democratic iterations that take place at a horizontal level, and also reflect processes of cross-fertilization and law migration between polities (Benhabib 2006, 2012).

Art.28 Based: Members in a Global Order that Enables Domestic Membership

The approach to global membership based on Art. 28 makes an explicit emphasis on the global factors that determine the achievement of a decent standard of living worldwide. It doesn't deny that national states have a prima facie responsibility for the fulfillment of human rights, but it also points to those contributing global factors which undermine

3] Benhabib, for instance, explicitly asserts: "My thesis is that without the right to self government which is exercised through proper legal and political channels, we cannot justify the range of variation in the context of basic human rights as being legitimate." Restated and expanded in (2011, 88; 117-37).

domestic efforts in this direction, or which promote the flourishing of corrupt regimes that systematically neglect the basic rights of their populations. The list of basic human rights emerges as a global standard for the assessment of institutional designs, be they local or global (Pogge 2008).

This approach faces one important challenge: we lack a shared universal justification for the list of human rights. Part of this difficulty was sketched earlier when mentioning the *de facto* convergence position: from a plurality of divergent moral traditions, we arrived at a common description of the basic conditions for a decent human life.

Thomas Pogge, for instance, takes this declaration and the human rights regime as indicative of our historical and institutional moment. These conditions should be achievable worldwide. They are feasible. If we can observe systematic under-fulfillment or violation then, in coherence with art 28, we have a duty to examine whether we, as members of a global order, are also part of the problem. That is, if we are contributing to the massive under-fulfillment of human rights, we are violating our negative duty not to harm. If this is the case, we, as members of the global order, have a duty to reform the institutional design that foreseeably and avoidably produces these dramatic effects. The global order is doing harm if it prevents the realization of the human rights of the world population—that is, if it keeps the global poor below the standard of living at which they should be (Pogge 2005b).

A global, institutional design “B” can be considered harmful even if it implies a modest improvement compared to its institutional predecessor “A.” If there is an institutional design at hand that foreseeably reduces the shortfall between the living conditions of the world population and the level at which we measure the satisfaction of their human rights, then supporting and maintaining in place modest improvement “B” still counts as harming the poor. Additionally, as members that benefit from imposing “B” we also have the duty to support and stop blocking the institutional reforms that would move us towards “C” (Risse 2005; Pogge 2005b).

Pogge’s formulation relies on this consensus on human rights, which is specified in the Declaration. The articles of the list detail the objects of the rights. In order to these rights be respected, the right holders must have secure access to the right’s objects (Pogge 2005a). The justice of an institutional design can be evaluated according to the degree of human rights satisfaction that produces for those subjected to this order.

Pogge denounces the strong connection between poverty and systematic under-fulfillment of human rights, as severe poverty itself is a human rights violation (Pogge 2008, 2007, 2011b). Consequently, he proposes a global institutional reform to address the problem of global poverty. One of the main arguments that back his proposals points to the systematic and uncompensated exclusion of part of humanity from the benefits of our common resources. This Lockean argument holds that the historical process of appropriation and exchange is inconsistent with the minimal conditions (proviso) that are stipulated to rationally compensate those excluded and latecomers. The manifest

violation of this clause demands the implementation of reforms oriented to eradicate severe poverty (at least).

Hillel Steiner defends a Lockean view that questions the legitimacy of hard territorial borders. He affirms that we don't share a justified convention about the legitimacy of domestic conventions that regulate individual property in a way compatible with the Lockean proviso. Simultaneously, hard territorial border exclude individuals form the job markets in which they could find a reasonable compensation for this injustice. Consequently, Steiner proposes taxing the differential value of land ownership worldwide to create a Global Fund in which all individuals would be equal shareholders (Steiner 1999, 2001).⁴

Pogge's reform proposal contemplates a transformation in the relationship between political communities and the natural resources present in their territories. The idea consists of transforming the current notion of territorial sovereignty—delineated along the lines of an exclusive and absolute property right, into a right of control conditioned on the application of a tax on those resources the sovereign community decides to exploit. This Global Resource Dividend is designed to fund programs of poverty eradication worldwide tackling that part of the human population whose real purchasing power prevents the secure access to the objects of their human rights (Pogge 2008).

However, this threshold is controversial as we lack a solid and universal rationale for the list of human rights. In order to avoid possible claims of parochialism in the confection and justification of this list, some authors try an alternative "contingent" strategy for a widely acceptable conception of human rights. According to Mathias Risse's enterprise, being originally on the same boat—that is, Life-Boat-Earth, is what defines our condition. We all have an original symmetrical claim to the natural resources. In this original situation, individuals don't have a duty to assist each other but nevertheless everybody has a legitimate claim on the goods required for basic needs satisfaction.

In order to avoid claims of parochialism, Risse's approach presents itself as virtually independent from contested notions of "human nature" or metaphysical doctrines of the good. It is the contingent fact of sharing the Earth in common ownership that grounds the claim for equal access to the satisfaction of basic needs. Political societies, the international order of territorial states and its institutions constitute a substantial alteration of the conditions of access to resources for those subjected to the global

4] Steiner's work is extremely interesting and deserves by its own right a more prominent role in this discussion. However, due to the space limitations of this paper I will focus on a Pogge-Risse exchange as they explicitly adopt the language of membership in a global order illustrative of an "Article 28" conception of Human Rights. For an interesting discussion of the aggregative nature of territorial sovereignty and individual ownership see the Steiner-Nine exchange (Steiner 2008; Nine 2008) or Simmons's work (Simmons 2001). For an interesting discussion of global taxes based on use/property see the exchange among Pogge, Steiner and Paula Casal (Pogge 2011a; Steiner 2011; Casal 2011).

order.⁵ Consequently, political institutions are only legitimized if they comply with this constraint. Human rights are contingent membership rights into a global order (Risse 2009a).

Translating Human Rights: Gained and Lost

1. Risse's reliance on the factual existence of a global order could be also its Achilles' heel. It could open the door to undesirable consequences if someone could convincingly question that the world is an integrated single order. In that case, these hypothetical "no-man's lands" would also be human rights lacunas and juridical limbos (Pogge 2009b).

2. Pogge's connection between the threshold of a decent standard of living specified in the human rights literature and the GRD is also contingent. This global tax is supposed to compensate for the exclusion from the benefits derived from the exploitation of limited natural resources. However, one could argue that the benefits from the shares in natural resources should be at a higher level than subsistence, or distributed according to a maximin structure of incentives. In any case, a settlement at subsistence level seems to fit into a minimal-ecumenical strategy that could also facilitate political feasibility. Nevertheless, higher levels of compensation are not necessarily ruled out.⁶

3. Pogge defends an institutional conception of human rights that doesn't demand its strict translation into individual legal rights. What matters is their actual degree of realization and not its formal positivization. This strategy facilitates an ecumenical convergence. Human rights work as standards to evaluate how institutions treat those affected by them but each society has a large variety of institutional alternatives to implement the standards of living expressed in the Declaration of Human Rights. This institutional conception is compatible with several legal systems and doesn't impose the terms favored by one particular legal tradition (Pogge 2008).

5] "What I mean by the global order is the system of states that covers most of the land masses of the Earth as well as the network of organizations that, while not constituting an actual government, provides for what has come to be called 'global governance.' Our current global order has arisen from developments that began through the emergence of states and the spread of European rule since the 15th century as well as the subsequent formation of new states through independence and decolonization. At the political level, the state system is governed by a set of rules the most significant of which are codified by the U.N. Charter. At the economic level, the Bretton Woods institutions (IMF, World Bank, later the GATT/WTO) provide a cooperative network intended to prevent wars and foster worldwide economic betterment. These institutions, jointly with the more powerful states acting alone or in concert, shape the economic order." (Risse 2009b, 21)

6] In fact, the classic arguments for a maximin distribution of global resources in a Rawlsian scenario are developed by Pogge (1989) and Charles Beitz (1999); and a justification for a GRD within Rawls's early proposal for a Law of Peoples by Pogge (Rawls 1993; Pogge 1994). The outcome of this debate was the final addition of the Duty of Assistance as the 8th principle of the *Law of Peoples*. However, the logic behind Rawls's Principle of Assistance is not strictly redistributive or cosmopolitan but based on "institutional capacity building" aiming to decent political reform. The cut-off point of this assistance is met when burdened societies become decent and independent regimes: "Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime." (Rawls 1999)

II. "WHO ON EARTH." THE STATUS OF CO-OWNERSHIP

Risse conceives two possible interpretations of the general conception of "common ownership of the Earth" and for the correlative claims based on their correlative accounts of the status of co-owners.

- The first one is the most limited and minimalistic. It just requires that the subsequent institutional orders that are imposed upon those that inherit the original status of co-owners, allow a level of basic needs satisfaction analogous to the original.
- The maximalist reading requires additionally that the political order imposed upon the original co-owners incorporates basic accountability measures. These checks and balances must prevent coercive interference with the satisfaction of basic needs. These institutional requirements would be very similar to the Lockean-liberal demand of the limitation of political power. However, the robust institutionalization of this guarantee doesn't necessarily equal a human right to democracy (Risse 2009a, 295). What is more surprising in this "maximalist" interpretation is that Risse explicitly rules out the positivization of constitutional guarantees regarding socioeconomic rights.

One could argue that if the author wants to be systematic and exhaustive regarding the conceptual implications of his premises and goes so far as to offer two alternatives, then he should offer a third one if there is conceptual space for it. This third interpretation would additionally require that basic needs satisfaction could be robustly realized, securing institutional socioeconomic conditions and embedding them in the constitution. In fact, if it is true that the state's political power can diminish the ability of the individuals to satisfy their needs; it is also true that the argument works the other way around. Authoritarian regimes are very capable of improving the ability of their subjects to satisfy their basic needs⁷ and this option is conceptually compatible with the contingent premises of "common ownership of the Earth." In order to rule out a fourth, authoritarian interpretation, a conception of individual freedom should play a stronger role than the one that it occupies in Risse's contingent project—and it must do it in a non-parochial way.

For instance, one could adopt Sen's diagnosis of famines as byproducts of deficits in democratic rights (Drezè and Sen 1989). This is a plausible move that links institutional conditions for political accountability to material conditions of needs satisfaction. This strategy strengthens the connection between liberal political rights and human rights as equality of opportunity for basic needs satisfaction. However, this move would be inconsistent with Risse's position, because if we believe that the link is this strong, then it would demand a human right to democracy but Risse stops short of this proposal. He explicitly considers and then rejects this view, favoring instead of some minimal right

⁷] Of course, we are aware of both sides of this story. See also James C. Scott, *Seeing like a State. How Certain Schemes to Improve Human Condition Have Failed* for an account of some failed utopias of high-modernist planning.

of interest representation in collective decision making. This consultative mechanism, however, can't guarantee the level of power sharing necessary to make the government fully accountable for the prevention of future famine.

Here Risse's strategy seems unnecessarily "ad hoc" and led by his preferred political views. He defends a minimalist conception of human rights correlative to "imperfect duties" and so they don't assign a specifiable obligation to a responsible agent. Imperfect duties are general duties that have to be reasonably balanced with the agents' other legitimate and important concerns. The conception of human rights as membership rights in the global order only requires an adequate response to cases of global urgency by those agents capable of intervention (remedial responsibility) when states fail to secure the basic conditions of their subjects. This time Risse explicitly adopts Sen's conception of human rights, his metric of "species normal functionings" and his embracement of imperfect duties (Risse 2009a, 292-294). However, Risse's partial commitment is inconsistent with Sen's whole conception. Sen's view rests on very demanding deliberative conditions and on a strong commitment to democratic rights—as seen in the famine problem (Sen 2009). Risse would have to justify why he selectively rejects constitutionalizing socioeconomic guarantees that would robustly grant an adequate standard of living, and why he avoids giving them the same status that he concedes to classic liberal rights. This is particularly problematic since he rests on the requirement of meeting material conditions to justify liberal rights. At the same time, he would have to justify why a human right to domestic democracy is inconsistent with his conception of human rights as membership rights in a global order.

Risse's minimal premises allow for a larger conceptual space than his specific proposal. Some might be more attractive than others, but all deserve to be exposed and explored in full length. Of course, presenting a wider family of alternatives doesn't prevent the author from defending a preferred one. But the arguments should be made explicit.

"Right from the Ground." Terms of Respect for Co-Ownership

To summarize, we could say that a conception of membership in the global order consistent with the original status of co-ownership of the Earth allows three main interpretations:

1. Membership demands the ability to satisfy one's basic needs in conditions of equal opportunity for subsistence. The global actors have a subsidiary imperfect remedial responsibility to assist in cases of global urgency.
2. Membership requires – additionally – the right to constitutional guarantees that prevent political power to interfere coercively with the membership right stipulated in (1).
3. Membership requires – additionally or alternatively to (2) – the institutionalization of constitutional guarantees that secure the fulfillment of the conditions described in (1).

I hold that, contrary to Risse's preference, alternative 3 is the most consistent with the premises. Risse's argument relies on a contingent original situation that is reconstructed as a situation of common ownership of the Earth among individuals symmetrically situated in relation to these resources, entitled with an identical claim on the means to satisfy their basic needs; they have a duty to respect their equal opportunity but not a positive duty of assistance or beneficence. These original conditions under this description delineate a particular "status." This particular status sets the benchmark for legitimate membership rights under consecutive political transitions, leading to increasingly complex political orders. In the end, even a complex global order like ours should guarantee an status of co-owner of the Earth equivalent to that constituted by the aforementioned original conditions.

My claim is that Risse's reconstruction is deficient. The main feature that captures the peculiarity of the original condition is not just the ability to satisfy one's basic needs. To be sure, this is a crucial element, but in fact it is only a consequence of the original status. When one's original status of co-owner is adequately respected, one is able to make ends meet. But what qualifies this status is the kind of relationship that is established among all individuals contending for common resources. My point is that what captures the essence of this status is a condition of "independence," as all are symmetrically situated and none of them has to rely on positive duties of beneficence.

This marks a strong departure, for instance, with Sen's conception of human rights. Sen holds that we have an (imperfect) duty to help those in need to achieve a decent level of human capabilities. This is not the case in the original situation. Co-owners have the duty of noninterference and the equal right of self-help to achieve this basic level. What characterizes the original situation is not only the outcome (need satisfaction) but the way by which it is achieved. The way equality of opportunity is realized expresses a condition of self-sufficiency that clearly marks the status of original co-ownership. What characterizes co-owners is not enjoying some benefits but being a shareholder. If my reconstruction is convincing, then the subsequent political transitions only respect the "status" if they reflect some analogous sense of independence in the way the subjects meet the sufficiency threshold. In my view this interpretation moves us closer to the constitutionalization of some socioeconomic guaranties, and not just minimal liberal rights. Identically, honoring the status of co-ownership as membership in the global order requires a division of institutional labor that allows that these conditions are met in a robust way. Again, robustness would require a determined global distribution of competences that go beyond imperfect duties of remedial responsibility.

III. POLITICAL ACCESS AND EXCLUSION

The transition from the original common ownership of the Earth to political societies also exemplifies the transition between one form of "property" in relation to natural resources and the legal definition of property rights. Risse explicitly rules out for

the original situation alternative forms of property like “joint ownership” or “individual property.” The reason to favor common ownership over these alternatives is because it requires a minimum of concerted action, only limited to reciprocal respect of a threshold of opportunity for sufficiency. The other property regimes require a more complex structure that demands the introduction of political authority. This transition may be induced, for instance, due to familiar “tragedies of the commons.”

Once we have an impartial enforcer it is possible to organize joint enterprises regulated by voting procedures or individual entitlements interpreted by an authorized umpire. The legitimacy of these transformations in the property regime depends on their factual respect of the original status of the co-owners, as we have repeatedly stated.⁸ They must allow *-de facto* or *de jure*, opportunity for sufficiency. “*De facto*” exemplifies Risse’s minimal and maximal interpretations, the latter implementing liberal rights that prevent coercive interference by the state. “*De jure*” reflects our view in support of a “robust” implementation of this constraint in terms of constitutional socioeconomic guaranties. The subsequent roles of the global order are also accordingly differentiated.

In the first case, minimal *de facto* respect only requires a duty of assistance with a cut-off point at the threshold of sufficiency. This captures the spirit of humanitarian duties of rescue.

In the second case, maximal *de facto* respect, requires that the global order intervenes and pressures different regimes into incorporating and respecting the terms of basic liberal rights. This view could incorporate conditional development aid and loans linked to the demand of implementing political transformations. As in the example of Sen’s diagnosis, assistance in food security crises would be conditioned on the implementation of accountability rights. However, although “conditionality” in practice is one of the most favored mechanisms in the pool of carrots and political sticks, it is problematic under the normative premises that Risse proposes. Let’s remember that we are talking about individual membership rights in a global order, and while we can hold a regime reprehensible for their reckless lack of provision, we must keep in mind that its subjects are right holders before the global order. They are entitled to demand the adequate level of resources even if they live under a criminal regime and especially if this is not a fully democratic regime. Conditionality backed by international blockade is problematic while “food for oil” kind of programs seem closer to this rationale for intervention. A coherent

8] Darrell Moellendorf (2009) defends a conception of global justice based on equality of respect in political and economic associations. For Moellendorf, the reference in the terms of respect is a moral conception of human dignity, captured in the formulation of human rights and that implies a *prima facie* principle of equality in its institutional realization, and “justificatory respect” is the kind of respect that is owed to the members of a common association governed shared rules. There are *pro tanto* reasons that allow justified departures from equality, but the overall presumption is that distributive inequalities violate the inherent dignity of the persons, and so the baseline for respect is global equality of opportunities, not just sufficiency – as in Caney 2007. Moellendorf agrees with Pogge and Risse that we are all *de facto* members of a global socioeconomic order, but he disagrees on the terms of respect. His “justificatory respect” is, however, closer to Benhabib and Frost’s conceptions of “equal respect for membership.”

reading of Art. 28 could even allow preventive humanitarian interventions to avoid forthcoming food-security crises under a strict doctrine of the responsibility to protect (R2P).

Our third case stipulates maximal *de jure* socioeconomic rights. According to this interpretation the global order should only recognize those regimes that are compatible with the institutionalization of these protections. Article 28 constrains Article 15, demanding that no member feels that she is in a situation of dependency, nor that her standing of equal-footing co-owner of the world is disrespected due to lack of resources. Whoever is the appointed primary/subsidiary responsible agent, its intervention has to be perceived as honoring a membership right. An appeal to benevolence or charity constitutes institutional disrespect. Pogge's GRD is closer to this interpretation.

This third maximalist interpretation is also consistent with the conceptualization of "property" as a legal right guaranteed in a jurisdiction (Murphy and Nagel 2002, caps. 3-4). Control over access is recognized and defined by a legal community, which is also defined by some exclusionary recognition of access implied in membership rights. So this transition seems seamlessly coherent, from shared control over access to common resources to legal access to the collective distribution of goods and services. Membership in modern societies has become not only an entryway to an attractive job market but also an access point to a series of entitlements, goods and services including infrastructure, public health systems, education, physical security and protection or effective legal representation. An adequate awareness of the value of this package attached to membership leads some authors to talk about citizenship as a "new property" (Reich 1964). Under this new paradigm, private property is being replaced by the entitlement to participate as co-owner in the network of goods managed by the community. The concept of membership entails as well the right not to be excluded.

Membership as an Exclusive Property

Ayalet Sachar, for instance, points to the two main features of citizenship as "enabler" (through access to resources) and "gate-keeper" (by restricting access to the community of co-owners) to illustrate how membership has actually become a "new property" (Sachar 2009, 32). This property is also transmitted through inheritance and in fact this is the most usual way of acquiring it. After examining the unequal value of the package of goods and services attached to membership in different communities worldwide, Sachar concludes that citizenship could be considered a birthright privilege that distributes opportunities for subsistence in a morally arbitrary way. Given the impact that membership has in the unequal quality of life of individuals worldwide, Sachar proposes that it should be taxed in a similar way as we tax inheritance and property. The latent rationale relies on luck-egalitarian intuitions. No one deserves to be disadvantaged through no fault of her own, and birthplace is by definition a morally arbitrary fact. One *is born* and this contingency determines her chances in life as a real, as the title says, "birthright lottery" (11, 91).

Again, we could discuss if the most coherent baseline for this redistributive taxation is a sufficientarian or a more demanding criterion.

Following Sachar's study of citizenship, we can distinguish two interesting dimensions intertwined:

- First, membership as the right to participate as co-owners in the political determination of the commonweal.
- Second, membership as the right to participate in the benefits of the community.

In these cases we could assimilate this discussion to the debate between rival conceptions of human rights as membership rights. The first case is illustrated by Seyla Benhabib's conception of a "right to have rights," which is connected to a human right to democracy (Benhabib 2007). The second case is exemplified by Joshua Cohen's defense of human rights as a right to membership in a community that shows "due consideration" to the interests of all its members. In this second case, the terms of respect of the status of membership are far less demanding than a full right of democratic participation (Cohen 2004, 197-8). In both cases, individuals' interests are taken into account, but the contrast rests between the requirement of "due consideration" and the terms of "equal consideration." In both cases, human rights are basically realized at the domestic level, so both alternatives belong to what we had called Art. 15 conceptions of human rights. Accordingly, they emphasize that all individuals are part of a community that protect their rights. Article 28 only applies in a subsidiary capacity to the realization of Article 15. Consequently, membership in the global order is derived from domestic membership.

Joshua Cohen's conception shares a number of insights with Rawls's political conception of human rights. These are defined by their political function in the international order as criteria for limiting its admissible degree of tolerance and justifiable intervention. Rawls's purpose is to show that a liberal conception of international justice can tolerate non-liberal but decent social models. In order to widen the scope of toleration a number of rights have to be sacrificed from the list (Rawls 1999, 36-38, 65-68, 78-81; Beitz 2009, 96-106). Cohen also agrees that minimalism about human rights is an acceptable price to pay in order to incorporate pluralism. His argument for rejecting democracy as a human right is that introducing an enforceable conception of democracy for real world conditions would necessarily devalue the democratic ideal. Otherwise it would lead us to forceful and exclusionary interventionism. Political traditions of the common good are good enough, and according to Cohen, probably the best we can hope for within the realistic limits of a political conception of human rights. Individuals are respected as members if their interests are taken into account when considering the common good. In these regimes, individuals are respected as members of a shared cultural and political tradition.

In contrast, membership rights for Benhabib imply democratic rights, because members of a political community are respected when their communicative freedom is

publicly recognized. Honoring this communicative competence requires doing justice to their capacity to evaluate, propose, accept or reject the terms of political deliberation that are relevant for her. For Benhabib, the only guarantee that this is so is to grant equal political power to all members (Benhabib 2007; cf. Christiano 2011, 145-46).⁹

She embraces justificatory minimalism about human rights because only when the content of a list of rights is specified in a local political deliberation is membership truly respected. But justificatory minimalism is compatible with maximal content, although this content is determined in an iterative process between cosmopolitan standards elaborated at the global level and domestic processes of adoption and adaptation. Individuals are members of a global order because the conditions of equal political power, participation and individual protections in self-governing communities express the universality embedded in deliberative reason. This way, through egalitarian deliberative institutions, the principle of rights applied at the domestic level is made congruent with the cosmopolitan standards at the global level (Benhabib 2011). This degree of interactive universalism is also tested when new members and foreigners challenge prevalent exclusionary practices and press for their reformulation in more universal terms (Benhabib 2004).

The content in the package of membership rights may vary substantially between democratic communities. Membership in the global order is realized through domestic participation in communities with very divergent thresholds of need satisfaction. However, once the communities have achieved a threshold of autonomous self-governance, international inequalities fade into a secondary plane. This degree of political control also implies that the *demos* are sovereign about their admission policies.

9] Thomas Christiano defends a coincidental argument for a human right to a minimally egalitarian democracy backed by empirical studies. I quote the argument *in extenso*: "The human right to democracy argued for asserts that there is a strong moral justification for states to adopt or maintain the institutions of minimally egalitarian democracy and that it is morally justified for the international community to respect, protect, and promote the right of each person to participate in minimally egalitarian democratic decision making concerning their society. By *minimally egalitarian democracy*, I mean a democracy that has a formal or informal constitutional structure which ensures that persons are able to participate as equals in the collective decision making of their political society. It can be more precisely characterized in terms of the following three conditions: (1) Persons have formally equal votes that are effective in the aggregate in determining who is in power, the normal result of which is a high level of participation of the populace in the electoral process. (2) Persons have equal opportunity to run for office, to determine the agenda of decision making, and to influence the process of deliberation. Individuals are free to organize political parties and interest group associations without legal impediment of fear of serious violence, and they are free to abandon their previous political associations. They have freedom of association at least regarding political matters. In such a society, there is normally robust competition among parties and a variety of political parties that have significance presence in the legislature. (3) Such a society also acts in accordance to the rule of law and supports an independent judiciary that acts as a check on executive power. This cluster of rights can be characterized simply as a right to participate as an equal in the collective decision making of one's political society, which I refer to as a *right to democracy*. To have a human right to democracy implies that there is a strong moral justification that such a cluster of rights be realized in one's political society." (Christiano 2011, 145-46)

Territory and Collective Self-Determination

The justification of territorial borders and democratic closure remains an especially problematic question. Article 15 formulations have to face the unsolvable paradox of democratic boundary. One approach consists of starting mid-way from the historical existing conditions that constitute the bounded rationality implicit in any historical form of cultural and political organization. The demos needs closure because the value of democratic membership rests on a sustained commitment to consequences of the decisions of a community over time (Benhabib 2004, 118-137). Political cooperation requires the expectancy of allegiance and reciprocity so individual sacrifices may be compensated in the long run. This generalized level of social trust is only possible if there is a perception of individual investment in a common fate linked to a political project (Christiano 2006). Membership could be defined as a specific form of reciprocal political subjection in which individual interests are intertwined over time. So membership is connected to but differentiated from “affected interests” and “subjection.”

However, article 15 conceptions reconcile democratic self-government with cosmopolitan universalism through the application of certain constraints to democratic admission policies. This “porous” border policy includes:

- Straightforward transition from long-term residence to full membership.
- The rejection of discriminatory criteria based on adscriptive features like race, ethnicity, sexual orientation, etc.
- Observance of asylum seeker rights.

So “democratic control over borders” can meet some justificatory criteria (Benhabib 2004, 137-63; 2011 136-65).

Some authors defend that political coercion is only legitimate if it can be justified to those subjected. Rainer Forst defends that justification of coercive measures constitute the terms of respect of human rights (Forst 1999), but it is not always clear if he differentiates between a duty to make explicit the reasons for the coercion and a duty to offer shared or acceptable reasons:

The declaration emphasizes strongly the connection between being safe from unjust and arbitrary rule and being a participant in political affairs. “The social and international order in which the rights and freedoms set forth in this declaration can be fully realized” which each person is entitled to is not meant to be one where rights are received as goods handed down from some authority. Rather it is to be one where no set of legally binding rights is determined without the participation of those who are the subjects of these rights. (Forst 2010, 718)

In the first case we are talking about a “right of interpellation” that those excluded from a polity could claim in order to force authorities to make public the grounds for the rejection. The decision would still be sovereign, and the deliberation would be restricted only to members. To be sure, some sympathetic members could decide to give voice to the

claims of excluded outsiders in the domestic realm of public reason. Forst differentiates between a primary obligation to implement the justificatory institutions (fundamental justice) and the specific deliberations that take place in each domain and sphere (maximal justice), and links human rights closer to the fundamental justice in a “basic structure of justification” in which the members have the means to deliberate and decide in common about the basic institutions that apply to them” (Forst 2010, 736). In any case, the main referent is still the state, explicitly defended as the main site for implementing social justice (Forst 2010, 378-79). However, his work oscillates between the classic statist defense of citizenship (Forst 2001, 172) and the openness to incorporate the justificatory right “both *within* domestic societies and *between* them” (Forst 2001, 174). In this phrasing, states are still the default building blocks. The substance of the transnational is the gap or the cement between blocks. It is not clear how much of these blocks would survive after the identification of all transnational domains in which “subjection” is experienced by the “members” of a social structure that “applies to them” and “affects” them (Forst 2010, 736).¹⁰

Human rights presuppose “the basic right to justification – but above that, they protect against the harm of not being part of the political determination of what counts as such harms.” (Forst 2010, 737) So for Forst, this conception of human rights entails a notion of “dignity” that means “that a person is to be respected as someone who is worthy of being given adequate reasons for actions or norms that affect him or her in a relevant way.” And the adequate criteria of justification are “reciprocity and generality in a strict sense” (Forst 2010, 734). The problem in Forst’s formulation is that he presupposes that all are already members, although there is not a clear limit of the scope: “all members,” “all subjected,” or “all relevantly affected”.¹¹ On the other hand, he pushes the duty of justification to a transnational dimension but he explicitly leaves aside the specific duty of implementing the “right to have rights” in a world of forced migration due to human rights violation or economic deprivation (Forst 2010, 739).

These are of course difficult questions, because on the one hand here Forst presupposes that there is an agreement on what constitutes a human right violation for the migrant in his country of origin; but on the other hand, it is not easy to find common ground on what constitutes “harm” based on formal criteria of reciprocity. So if one country eventually recognizes homosexual marriage on grounds of no-discrimination under the same “basic structure of justification” then it should recognize its violation elsewhere as a valid case for asylum based on human rights. Your harm is my harm. But territorial exclusion may be ruled out as harm or coercion on account of strictly formal, reciprocal and Westphalian terms: “You don’t cross my borders, I don’t cross yours.” Coercion and subjection are broad notions that must be specified in order to provide acceptable ground for practical policies.

10] Forst presents a synthetic reformulation of these arguments in Forst 2012, 222-27.

11] For an exhaustive distinction, see Goodin 2007.

This argument leads to a contact point with Nancy Fraser's conception of a multilevel global order defined by the duty to implement parity of political power for all subjected to the same institutions (Fraser 2009, 61-7). This proposal closely parallels Thomas Pogge's multilevel cosmopolitan order that incorporates all-relevantly affected interests (Pogge 2008). These terms of respect could differ in practice and could also have different consequences in institutional design. As Forst reminds us, the duty to take into account someone's interests is not the same as the duty to offer her acceptable reasons.

For Risse, the international order of territorial states implies subjection for those within and for those outside the borders and so it gives grounds for global membership rights (that is, to human rights to subsistence). For Steiner, the impact that border control has on the natural liberty of movement and of association implies a violation of basic rights that is not justified, and so it grounds compensatory participation in a *Global Fund*. But what constitutes "coercion" is also subject to dispute. For instance, contrary to Abizadeh (2008) or Risse's claims, Benhabib (2011, 161-65) and Miller (2010) hold that territorial exclusion does not constitute coercion if there are a number of acceptable options available.¹² Denying access clearly constitutes a limitation, and the mere presence of border patrols constitutes an act of intimidation. This situation may alter an individual's prospects and plans, but it does not constraint her freedom in such a way that forces her to act in a singular, restricted direction. If this was the case, then the coercion argument would apply. However, this is not the common case. Individuals usually face a sliding scale of alternative options that make selective admission policies compatible with human rights. Even if this non-coercive limitation of freedom is legitimate or justified in the first case, in virtue of article 28, the global order should provide a number of acceptable options and sources for independent self-sufficiency to those willing to exercise their global membership status abroad.

Massive acceptance of economic migrants will certainly alter both communities, one demos would lose some of its most dynamic members while other will have to integrate a higher internal diversity. However, "cultural integrity" as such is neither an a-priori valid exclusionary reason for co-owners of the Earth, nor a valid reason to deny exit.

National membership is a right, not a duty. Someone has interest in exercising a right when it entails a number of values and interests. In some sense, the prospects of particular cultures are linked to the differential value between domestic political membership and the options for independent self-sufficiency as a member of the global order. If national membership in X ceases to be experienced as a shared valuable project, then the global order must be re-defined in order to offer new opportunities for adequate subsistence for co-owners of the Earth. There is a certain amount of tradeoff the individuals are willing to undertake for keeping the network of attachments embedded in their national

12] Abizadeh claims that his thesis is sustained by two intrinsic features of democratic theory: the requirement of justification to those subject to coercive acts or threats; and the unbounded nature of popular sovereignty. Benhabib and Forst discuss these terms in a similar language with different accents.

membership. When this “common world” (Christiano 2006, 85-7) implicit in domestic membership collapses, then the status of co-owner of the Earth becomes more attractive.

Decoupling Territorial Rights

The possibility of decoupling polity and territory reveals how problematic their interconnection is within this contingent frame of common ownership of the Earth. As there is no ground for a “territorial duty,” rights of territorial control are conditional. No one “belongs” to the patch of land that he inhabits, although one may “feel that belongs” in the common world of a particular polity.

Anne Stilz argues in a different direction. She holds that the ultimate territorial right resides on the people, even after a state collapses. Stilz conceives the people as “collective moral personhood” that stands in a principal-agent relationship with its state. The people is the product of continued cooperation under a state over time and also the rightful owner of the territory. The state is the impartial agent capable of determining the rights of its subjects and of representing the will of the people. In this capacity, the state has jurisdictional powers over the territory, although it is the people who retains metajurisdictional powers:¹³

Metajurisdiction is thus a right over territory that inheres in the citizenry, the group that has historically cooperated in sustaining a state together. But it can be only exercised by the people in extraordinary circumstances, when their state fails to legitimately represent them or has been usurped. And there is only one object of the right: to set up a legitimate state that can exercise jurisdiction over their territory. In ordinary moments, the people exercise metajurisdiction simply by having a legitimate state in place. (Stilz 2009, 210)

The aim of this project is to make sense of some conventions in our modern international law using modified Kantian tools. But in order to do so Stilz takes away the Kantian cosmopolitan edge and sweeps the very Kantian problems under the footnote carpet. She doesn't address the question of the “right to revolution” or the “global state.” (Stilz 2009, 203 n.10, 207 n.12) Stilz discards them as parasitic on the prior right of territorial jurisdiction (2011, 573-74) even though these are the obvious issues that are relevant for us. Her strategy is focused on an account of the moral personhood of “the people as a whole” that is immune to intergenerational identity problems, even after the dissolution of the very agent that unifies it into a single body. “Who speaks for the multitude?” Hobbes would ask, rightly. Would Kant recognize a Revolutionary Government as having jurisdiction over the site of jurisdictional power? Would a *Council of the Wise* legitimately represent “the people as a whole?” Who can determine to what extent the state has ceased to perform its constitutional duties?

Stilz's project depends on the assumption that the rights of a collective of coexisting individuals can only be realized if an absolute territorial right is implemented. What she fails to justify is to what extent this is true. On her account, jurisdictional and

13] “Metajurisdictional powers are powers over powers: they confer authority on certain agents to decide who has powers to make primary rules over which pieces of territory.” (Stilz 2009, 196)

metajurisdictional powers are attached to the state and the people, respectively. This is a self-referential conception of absolute territorial rights. Externalities and the exclusion of outsiders have been cropped out. But, why should the “integrity” of this moral personhood be the only criterion to determine how to exercise control over a territory? Couldn’t we also assess its record in managing the environment it controls, and maybe conclude that it had done a poor job, one that shows very little concern for the intergenerational continuity?

The promise: “You shall inherit the Earth,” as Hobbes knew well, only makes sense if it’s made by a real God. No Mortal God can fulfill his prophecies once he is gone. Attributing metajurisdictional power to a diasporic body premised on its moral personhood is bootstrapping oneself from the grave of a failed state. International politics is a matter of recognition, so a territorial right cannot be formulated just in self-referential terms. If the territorial right is justified as necessary for the continuity of a people then the value of its integrity should be assessed also against external standards recognized by outsiders (UDHR’s, for instance) and justified against other alternatives. This implies that the metajurisdictional power over the territorial right of “We-the-People” (as a whole) rests on “We-the-Peoples” and their concerted agency.¹⁴

Another related conclusion is that territorial rights do not need to be absolute (Miller 2007, 221).¹⁵ They can be linked to national collective determination in ways compatible with the realization of the rights of all human beings (article 28 UDHR). In some cases when peoples reject an instrumental valuation of the land they inhabit or express an strong attachment, the right of territorial control may be key for having the necessary collective control over their lives. The fact some very singular place is *irreplaceable* for a people is a pressing condition for its assessment, but not absolute (Moore 2012, 94-101).¹⁶ Conditioning territorial rights on the taxation of natural resources for global

14] I leave aside here the complex details of global institutional design, but for questions of usurpation and restoration, something along the line of Thomas Pogge’s international Democracy Panel would be enough (Pogge 2008, 152-67; cf. Keohane, Macedo and Moravcsik 2009).

15] Although Miller defends a Nationalistic conception of self-determination according to which the territorial rights that the state exercises “belong fundamentally to the people collectively and are exercised on their behalf by the state they have authorized to do so.” (2007, 217) The justification of the connection between nation and territorial right comes from a shared sustained history of adaptation and transformation of the land according to a cultural system and expressing determined cultural values. Control over this environment is crucial for collective self-determination. Additionally, Miller claims that the present generation is the natural inheritant of the value added historically to the land through a shared history of investment of labor. Miller argues in a quasi-Lockean way against Steiner that it is practically impossible to differentiate between the added value and the raw natural value that constitutes the baseline for the equal division of the Earth. (2007, 56-62) These are weighty factors that justify partiality towards fellow citizens and their collective interest before foreigners, but not in an absolute and systematic way. (2007, 216-24).

16] To be sure, the assessing representative global institution should be adequately design in order to avoid parochial interpretations of human rights and alternative global orders should be evaluated according to its propensity to realize human rights worldwide. The risk of circularity is obvious, even when we start provisionally from a convergence view of human rights anchored in a broad factual consensus. However, there is an inescapable need to refine and contrast the epistemological acuteness of our institutions with the contexts of application. Allen Buchanan defends a social epistemological approach to this institutional design, consisting of “a normative, not a purely descriptive enterprise; it is the comparative evaluation of alternative institutional arrangements according to their tendency to foster true or justified beliefs. The guiding prem-

redistribution (GRD) or on universalist criteria of justification for border control are just some of the compatible alternatives.

In the case of border control, the global order can keep reasonable stability concerns in mind. It doesn't have to accommodate collectives or national groups as such, but only members of the global order on an individual basis. Accommodation according to this status of independent co-ownership may require regulated transition to full membership in a different polity in which she can enjoy an adequate standard of living but it does not imply rights of cultural reproduction or national reunification.

The global order could also establish compensatory mechanisms for recipient countries when migration is triggered by subsistence needs. Risse argues that admission should be enforced on those countries with a very large ratio of unexploited natural resources and population (Risse 2008, Blake and Risse 2009). It is difficult to see why this option is favored over other alternatives like high GDP that is frequently the derived accumulation and transfer of exploited natural resources.

We could say that when individuals decide to enact their status as global denizens and relocate abroad, the global order "cashes out" their global shares to fund their new accommodation. New admission options are the product of concerted allocation decisions between the global order and national communities. National communities are collective managers of a share of the Earth. Part of the product of this collective management also funds the global order in which everybody is a member by right. While one is committed to her national membership, one is also an investor in a cooperative enterprise (Rawls) that funds both a national collective project and a global fund. If one decides to exercise global membership, opting out from national membership by becoming a denizen, then one is also funded by the global order.

Obviously, the existence of a global safety net attached to the status of "global membership" modifies the terms of respect of citizenship as the prevalent political status. It also affects the capacity of domestic communities to fund "basic unconditional income of citizenship" (Van Parijs 1995). It affects its rationale as the individuals that decide to opt out the cooperative scheme can retain a funded status as global denizens, the level of which is also determined by the number of candidates, the taxation rates and the impact on the global productivity incentives. However, we also face similar problems on a domestic scale (Miller 2008, 382).

ise of the enterprise of developing a social epistemology is the anti-Cartesian insight that knowledge – and justification – are to a great extent social achievements." (Buchanan 2010, 89) The tendency in ecological thought to resist the instrumental valuation of the *irreplaceable* places through strict cost-benefit analysis (willingness to pay) tends to privilege the irreplaceable communitarian perspective. In both cases value is in the eye of the beholder, so Sen's observations about the need to introduce open and non-parochial impartiality in the deliberative process through. The problem in this specific case is that some cultural groups can claim an asymmetric interest in something irreplaceable similar to the "positional relevance of parenthood" (Sen 2009, 160) that limits the ability to achieve the "interpersonal invariance" required to achieve "positional objectivity" (Sen 2009, 156). Douglas Kysar reflects this tendency in environmental law against agencies of environmental impact assessment. See also Anderson 1993, O'Neal 2007, and Taylor 2006.

In this paper, I only lay out a converging justificatory approach for this conception of global membership. Due to the reasonable space limitation, I will explore in a forthcoming paper its more concrete implications. I won't discuss here, for instance, whether Malibu surfers could be "incentivized" to waive full-membership as citizens in favor of a "global denizen" status. According to our interpretation of article 15.2., everybody has the right to be and to keep full domestic membership somewhere. They cannot be forcibly denationalized, but domestic communities may consider that some individuals are also voting with their (otiose) hands in matters related to social cooperation (White 2003). However, the status of global co-ownership demands from the global order sources for adequate self-sufficiency, which may entail contextually equivalent income (purchasing power parity from global resource shares) supplemented with job opportunities (global social opportunity shares) adequate to keep a capability threshold of independent self-sufficiency. This global equivalence attached to residency addresses the accusation that the struggles for an unconditional basic income for citizens in rich countries, in a context of massive global injustice, amount to mere "justice among thieves" (Steiner 2003; Van Parijs 2003).

Under this view, one could argue whether the *metics* are the default cosmopolitans, and to what extent this "cosmopolitanism" implies a retreat from local politics and real politics. If this is so, it would be a very cynical move, literally. We could reclaim Diogenes as the founding father of cosmopolitan detachment of local conventions, but also Socrates with his stubborn, fatal attachment to "deliberative," democratic Athens. Cosmopolitans need not be "dead souls" (Benhabib 2011, 3-5; Benhabib and Álvarez forthcoming). However, global denizens are residents in local contexts, and it is in this very local dimension where differences in membership status become less relevant. In fact, part of the modern terminological confusion identifies the city and the nation, citizenship and nationality. Local residency implies a level of recognition, access to resources, and opportunities for participation that are not so easily available at the national level (Miller 2008, 377). The city of New Haven, Connecticut (US) issues ID cards even to illegal immigrants, but not passports (Carens 2008, 181-83). Some countries in the EU allow EU residents to run for mayor in local elections, but not to run for office at the national level. These cosmopolitan implementations are exhaustively analyzed in Benhabib's work (2004, 2006, 2011).¹⁷

Another pertinent objection has to deal with the effective political feasibility and the uncertain impact on global productivity. To be sure, this is a complex crucial question that deserves an independent paper. For the moment I think it is desirable to move in this direction, and I hope we can. There are three factors that contribute to make these hopes reasonably realistic.

First, it is presented as a "converging view" among a reasonably wide scope of normative theories.

¹⁷ For other important contributions on this line of parsing the concept of membership see the works of Saskia Sassen (2006), Linda Bosniak (2006), Rainer Baubök (2007) Melisa Williams (2007), and Dora Kostakopoulou (2008).

Second, the terms of respect for independent self-sufficiency can be expressed in a language of capability. This fact creates incentives for early and efficient investment in promoting the capabilities of the global poor. The more “resourceful,” “capable” and adaptive the individuals become, the easier will become for the global order to fund their status as denizens.¹⁸

Additionally, the global community might be interested in minimizing the cases of transborder accommodation, so it may channel investments through the worse-off communities and create incentives to maintain their common worlds. This system constitutes a way of revaluing the conditions for national membership. In practice, this global scheme implements some sort of institutional maximin. The more a community invests in promoting its collective capacity of self-government and of efficient management of the resources they control, the larger its contribution to the global fund. The larger the impact of these transfers abroad, the more attractive the developing societies become for their members. In practice, this scheme shortens the difference in the value of political membership around the globe (cf. Cavallero 2009).¹⁹

Third, assuming this normative political framework could facilitate moving towards a global public goods economic model in which developing countries and the global poor benefit from the incentives that drive economic productivity, research and innovation in the developed countries. In the current system, the products of these activities, due to market inefficiencies and the lack of capacity of the developing states, are marked up at unaffordable prices for the populations in which their impact could be higher in boosting capacities for independent self-sufficiency. Under this proposal, developed countries have additional incentives to align their productivity with real global development goals (Buchanan, Cole and Keohane 2011; Banarjee, Hollis and Pogge 2010; Pogge 2009b). Related to this point, we should notice that the pressing ecological limits of our current productive model require the introduction of sustainable incentives and rewards. The introduction of this necessary constraint is the more pertinent, as this conception relies on the common ownership of a warming Earth and its translatability into intergenerational claims. With this horizon in mind, sacrifices in global productivity have to be assessed

18] See for instance Moellendorf’s insistence on investing in the acquisition of a capacity for *lingua franca* (English education) as a necessary complement to the liberalization of immigration policies if we want to promote global equality of opportunities (Moellendorf 2009, 68-89). For an interesting discussion of the injustices associated to a *de facto* hegemonic *lingua franca*, see Van Paijs 2011.

19] Eric Cavallero (2006) develops a very interesting proposal that partially converges with the one exposed here, although departing from different premises. His “immigration-pressure model” assigns entry quotas for rich countries and charges them with a duty of assistance with no absolute cut-off point. The threshold of the international transfers is established at the level at which the immigration pressure from developing countries is neutralized. This point is supposed to identify the state of affairs in which both sides of the borders find their options equivalent or equally attractive. Both proposals adopt a “communicating vessels” model and both accept that migration flows are a destabilizing phenomenon that exerts a pressure for integration. However, the conceptual framework I try to sketch revolves around the status of the individuals, so that they can legitimately perceive themselves as true co-owners of the world. Cavallero’s goals are closer to an institutional amendment of our unjust international order. I want to leave the transborder door open as it may lead us to a more cosmopolitan order. Cavallero wants to minimize the need to open it.

against an acceptable set of sustainable conceptions of welfare and standards of life. As Roemer reminds us, neglecting this pressing fact leads us to a “consumerist fallacy” in our assessments (Roemer 2011, 379-80).

Respectable Members of a Legitimate Global Order

Individual involvement in the international system is also problematic, especially when it exhibits constitutive practices that undermine the opportunities for the subsistence of large segments of the world population. Pogge enumerates predatory practices, like the international resources privilege or the international loan privilege that frequently go in tandem as the concession of exploitation license for foreign extractive industries, and other natural resources can be also used as collateral for funding corrupt governments in their campaigns to stay in power. Pogge’s Global Resources Divided stipulates a conceptual shift in the definition of sovereign control over natural resources. The tax proposal considers that states keep a preferential control over the resources in their territory and a sovereign decision on whether they should be exploited or not. From a strictly cosmopolitan point of view, it is difficult to defend a *prima facie* right to exclusive control over the resources contained in a limited territory. They naturally belong in common to humanity.

Leif Wenar, for instance, takes for granted that natural resources belong to the peoples, as it is accepted in international documents (2007, 2010, 2011). When rich societies take advantage of corrupt governments and pay a reduced price for natural resources, they are stealing from the peoples that legitimately own these resources. His argument establishes an analogy between stealing among individuals in a domestic setting and stealing in the international order. This parallel is interesting because we accepted that “property” is the product of a legal convention enforced within the limits of a jurisdiction. But the status of a global jurisdiction remains unclear. On what grounds should we accept that domestic respectable consumers in one part of the globe are also global smugglers?

If Wenar’s argument holds, we can take individual domestic consumers as global smugglers because they are collectively taking advantage of existing foreign authorities interfering in their subjects’ right to benefit from their resources. They could also argue that it was done following a valid legal procedure with a corrupt but internationally recognized representative. Confronted with a clash between moral and legal conventions and challenged by the epistemic and practical impossibility of tracking down every step in every transaction, domestic consumers may well argue for the implementation of an institutional mechanism that re-integrates their status as bona-fide members of a legitimate global order (Wenar 2011, Pogge 2010, 230-31).

IV. THE FAIR VALUE OF MEMBERSHIP IN COSMOPOLITAN TERMS

Wenar’s argument presupposes that individuals have a global status, and that current international conventions are in need of legitimation. The existing practice

is a factual set of references that exhibits a normative deficit. However, creating the institutional forum where this deliberation could take place also clears a path towards questioning the arbitrary global distribution of resources behind exclusionary borders. Global smuggling undermines the potential of resource-rich countries, but resource-poor countries cannot even be exploited by foreign companies. Why would their populations accept that inhabitants of a neighboring territory have a right to exclude them from its natural resources and the benefits thereof?

We could say that the recognition of a certain degree of territorial self-determination and preferential control over its resources is legitimate if it is compatible with Art. 28. The compatibility consists on its contribution to the sustainability of a global order in which the rights of all global members could be fulfilled.

The many implications of this conception exceed the limits of this paper, but we could note that it proposes a challenging paradigm to consider pressing problems as guidelines for global regulation of migration flows, new ways to deal with adaptation/mitigation policies for climate change, and incentives to shift towards a model of global public goods that can have a differential impact on the worse off.

Extractive processes, environmental degradation, resource depletion, and “not in my backyard” policies are undesirable consequences of a historical process of progressively refined capacities of resource transformation and commercialization. This process, often shaped by violence and by political and military colonization, also exerts an unequal influence on migration patterns, demographic concentrations, the attraction of capital and skilled labor, training opportunities and talent rewards. To be sure, these transformations add a substantive surplus that also attracts and generates new forms of social life and the flourishing of science, technology, cultures and the arts.

A *demos* has an intrinsic interest in fostering a shared commitment to manage and cultivate this natural, social and human capital from one generation to the next. Some polities manage to thrive longer while others decline but on the long run, the big picture is still one of unequal distribution of burdens and benefits. By splitting the claims about territorial control and collective self-determination, we can see that all human beings, by virtue of sharing a common status of co-owners of the Earth, have an original valid claim on part of the products of natural resource-based activities. By separating membership in the global order from political membership, we see that the interest in preserving democratic self-determination is linked to a commitment in global reinvestment.

This conception may seem too difficult to reconcile with our current state of affairs, and too idealistic for what Rawls demanded from a realistic utopia. It may be. But our current state of affairs – sovereign states, living on borrowed time – is no more realistic. The twilight of international politics is marked by its inability to adapt to the limits of sustainability. So maybe what we need is some chance of reconciliation with the future instead of patching up an agonistic international system (Pogge-Álvarez 2010a; cf. Sen 2009, 15-17).

V. CONCLUSION

In this paper I defend an account of membership in a global order coherent with a contingent conception of common ownership of the Earth. In contrast with Risse's formulation, I argue that the most plausible translation of the status of co-owner of the Earth implies the institutional conditions for independent self-sufficiency secured by the global order to global denizens and embedded into constitutional socioeconomic protections for national members.

I also hold that, from the original premises of common ownership of the Earth, it is possible to defend the decoupling of absolute territorial self-determination from collective self-government. Since there is no convincing defense for absolute territorial control that is compatible with the original premises of the common ownership of the Earth, I defend an interpretation of the Article 28 of the UDHR according to which national membership (Art. 15) is conceived as individual participation in a cooperative enterprise that manages global resources, the benefits of which are taxed by the global order. Decoupling territorial control and collective self-government allows the possibility of disaggregating domestic membership in a cooperative enterprise (citizenship/nationality) and global residency (membership in the global order). I defend this last status as a plausible and promising means for reenacting the status of co-owner of the Earth in terms of independent self-sufficiency.

daidalvarez@uvigo.es

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Why ‘We’ Are Not Harming the Global Poor: A Critique of Pogge’s Leap from State to Individual Responsibility

Uwe Steinhoff
University of Hong Kong

Abstract: Thomas Pogge claims “that, by shaping and enforcing the social conditions that foreseeably and avoidably cause the monumental suffering of global poverty, we are *harming* the global poor – or, to put it more descriptively, we are active participants in the largest, though not the gravest, crime against humanity ever committed.” In other words, he claims that by upholding certain international arrangements we are violating our strong *negative duties* not to harm, and not just some (perhaps much weaker) positive duties to help. I shall argue that even if Pogge were correct in claiming that certain rich states or at least the rich states collectively violate certain negative duties towards the poor and harm the poor, he is far too hasty in concluding that “we,” the citizens of those states, are thus harming the global poor or violating our negative duties towards them. In fact, his conclusion can be shown to be wrong not least of all in the light of some of his own assumptions about collective responsibility, the enforceability of human rights, and terrorism. In addition, I will also argue that his view that we share responsibility for the acts of our political “representatives,” who allegedly act “on our behalf,” is unwarranted.

Key words: collective responsibility, harm, individual responsibility, negative duties, Pogge, political representation, poverty.

Thomas Pogge claims “that, by shaping and enforcing the social conditions that foreseeably and avoidably cause the monumental suffering of global poverty, we are *harming* the global poor – or, to put it more descriptively, we are active participants in the largest, though not the gravest, crime against humanity ever committed.” (Pogge 2005a, 33) In other words, he claims that by upholding certain international arrangements we are violating our strong *negative duties* not to harm, and not just some (perhaps much weaker) positive duties to help. Therefore, he thinks that we, the citizens of the rich countries, are misguided in perceiving the problem of world poverty primarily in terms of (lacking) assistance or charity rather than in terms of our active, criminal contribution to the problem. We are not only not doing much *against* poverty, we are actually to a large extent producing it – poverty’s executors, as it were. I shall argue in this paper that Pogge’s claim is unwarranted and wrong. In particular, I shall argue that even if Pogge were correct in claiming that certain rich states or at least the rich states collectively violate certain negative duties towards the poor and harm the poor, he is far too hasty in concluding that “we,” the citizens of those states, are thus harming the global poor or violating our negative duties towards them. In fact, his conclusion can be shown to be wrong not least of all in the light of some of his own assumptions.

I. THE THREE STRANDS OF POGGE'S ARGUMENT

Let me begin by first giving a brief sketch of Pogge's argument (following his own crystal-clear summary in "Real World Justice"). The first step "is to show that our world is pervaded by [...] 'radical inequality.'" Radical inequality means that the worse-off are very badly off in absolute as well as in relative terms and that it is difficult or impossible for the worse-off to substantially improve their lot. Further, this inequality affects most or all aspects of the life of the worse-off and, most importantly, it is avoidable: "The better-off can improve the circumstances of the worse-off without becoming badly off themselves." (2005, 37) I have no criticism of this first step.

Pogge then presents "*in parallel* three second steps of the argument, each of which shows in a different way that the existing radical inequality involves us in harming the global poor." (2005a, 37). These three second steps refer to the effects of a common and violent history, to uncompensated exclusion from the use of natural resources and to the effects of shared social institutions.

The *first strand* of the second step attempts to appeal to readers who are attracted to historical-entitlement conceptions of justice, and emphasizes that "the social starting positions of the worse-off and the better-off have emerged from a single historical process that was pervaded by massive grievous wrongs." And he claims:

[This] approach is independent of the others. For suppose we reject the other two approaches and affirm that radical inequality is morally acceptable when it comes about pursuant to rules of the game that are morally at least somewhat plausible and observed at least for the most part. The existing radical inequality is then still condemned by the [first] approach on the ground that the rules were in fact massively violated through countless horrible crimes whose momentous effect cannot be surgically neutralized decades and centuries later. (2002, 203-4)

Moreover:

In short, then, upholding a radical inequality counts as harming the worse-off when the historical path on which this inequality arose is pervaded by grievous wrongs. (2005a, 38)

With the *second strand* of his argument Pogge explicitly wants to cater to Lockean. (2005a, 38) He explains:

Locke is assuming that, in a state of nature without money, persons are subject to the moral constraint that their unilateral appropriations must always leave "enough and as good" for others [...]. This so-called Lockean Proviso may, however, be lifted [...] if all can *rationally* consent to the alteration, that is, only if everyone will be better off under the new rules than anyone would be under the old. (2002, 22)

The better-off – we – are *harming* the worse-off insofar as the radical inequality we uphold excludes the global poor from a proportional share of the world's natural resources and any equivalent. (2005a, 40)

The *third strand* is to appeal to consequentialists. Pogge says:

On my ecumenical response to broadly consequentialist conceptions of social justice, we are *harming* the global poor if and insofar as we collaborate in imposing *unjust* social institutions upon them; and institutions are certainly unjust if and insofar as they foreseeably give rise to large-scale avoidable underfulfillment of human rights. (2005a, 46)

As Pogge emphasizes, this third strand is not addressed to libertarians. However, it seems to me that a libertarian – and most other people – might well agree that *imposing* on others an institutional order that will make them victims of infringements upon their rights *is* – under certain circumstances – harming them.

In any case, Pogge claims that the international institutional order is predominantly shaped by the rich countries, often in collaboration with the corrupt elites of the poor countries. The detrimental institutions of the international order include the *resource privilege* and the *borrowing privilege*. These privileges confer upon a group in power “the power to effect legally valid transfers of ownership rights in such resources” and “to impose internationally valid legal obligations [of paying back debts made, for example, by a dictatorial regime] upon the country at large” (2004, 270-71). Pogge rightly says that these privileges “provide strong incentives to potential predators (military officers, most frequently) to take power by force” and to oppress their people and divert state revenues into their own pockets (2005a, 49). Moreover, with tax laws the rich countries have contributed to the bribery of elites in poor countries, and by insisting “on continued and asymmetrical protections of their markets through tariffs, quotas, anti-dumping duties, export credits, and subsidies to domestic producers, greatly impairing the export opportunities of even the very poorest countries [...] these protections certainly account for a sizeable fraction of the 270 million poverty deaths since 1989.” (2005a, 50)

II. INDIVIDUAL RESPONSIBILITY UNPROVEN

I now want to provide an argument that undermines – indeed, I think, refutes – all three strands of Pogge’s argument at once.¹ I shall do so by focusing the attention on a *structural flaw* in Pogge’s argument: his argument consists of two steps – but it needs at least three. In his first step Pogge establishes the fact of radical inequality. In his second step he establishes at best the responsibility of some individual rich countries (but perhaps only the responsibility of the rich countries as a collective) for this radical inequality. Thus, what he fails to offer is a third (or perhaps fourth) step establishing the responsibility of the individual citizens of the rich countries (and before that, perhaps, their collective responsibility), that is, their responsibility in terms of the violation of a negative duty or in terms of inflicting harm.

[1] In a sister paper to this one (“Are We Violating Our Negative Duties Towards the Global Poor? A Critique of the Three Strands of Pogge’s Argument,” unpublished ms.) I also criticize the three strands separately.

Note that the first two strands of Pogge's argument ultimately come down to the accusation that "we" are "upholding" the radical inequality Pogge criticizes; while the third strand accuses us of "collaborating in imposing *unjust* social institutions." However, it is anything but clear *how* "we" "uphold" the radical inequality. I, personally, am actually not aware of "upholding" it. And as regards imposing unjust social institutions, Pogge refers, as I explained, to the resource privilege, the borrowing privilege and to certain unfair tariffs and trade regulations. But *how* exactly do I (or you) "collaborate in imposing" these institutions? It might be plausible to claim that *rich countries* uphold the radical inequality or collaborate in imposing unjust social institutions, but to show that "we" do these things too, and that we do so in a way that can really count as harming the global poor or as violating our negative duties towards them would most certainly require a very significant amount of argument.

On the Gap between Collective and Individual Responsibility

However, in my view, Pogge is too quick in moving from the responsibility of governments to that of citizens.² He takes this step – or leap, rather – literally between commas, talking, for example, about "the global institutional order for which our governments, *hence we*, bear primary responsibility" (2002, 13, my emphasis) or affirming that "the conduct of our elected representatives" is "*our* conduct" (2008, 22, Pogge's emphasis).

Yet, the assertion that if our governments bear "primary responsibility," we do as well, is clearly mistaken. First of all, "My government bears primary responsibility for X" does certainly *not* entail "I and my compatriots bear primary responsibility for X." For example, the government might do something we asked it not to do. Why should we then automatically be responsible for what it has done? Or what happens if my government decides to unjustly kill me? It is obviously wrong to say that my compatriots *and I* bear primary responsibility for my murder. The same holds if my government decides to kill me and my girlfriend. It is still obviously wrong that my compatriots *and I* bear primary responsibility for our murders. Nothing changes if my girlfriend is a foreigner. To say that *that* suddenly completely changes the story and now *does* confer upon me primary responsibility for her murder seems to be little more than a belief in magic. But then, what is the difference if the foreigner to be killed together with me is not even my girlfriend nor anyone I know at all? Why should that now confer primary responsibility on me? There is no discernible reason.

Second of all, the fact that our government violated a negative duty towards foreigners does *not* mean, for purely logical reasons, that we have also violated a negative duty. For example, maybe my government violated a negative duty not to veto a certain Security

2] This point is also made by Shei (2005). However, Shei's criticism relies on what he calls "*the contribution condition*" (148), which in my view is *not* a valid condition of moral responsibility. I also reject Shei's own, enormously sweeping and counter-intuitive account of collective responsibility.

Council resolution on behalf of an oppressed people. I certainly cannot have violated that duty, because it is logically impossible for me to violate that duty. I simply cannot veto Security Council resolutions.

In the same vein, and third of all, the fact that “we” as a collective violated a negative duty towards foreigners does not mean that the individual members of the collective violated a negative duty. Consider a collective like a football team that violates a negative duty by entering the game with more players than the rules of the game allow. The individual players are, again, not even logically able to violate that duty.

These examples show that two general claims are necessarily and clearly wrong: “Whenever my government or my state or country or ethnic group violates a duty I violate the same duty” and “Whenever my government or my state or country or ethnic group violates a duty I violate some correlative duty.” (Already the example of my government unjustly killing me and my foreign girlfriend suffices to show that both general “principles” are wrong.) Thus, Pogge cannot rely on these or similarly general principles in an attempt to derive the claim that “we” harm the global poor from the premise that a collective of rich countries or each individual rich country is doing so. Instead, he would have to provide a specific argument that *shows and explains that and how* “we” harm the global poor.

Pogge’s First Attempt to Bridge the Gap: The Upstream Factories and Joint Action

Yet, it is very difficult to find in Pogge’s work any passages providing an explanation as to *how exactly* “we” – the citizens of the rich societies, and not only our governments – violate negative duties towards the poor. Here is one, and I will quote it at length:

[...] I must not help uphold and impose upon [others] coercive social institutions under which they do not have secure access to the objects of their human rights. I would be violating this duty if, through my participation, I helped sustain a social order in which such access is not secure, in which blacks are enslaved, women disenfranchised, or servants mistreated, for example. Even if I owned no slave or employed no servants myself, I would still share responsibility: by contributing my labor to the society’s economy, my taxes to its governments, and so forth. I might honor my negative duty, perhaps, through becoming a hermit or an emigrant, but I could honor it more plausibly by working with others toward shielding the victims of injustice from the harms I help produce or, if this is possible, toward establishing secure access through institutional reform. (2002, 66)

This argument faces several problems. First of all, *why* and *how* exactly would I share responsibility just by contributing my labor to the society’s economy, my taxes to its government? *How* would I thereby *harm* the global poor or *violate a negative duty*³ towards them? To simply *claim* that I thereby share responsibility is certainly not enough.

Yet, Pogge might actually have an explanation. Elsewhere he considers

two upstream factories releasing chemicals into a river. The chemicals of each factory would cause little harm by themselves. But the mixture of chemicals from both plants

3] There can of course still be other duties and responsibilities.

causes huge harm downstream. In this sort of case, we must not hold each factory owner responsible for only the small harm he would be causing if the other did not pollute. This would leave unaccounted-for most of the harm they produce together and would thus be quite implausible. [P]rovided each factory owner knows about the effluent released by the other and can foresee the harmful effect they together produce, each owner bears responsibility for his marginal contribution, that is, for as much of the harm as would be avoided if he alone were not discharging his chemicals. Each factory owner is then responsible for most of the harm they jointly produce. (2005a, 48)

This account of collective responsibility, however, is not strong enough to support Pogge's case. After all, it is safe to assume that the marginal harm the average citizen of the rich states produces by his or her participation in the economic process of his or her state is *zero* – or at least infinitesimally close to zero, so that the infinitesimally small amount of money we give to development aid or charities or invest in academic discussions on poverty might already be a sufficient compensation. Moreover, there is no argument available in the first place that could show that by dropping out of the economic process and by ceasing to pay taxes one could not *also* harm the global poor⁴ (cf. Reitberger 2008, 389-90). This could mean one person less who buys their products. Elsewhere Pogge makes measures that impair the “export opportunities of even the very poorest countries” responsible for “a sizeable fraction of the 270 million poverty deaths since 1989” (2005a, 50). Obviously, “our” dropping out of the economy and going into the woods would harm their export opportunities even more than the other measures Pogge mentions. Thus, it would “kill” more, not fewer people. And if many of “us” did not pay taxes, the state might perhaps try to compensate for missing revenue by cutting development aid that actually worked and by offering less for possible disaster relief. Pogge therefore simply has no evidence for his claim that by paying taxes or taking part in the economy “we” harm the global poor or violate a negative duty towards them.

To be sure, it is not correct that in cases of collective action people will always only be responsible for their marginal contribution. But then, again, it would be Pogge's task to give us a mechanism that actually explains how we do become responsible. Since he does not do that (leaving aside his ideas about “delegation,” which we will turn to later), let us ourselves try to shed some light on the issue with the help of an analogy, namely with a clear case of unjustly imposing something on innocent people. This is the case of

Angela, the minions, and the ordinary citizens

In a remote, lawless area of country X there is a small town where Angela is the local strongwoman. She collects “taxes,” but she indeed provides protection in exchange and also sees to it that there are schools, health services, etc. If you do not pay the taxes, you will be imprisoned in her private jail for quite a while. The ordinary citizens pay, although they foresee that at some point Angela will use part of the money to hire 100 minions (although 70 of them would also suffice) to help her to push the big rock on

4] Cf. Reitberger 2008, 389-90.

a cliff above the poor people's boarding house over the edge, knowingly killing many poor people below. And this is indeed what happens in the end.

If country X is a Western jurisdiction, then (barring special circumstances) Angela and the minions are legally guilty of manslaughter or murder, and the ordinary citizens *of nothing*. Note that Angela and *each* of the minions is guilty of manslaughter or murder although the marginal contribution of each of them was zero: the non-participation of one of them would have made no difference at all. Yet, each of them participated in the unjust and foreseeably deadly imposition of a rock on innocent poor people, and thus each of them is guilty of murder or manslaughter.

We can also consider the situation from the perspective of self-defense law. The poor people below would certainly be justified in killing Angela and the minions above – all of them, if necessary to avert the attack. They have *no* such legal self-defense justification for killing any of the ordinary citizens paying taxes. They might have a *necessity* justification (under some US state jurisdictions) to kill a smaller number of the citizens – or, for that matter, of people from a completely different place – to save a larger number of themselves, the poor; but a necessity justification implies that the people who are harmed on its basis are *innocent and wronged* and their *rights violated*, even if justifiably so.

Thus, from the legal perspective – and I submit from the perspective of common sense – Angela and the minions are *participants* in crime, but the ordinary citizens are *not*. Pogge might still claim that they are “implicated” in the crime by paying taxes, but now this looks like mere rhetoric. This kind of “implication,” after all, intuitively and legally does not amount to a *participation in crime* or to a *violation of a negative duty*.⁵ The application of this example to the case of the citizens of the rich countries and the global poor is obvious.

Second, suppose, for the sake of argument, that Pogge were right that by paying taxes and partaking in the global economy we do harm the global poor. Then he would certainly be wrong with his claims about what would constitute the most plausible way of not harming them (cf. also Hayward 2008, 5). To wit, by participating in a conspiracy to kill an innocent person and simultaneously hiring bodyguards to protect that person I do not honor my negative duty not to harm that person “more plausibly” than by abstaining from that conspiracy in the first place.⁶ If the conspiracy succeeds I will have harmed the victim and violated a negative duty towards him, whether I paid the bodyguards or

5] Ci (2010, 90) recognizes that Pogge's account of responsibility involves a “leap” but claims that “*the leap is justified*.” He provides *no argument* for the latter assessment and overlooks that it is not only unjust to unduly limit responsibility, but also to unduly expand it.

6] A critic claimed that by “honoring a duty” Pogge means less than discharging it or complying with it, and that therefore my criticism here is a “red herring.” Seriously? First, I do not believe for a moment that Pogge really meant by “honoring” less than “complying with.” Second, if he did, then he might indeed be right – by definitional *fiat* – in claiming that one can “honor” a duty by merely compensating for its violation. The problem then, however, would be that one cannot discharge a duty by “honoring” it. And the duty demands that we discharge it, comply with it, not just “honor” it. Thus, my argument stands.

not. Nothing changes if we are not talking about a *conspiracy* to kill an innocent person (which implies an intention) but rather only about the *foreseen* killings of another person.⁷ By simultaneously hiring a private security company that is notorious for its members' penchant for rape and excessive, murderous violence *and* yet another private security company to protect the innocent people in the surrounding area from the first PSC, the CEO of a mining company somewhere in Africa certainly does *not* honor his negative duty not to harm the innocent persons in the surrounding area "more plausibly" than by abstaining from hiring the brutal and barbaric PSC in the first place. If the first company rapes women and kills innocent people he will have violated the negative duty, whether he hired the second company or not.

But what if the second security company succeeded in protecting the innocent? Well, Pogge does not require that in the above quote. "Working with others toward shielding the victims of injustice from the harms I help produce or, if this is possible, toward establishing secure access through institutional reform" is not the same as *actually* shielding them from the harm I help to produce. If the harm has occurred it has occurred; I cannot make that go away with reform efforts. As already Tim Hayward has pointed out against Pogge, compensating people for harm is simply not the same as not harming them; indeed, the possibility of compensation conceptually presupposes that the harm has occurred (Hayward 2008, 5). Thus, one can *not* discharge one's negative duty not to harm by later making amends.

Elsewhere, however, Pogge distinguishes negative duties not to harm from "intermediate" duties "to avert harms that one's own past conduct may cause in the future" (2005a, 34). Might discharging an intermediate duty to avert the harm that one's past conduct may cause amount to discharging the negative duty not to harm? I think it would. If the second PSC really had successfully protected the innocent persons in the surrounding area of the mining company from encroachments by the first, brutal company, the CEO would indeed, all else being equal, have discharged his negative duty not to let the innocent people in the surrounding area of the mining company be harmed by the first security company. Nevertheless, he would *not* have discharged his negative duty *not to impose a terrible and unnecessary risk upon them*. If at this point someone asks, "What is the difference, since after all they did not really get physically harmed?", I would invite the questioner to consider the case of someone telling a judge: "Yes, your honor, I indeed knowingly hired a serial child abuser as nurse for our kindergarten, but I also hired a private detective to keep an eye on him, and the latter indeed managed to keep the former all eight times from abusing a child. So what is the difference?" Isn't it obvious?

Besides, while the CEO of the mining company might be able to keep the first Private Security Company from harming innocent people with the help of the second

7] A condition for citizens' responsibility for a human rights deficit caused by the "imposition" of an unjust institutional order is, on Pogge's view, that they at least foresee that this order they cooperatively "impose" comes with those deficits. See Pogge 2005b, 60.

one, there is no way that “we” can shield the global poor from the harm arising from the unjust institutional order to which we allegedly contribute by paying taxes. Interestingly, Pogge even thinks that the harm we cause is quantifiable. He claims that “our obligation to compensate is limited to the amount of harm for which we become responsible by cooperating in the imposition of an unjust social order” (2005b, 60-61). However, it is far from clear what that means. How much money do you have to pay to Oxfam in order to “compensate” for one month’s contribution to the unjust institutional order killing about 20 million people every year? What impact factor does the journal need to have so that your article against global poverty compensates for 5 weeks of contribution? How can you possibly measure that? What is the unit of measurement? This is not only a “practical” or “epistemological” problem; it is a problem of intelligibility.

But we do not even have to go further into this. The global institutional order, according to Pogge, harms practically all the global poor. This means that by contributing to that institutional order you are contributing to harming all the poor affected by it. Suppose you gave all your money to Oxfam yesterday, and yet today thousands of poor people still died from poverty-related reasons. Obviously, you have not managed to avert the harm to *them*. You have not even contributed to averting the harm from them. If it had been averted, they would not be dead. The effects of the unjust global institutional order to which you contribute have killed them. So, even if your money shielded many other poor people today, it obviously did not shield those who died. You have *not* discharged your negative or intermediate duties towards them. (Recall also the “Angela” example: even if they simultaneously pay money to the “Help the poor below” program, Angela and the minions still remain guilty of murder or manslaughter if they kill many of the poor below by imposing a deadly rock on them.)

Thus, Pogge’s idea that by discharging a duty to compensate others for the harm you inflict on them you also discharge the underlying negative duty not to harm them is mistaken. However, even if this idea were not mistaken – if compensation were understood as shielding – the further idea that it is applicable to the relations between the global rich and the global poor is still mistaken.

Consequently, if by contributing my labor and my taxes to a government that imposes an unjust institutional order on others I am violating certain negative duties, then becoming a hermit is the *only* way to honor these negative duties. Secondly, by compensating someone for the harm I have done to her I am doing something or assisting someone, not refraining from doing something. I cannot, even in principle, discharge *this* duty by inaction. It is therefore certainly not a negative duty (unless one wants to engage in false labeling). That does not mean that it cannot have been derived somehow from the more fundamental negative duty. By violating that negative duty I might have incurred a positive duty to compensate. However, my point is that discharging *that* duty is not the same as discharging the more fundamental negative one.

This finding has unfortunate consequences for Pogge's argument,⁸ for duties sometimes conflict. My taxes do not only do harm, they also do good; for example, they help the poor and sick people in my own society. Besides, what about a mother and her special duties towards her children? Even if her only way to honor her negative duties towards the poor consists in becoming a hermit or an emigrant (and an emigrant to where and to what?), is she really morally required to do so, given her obligations towards her children? Intuitively, this seems to be not particularly plausible.

At this point Pogge's idea that you can fulfill the negative duty not to harm the global poor by "compensatory" or "shielding" measures would come in handy for him, for it would shield him from the charge that he makes completely unreasonable, indeed morally unacceptable demands on the rich. He could say that he does not want to drive them into the woods, but only for them to pay money to Oxfam or organize or partake in reform movements. However, this escape route is blocked by my argument above. If Pogge is right that by paying taxes and partaking in the economy you harm the global poor, then he cannot also be right in claiming that you can cease harming them by simply adopting those alternative measures that Pogge thinks are "more plausible." For the reasons adduced, they are anything but plausible; they simply cannot serve as a way to discharge the negative duties in question. Thus, in its present form Pogge's theory is inconsistent.

Incidentally, Pogge also could not escape this problem by simply abandoning the negative duty not to harm and by claiming that we only have the more complex duty not to harm without compensation. For if we do not have a duty not to harm in the first place, why should we be obliged to compensate if we do harm? We can only be obliged to compensate for a violation of a duty if we in fact *have* violated a duty.

If, however, one insists – as Pogge must, as we just saw – that there is indeed a duty not to harm the poor, then Pogge's theory demands far too much, as shown by the example of the mother required to live in the woods. Moreover, it should be noted that many of the *poor* also help to "uphold" the unjust global order, for example by working for transnational companies or mines or by transporting goods or people, etc. This would weaken their position considerably if they asked us to do otherwise. To be sure, one might argue that, as long as this order exists, we cannot reasonably expect the poor not to try to carve out a better life for themselves. But can this be expected of us? If they are not expected to live as hermits, why are we? Again, to say that the rich have other alternatives is to ignore the fact that this road is blocked. The only alternative is to live as a hermit. And it is not immediately clear why it should be more difficult for the poor to live in the woods as hermits without economical exchange with the rest of society than it would be for the rich. Besides, even if it *were* for some reasons more difficult – it might also be more difficult

8] While Hayward (2008, 5) notes the difference between discharging one's negative duty and compensating for its violation, he does not notice how extremely damaging the existence of this difference actually is for Pogge's account.

for a poor kid in a Brazilian *favela* than for one in a high school in Beverly Hills to resist becoming a contract killer. However, even if that were true, this greater difficulty might at best be a mitigating circumstance, not an excuse, let alone a justification. Analogously, if by partaking in the global economy you unjustly harm the poor, then you unjustly harm the poor – whether you are poor yourself or not.⁹

The Contradiction between Pogge's Views on Poverty and His Views on Terrorism

Pogge's problems do not end here. His idea that we (unjustly) harm the global poor or violate negative duties by doing such *prima facie* morally innocuous things as paying our taxes and going to work can also be undermined by an appeal to Pogge's own assumption that human rights "are in principle enforceable." That they are in principle enforceable means that someone's omission or, more relevantly here, someone's action can constitute a human rights violation "only in cases where it is morally permissible for some other agent to use some coercive means to force the relevant individual or collective" to desist from the omission or action (2005a, 44).

Is it permissible to force individuals in the rich countries into the woods, so that they do not continue upholding the unjust institutional order? Actually, this would intuitively seem to be a gross violation of *their* negative rights. If in an attempt to reach a "reflective equilibrium," that is to reconcile our intuitions with our principles and philosophical positions, these intuitions prove to be more resilient and fundamental than Pogge's position, then this speaks strongly in favor of rejecting Pogge's position. I do in fact think that these intuitions I just appealed to are more resilient than Pogge's position. They can also be further supported by an additional argument.

Just war theory provides the basis for this argument, by stating that non-combatants are not liable to direct attacks. It is widely accepted that, for example, a baker or a farmer is a non-combatant while a worker in a munitions factory is not. What is the difference? Jeffrie G. Murphy provides the following influential explanation:

The farmer qua farmer is, like the general, performing actions which are causally necessary for your destruction; but, unlike the general, he is not necessarily engaged in an attempt to destroy you. [...] The farmer's role bears a contingent connection to the war effort whereas the general's role bears a necessary connection to the war effort [...] The farmer is aiding the soldier qua human being whereas the general is aiding the soldier qua soldier or fighting man. (Murphy 1973, 532-34)

9] Note, by the way, that Pogge meanwhile realizes this problem, and therefore uses a mere "can" now (2010, 244 n. 48): "Only if the existing global order is unjust can our mere contribution to its imposition count as wrongful" (194). On the next page he again uses such a formulation with "can". So the question arises (and this is a question for an account of collective responsibility): when *does* the mere contribution to its imposition count as wrongful? The answer comes still a page later: if you are "affluent" (196). And why does it count if you are affluent but not when you are poor? As to be expected, Pogge provides absolutely no explanation, thus "implicating" the rich and exempting the poor by way of dogmatic stipulation.

In other words, the mere fact that a farmer is producing food which might then, in part, be eaten by the soldiers does not yet make the farmer liable to attack – and therefore, to draw on Pogge's assumption, he cannot be violating the negative rights of the enemy soldiers (not even if they are on the just side). Of course, a farmer could quite deliberately support an aggressive war with additional payments to the cause and with propaganda or other means. And this might indeed make him liable to attack (although it might still, for consequentialist, particularly rule-utilitarian, reasons, be unjustifiable to attack him, but this lack of justification would no longer be due to a *right* of the farmer not to be attacked). In my view, this is a very plausible position. Although the first farmer, the one who does not deliberately support the war, is still causally contributing to the war effort, “upholding” it, this does not mean that he is violating others' rights. He is just going about his business, as he did before the war, and this business is not, not even in a time of war, directly devoted to destroying other people. He cannot reasonably be expected to give up his work (especially, by the way, as this work not only feeds soldiers but is also necessary to feed innocents – for example children). Analogously, by simply living in a rich country and working and paying taxes there, one is *not* sufficiently and in the relevant way implicated in the plight of the poor to become liable to coercion by a third party in defense of the poor.

To be sure, liability to attack and enforceability are not the same standards. My right that others do not steal my cookie is enforceable: if someone tries to steal it, I have the right to prevent this, if necessary by force. Yet, given that a cookie is not of huge value, there apply certain proportionality constraints. Although the thief is liable to some force, he is not liable to deadly attack. However, we are not talking about cookies here but, according to Pogge, about the “largest [...] crime against humanity ever committed.” We are talking about starving people to death. And of course Pogge does regard the participation in this crime as a human rights violation. Thus, his premises that human rights are enforceable and that we are “active participants” in their massive violation and his ideas about what counts as such “participation” do imply that “we” are becoming liable to attack just by buying salad dressings in a supermarket or paying taxes.¹⁰

At least it does imply this if Pogge accepts a correct understanding of human rights. As a critic pointed out to me, Pogge could just flatly deny – but I seriously doubt that he would – that human rights are enforceable by more than ordinary governing institutions and the coercive imposition of tax burdens (for the benefit of the poor). Yes, he could. A philosopher, for example, who claims that all human beings deserve an apple and denies that any human being deserves a physical object does not involve himself in a contradiction as long as he denies that apples are physical objects. Thus, he would have achieved the coherence of his account at the price of its blatant incorrectness. What we obviously want, however, are accounts that are not only coherent but correct. And hence the question becomes whether Pogge's account is still coherent *in conjunction with what we*

10] That “we” become *liable* does not yet mean that it is *justified* to attack us, only that we have lost the *right* not to be attacked. See also my further comments in the next paragraphs.

know about the world – in particular in conjunction with what we know about the human right to life. The answer is that it is not.

Remember the “Angela” example. Angela and the minions are liable to defensive attack – and thus not only to taxation – when they try to impose the rock onto the poor below. They are liable to attack because they are themselves participating in an unjust attack on the poor, violating their right to life. (Even the unjust potentially lethal attack on a person is a violation of the person’s right to life and not just the successful attack. If, however, one would like to take the latter position, this would only show that *less* than a violation of a right to life can be enough to justify lethal counter-measures.) The ordinary citizens of the example, however, are not liable to attack, precisely because they are not participating in a rights-violation. Thus, in the light of the actual normative status and implications of the right to life, a responsible adult person is either not unjustifiably violating another person’s right to life or liable to potentially lethal counter-attack. One simply cannot have it both ways.

But it seems that “we” are *not* liable to potentially lethal attack. This then implies that “we” do *not* violate “their” human rights and hence are *not* active participants in the largest crime against humanity ever committed.¹¹

Incidentally, Pogge actually *agrees* that “we” are not liable to attack – which seriously undermines his position. Discussing the attack on the World Trade Center in September 2001 he claims that the majority killed in these attacks were *innocent*, and he explains:

By calling a person innocent, I mean that this person poses no threat and has done nothing that would justify attacking her with lethal force. (2008, 5)

However, the majority of the people (practically all) killed in those attacks were active participants in the world economic system and also taxpayers and thus “active participants in the largest ... crime against humanity ever committed.” Still, he thinks that they are not liable to attack. But if they are not liable to attack then, according to his own premises, they cannot be violators of human rights. Pogge’s position is inconsistent.

It is, by the way, irrelevant that al-Qaeda did not attack those and other civilians because they were harming the global poor (as such) but for other reasons. If the civilians had not been innocent, the attack could still have been unjustified, for reasons Pogge mentions himself: for example the attacks were not necessary to achieve the good or supposed good the terrorists aimed at; or they were not in the least likely to contribute to achieving it. Yet, the *intentions* that guide an attack on a person are completely irrelevant for the *liability* of the targets – a person that is killed for the wrong reasons can still have been liable to attack, can still have done something that *would* have justified attacking her with lethal force. But Pogge insists that those taxpaying civilians who, working in the World Trade Center, will have “upheld” the unjust international institutional order to a

^{11]} To be sure, this argument does not contradict the possibility that we are harming them in some way below the threshold of human rights violations.

much greater extent than most of “us,” are innocent. Thus, the argument stands: Pogge’s position is inconsistent.

Just for the sake of argument: What would happen with this argument if Pogge or a Poggean would bite the bullet and say that “we” are liable to attack? Would this then not make my argument question-begging? After all, if Pogge were right that we are violating the human rights of the poor, then the conclusion that “we” are liable to attack might indeed be correct. This conclusion could, it seems, not be rejected by simply *postulating* that we are not liable to attack and then conveniently deriving the falsity of Pogge’s premises.

However, this is a misunderstanding. I would not have to present my appeal to just war theory and Pogge’s enforceability requirement as a knock-down argument against a radicalized Poggean. *If* Pogge had actually *shown* that “we” are violating human rights, I would without any hesitance say that we are liable to attack. However, as I have argued in this paper, Pogge has nowhere come near to showing anything of this sort. Thus, even against a radicalized Poggean the argument in terms of just war theory would still work as an appeal to plausibility considerations: we weigh the plausibility of the conclusion of the argument in question against Pogge’s contradicting claims. Given that, as it seems, our intuitions and just war theory are able to give very strong support to the thesis that “we” are not liable to attack even if this is the only way to keep us from shopping, paying taxes or going to work, whereas Pogge is not able to muster arguments or intuitions that undermine this thesis, the argument by appeal to just war theory further confirms my skeptical stance towards the claims even of a more consistent Poggean.

*Pogge’s Second Attempt to Bridge the Gap: Political Representation*¹²

Let me finally turn to Pogge’s attempt to use the concept of “political representation” to impute on us the largest crime against humanity ever committed. Arguing against Debra Satz, who is also rightly skeptical with regard to Pogge’s accusations against “us,” the citizens of the rich countries (Satz 2005, esp. 50-51),¹³ Pogge says:

Our politicians and negotiators wield powers *we* delegate. Their decisions and agreements would be of little consequence if they were not so empowered by us.

12] To be sure, there are other accounts of collective or national responsibility, but none of those other accounts is invoked by Pogge; and I do not have the space to deal with them here. I intend, however, to deal at least with David Miller’s well-known account of national responsibility on another occasion. Suffice it to say here that, in my view, Miller’s account fails for some of the same reasons Pogge’s appeal to political representation fails.

13] I am even more skeptical than she is. Satz believes in something she calls “civic responsibility – the responsibility of each citizen to do her part in honoring the state’s obligations.” This seems to be the outward-oriented sister of the inward-oriented political obligation. I have yet to come across a plausible argument for political obligation; and the situation of civic responsibility does not appear to be better. See also my remarks on “political representation” and “delegation of power” below. Pogge’s reply to Satz, by the way, misses the point. See in particular his use of the example of the campaign against slavery in Manchester in 1787, see Pogge 2005b, 81ff. Maybe “we” could indeed eradicate poverty. But that is not the issue here. The issue is whether we are violating a negative duty or are harming someone if we do not eradicate it.

[...] Satz is quite wrong to believe that the obscurity of political decision-making disconnects us from responsibility. We cannot disown responsibility for how our politicians and negotiators wield our collective power by appeal to *our own* failure to insist on transparency and accountability. (2005b, 79)

While I completely agree with Pogge that one cannot dissociate oneself from responsibility by one's own failure to insist on transparency and accountability, it still has to be noted that this is not the issue. The issue is whether by "delegating" one's power to a rich state a citizen of this state is violating a negative duty or harming someone. And the claim that he does is, again, vulnerable to the series of arguments I have adduced above.

However, the word "delegate" sounds of course very "political." Perhaps the delegation of power Pogge is talking about does not merely involve the paying of taxes or the involvement in the economic process. Maybe it has something to do with what is called "democratic representation." After all, Pogge also says that "our collective power is wielded *in our name*" (2005b, 79).

But – so what? To be fair, there are certain interpretations of democratic theory which might have an answer to this obvious question. Michael Green, for example, claims in the context of just war theory:

In a perfect democracy each and every person would be [...] fully responsible, because if the method of consent has been in operation, each has agreed to the decision reached by that method, or, if not that, to be bound by whatever decision was reached by that method. [...] Within democratic theory, it is not clear that even children, the insane, and the mentally handicapped are innocent. These have guardians who represent their interests. These guardians are still bound by and to the general will of the society in which they find themselves in representing their interests. Thus, even if as a matter of fact political authorities are responsible for most wars and citizens are usually forced into being soldiers against their will, it is not clear that this absolves them from responsibility if they were responsible for letting themselves be put in circumstances in which they are so passive. (Green 1992, 51-52)

These ideas, it seems, could also be applied to the issue of radical inequality. The problem, however, is that here Green might give us a more or less accurate characterization of totalitarian democracy à la Rousseau, but the current paradigm is the liberal-democratic one. And the characteristic of *liberal* democracy is precisely that the individual is *not* required to accept whatever is collectively decided. Rather, such decisions are constrained by the space of individual rights. Since Pogge also wants to cater to libertarians, it is worthwhile to take note of what John Locke has to say about the idea of the responsibility of the whole populace:

For the People having given to their Governors no Power to do an unjust thing, such as is to make an unjust War, (for they never had such a Power in themselves:) They ought not to be charged, as guilty of the Violence and Unjustice that is committed in an Unjust War, any farther, than they actually abet it; no more, than they are to be thought guilty of any Violence or Oppression their Governors should use upon the People themselves, or any part of their Fellow Subjects, they having impowered them no more to the one, than to the other. (Locke 2002, 388, § 179)

To be sure, Locke does not deny that citizens can be guilty to the degree that they do abet the crimes of their government. And I agree with him. I do not deny that, for example, citizens of a democratic state who vote for a known war criminal as prime minister or president then become liable to attack if this man is committing crimes of aggression against other peoples.¹⁴ The voters who voted for a decent person, however, do not become liable to attack. Moreover, deliberately voting for a known war criminal is one thing; paying taxes, going to work and buying in supermarkets is something completely different. It does certainly not amount to “abetting.” Thus, Pogge’s appeal to the delegation of power does not support his sweeping claims about the individual responsibility of not only some of us but of “us,” period.

Moreover, the claim that “we” delegate our power to our so-called political “representatives” is wrong. Let me illustrate this contention by first looking at an uncontroversial example of the delegation of power: I have some legal matter to settle. I look for a lawyer, find someone I like and trust, tell him what to do and sign a grant of power of attorney which says that the settlements she reaches are binding on me. That is delegation of power. Even here, however, her actions are not mine, not even actions she commits in my name. Strangely, Pogge at one point goes so far as to say that the conduct of “our elected representatives” is *our* conduct (2008, 22). However, for obvious logical and conceptual reasons the conduct of *another* entity (be it a person or an institution) cannot be *mine*. (If, however, it were, then *all* adult citizens of a country waging an unjust war would be liable to attack. Their president’s waging the war would be their waging the war. Pogge just cannot have it both ways.) And if the lawyer decides to threaten other people at gun point to sign contracts favorable to me, I do not bear the slightest responsibility for this if I could not reasonably foresee or suspect that this would happen. If I am informed that this lawyer acts in this way, I should fire her. (Yet, my last attempts at firing the chief executive of my state or giving her instructions on the phone on how to handle the banking crisis were unsuccessful.)

The case of political “delegation of power” is not like the lawyer example. It is more like this: I am born in a certain country. At some point I realize that the whole country has been taken over by one law firm. It has the monopoly. Every attempt of other people within the country to form their own law firm is crushed by the *Überfirm*. Any attempt by people to let their national legal matters be handled by one of the foreign law firms is crushed by the national *Überfirm*. Whenever I try to buy something or import something, the *Überfirm* comes and forces me to pay “handling fees” to them. When I call the management of the *Überfirm* and tell them that I do not want their “services” any more, they tell me that I am crazy. Mostly, I do not even get connected: “Don’t call us, we call you.” However, for public relations reasons, to enhance the company’s acceptance in the

[14] Again, that they become *liable* to attack, that they are *not innocent* in the relevant sense, that they lose their *right* not to be attacked does not yet mean that they *may* be attacked. Further considerations would come into play here (these are, however, not relevant in the present context). See Steinhoff 2007, 130-32.

population, it some time ago came up with the idea of allowing the population to vote for the highest executives of the firm. Theoretically, everyone is eligible; in practice, however, only people that have for many years been allied with one of the major “parties” within the firm, the *Business as Usual Party* and *The Business as Usual with Cream on Top Party*, have any real chance to get elected. Sometimes I vote, persuading myself that by doing so I can somehow contribute to the lesser of two evils being elected; sometimes I do not.

At no point have I signed any grant of power of attorney stating that I authorize the Überfirm to settle matters in my name or that what they decide is binding on me. By voting I do not give any of those I vote for (let alone those I do not vote for but who will be elected anyway) any permission or authorization to “represent” me or to speak in my name. I just try to exert influence, however marginal, on who will *claim* to represent me and will in fact make decisions that will greatly affect me, whether I like those decisions or not. Moreover, I try to exert this influence in a situation where I know that in the end, whether I like it or not, someone *will* claim to represent me and make decisions in my name. So where is the “delegation of power” here? As a simple matter of fact: there isn’t any. I did not *delegate* any power; rather, I tried to somehow *influence* a power that is already there, and perhaps much so against my wishes (thus, by voting for a certain person within an unjust institution I certainly did *not* vote for that unjust institution itself).¹⁵

Let me give a second example. There is a big transnational corporation, which, among other things, also owns a private military company with which poor people sometimes have enormously unpleasant encounters. As a public relations measure, the corporation decides to allow people all over the world to elect its CEO, and it offers five candidates. Two women in Sudan think that this is a good opportunity to have at least some beneficial influence on this nasty corporation, and they vote for the least disgusting of the five candidates. He indeed gets elected, and soon after has the private military company, “in the name of all those fine people who elected me,” invade Liberia to set up a lucrative mining company. Many Liberians get killed in the process. Is this invasion the act of the two Sudanese women? Obviously not. Do the two women share in the responsibility for the invasion and for the unjust killings? That is utterly counter-intuitive. If Pogge thinks otherwise, then he would have much explaining to do. It is not only that the two woman did not *delegate* any power, they also did not delegate any *power* (nor do “we” by voting). What “power” are they supposed to have “delegated?” Pogge simply *claims* that by voting for our alleged “representatives” we are automatically responsible for the wrongs they do. For the reasons given, this claim is not only entirely unwarranted, it is also wrong.

15] Incidentally, whether the citizens *could* overcome the Überfirm if they collectively acted against it is completely beside the point. I might also be able to overcome a robber who is robbing somebody else. That does not mean that by not overcoming the robber I violate a negative duty, however much the robber might claim to act on my behalf and however often I said on earlier occasions: “Well, if we cannot completely get rid of robbers, than I’d rather have him.”

III. CONCLUSION

In this paper I argued that Pogge's charge that "we" are harming the global poor or violating our negative duties towards them is unjustified and indeed wrong.

I first challenged his rather blanket claim that if "our" governments or states harm people or violate negative duties towards them, then "we" do so as well. I then argued that indeed even Pogge's *own* assumptions, in combination with some entirely plausible additional premises, imply that we do *not* harm the global poor or violate our negative duties towards them.

1. Using several examples I showed that two general claims are necessarily and clearly wrong: "Whenever my government or my state or country or ethnic group violates a duty I violate the same duty" and "Whenever my government or my state or country or ethnic group violates a duty I violate some correlative duty." Thus, Pogge would have to give a specific argument that *shows and explains that and how* "we" harm the global poor.

2. The only mechanism Pogge mentions, however, is that we are paying taxes and taking part in the economy, and thereby somehow "contribute" to upholding the unjust institutional order. Yet, it is not clear *why and how* we thereby *harm* the global poor or *violate a negative duty* towards them. His example for sharing in collective responsibility, the example of the two upstream factories releasing chemicals into a river, completely *undermines* his case: the marginal harm the average citizen of the rich states produces by his participation in the economic process of his state is *zero* – or at least infinitesimally close to zero. In fact, perhaps it is even negative: Pogge simply has no evidence for his claim that by paying taxes or taking part in the economy "we" harm the global poor or violate a negative duty towards them.

3. Pogge's idea that by discharging a duty to compensate others for the harm you inflict on them you also discharge the underlying negative duty not to harm them is mistaken. It is also mistaken to suggest that one could shield the poor from the harm allegedly produced by paying taxes or partaking in the global economy.

4. Consequently, if by contributing my labor and my taxes to a government that imposes an unjust institutional order on others I am violating certain negative duties, then becoming a hermit is the *only* way to honor these negative duties. However, then it seems that these duties are unreasonably demanding – and unreasonably demanding not only on the rich, but also on many poor – and therefore cannot be valid duties at all.

5. Pogge could not escape this problem by simply dropping the negative duty not to harm and by claiming that we only have the more complex duty not to harm without compensation. For if we do not have a duty not to harm in the first place, why should we be obliged to compensate if we do harm? We can only be obliged to compensate for a violation of a duty if we in fact have violated a duty.

6. On Pogge's own assumption human rights "are in principle enforceable." He also claims that "we" are active participants in the world economic system and taxpayers and thus "active participants in the largest [...] crime against humanity ever committed." Yet, he claims that most of "us" are "innocent," that is, that we pose no threat and most of "us" have "done nothing that would justify attacking [us] with lethal force." This position is inconsistent. If "we" really have done nothing that would justify attacking us with lethal force, then we can hardly be active participants in the largest crime against humanity ever committed.

In the last section of this paper I dealt with Pogge's attempt to use the concept of "political representation" or "delegation of power" to impute on us the responsibility for harming the global poor or violating a negative duty towards them. This attempt fails for three reasons:

1. As Locke emphasizes, simply being the subject of a government (including a liberal-democratic one) does not make one responsible for the crimes that that government or state commits. One is only responsible to the degree that one actually abets those crimes. However, simply paying taxes or taking part in the economy cannot count as "abetting" (not least for reasons already adduced).

2. The claim that "we" delegate our power to our so-called political "representatives" is wrong. I tried to show this by comparing real delegation of power, for example by signing a grant of power of attorney, with what actually happens in states. There simply is no relationship between citizens and states that could in any literal sense be described as a delegation of powers from the individual to the state. There is rather the *assumption* of power *by* the state.

3. Voting for someone does not automatically make us responsible for the act of the person we voted for if this person is actually elected, as my example with the two Sudanese woman shows. Moreover, voting for a person within an institution does not amount to voting *for* the institution.

I conclude that Pogge's claim that "we" are harming the global poor or violating negative duties towards them or with regard to them is unwarranted and, moreover, wrong.¹⁶

ustnhoff@hku.hk

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Global or National Justice? An Analysis of Pogge's and Buchanan's Reply to Rawls's *Law of Peoples*

Valentin Stoian
Central European University

Abstract. The paper discusses Thomas Pogge's and Allan Buchanan's criticisms of Rawls' *Law of Peoples*. Rawls argues for the exclusion of distributive justice from the global arena. Pogge and Buchanan attack Rawls starting from the premise that if there is a global basic structure, then there should be global distributive justice. The paper accepts the existence of a global system which resembles the domestic basic structure, but argues that the Rawlsian argument is still tenable. Rawls argues that because the basic structure, made up by social and political institutions, deeply affects the lives of individuals, it must be considered the primary subject of justice. However, in the *Law of Peoples*, Rawls refuses to establish principles of distributive justice at the global level by arguing that no basic structure exists. He uses a two-step model of the original position to establish principles of justice at the global level. In *Realizing Rawls*, Pogge disapproves of Rawls not using a one-time global original position model in order to arrive at the global definition of justice. Pogge attacks the two-step model and defends a single global original position. Buchanan, in "Rawls' Law of Peoples: Rules for a Vanished Westphalian World," accepts the two-step model, but argues that a global original position with peoples as represented parties would lead to more stringent demands of global distributive justice. The paper incorporates Laura Valentini's distinction between interactional coercion and systemic coercion, but argues that even if the global system is systemically coercive it does not need to be subjected to Rawls' principles of justice for domestic societies. Rather, it can be reformed to become less coercive. Then the paper argues that in this non-coercive system of internally just states, Pogge and Buchanan would not have an argument against Rawls.

Key words: global justice, Pogge, Buchanan, Rawls, coercion.

John Rawls seems to have disappointed many when trying to expand his discussion of internal domestic justice to the international plane. As Rawls was known for his highly egalitarian two principles of justice, which are based on a maximin theory, readers would have expected him to draw similar conclusions for the international arena. However, Rawls refuses to extend his sympathies for the least advantaged to the global poor. Rather, he chooses conservative principles of justice in the international sphere, placing such desiderata as state sovereignty and the principle of non-intervention at the core, to be tempered only by a universal demand for the respect of basic human rights.

This paper will discuss criticisms brought against Rawls by two authors: Allan Buchanan and Thomas Pogge. It will present Rawls's argument that justice belongs to the basic structure and the two-step original position model. Then, it will discuss the interaction-based criticism of Pogge and Buchanan, underlining the differences among the two arguments. The paper will argue for Rawls' interpretation of the law of nations.

Rather than attacking Rawls' normative premises, which both accept, Pogge and Buchanan have went against his empirical premise. Rawls's normative premise, that the basic structure should be a subject of justice is rather difficult to reject. Unlike the libertarians, Rawls believes that the conditions under which a transaction is carried

through should be fair, rather than just the consent of the parties free. Because the basic structure deeply affects these conditions, Rawls has argued and all his critics have accepted, it should be the subject of justice. However, his detractors have argued that if there is a global basic structure, with similar characteristics as the internal one, it should also be a subject of justice.

This paper will proceed the opposite way. It will accept the empirical premise of Pogge and Buchanan: that the current international system has similar features to the domestic basic structure. It is coercive and affects the life prospects of individuals. Firstly, relying on Laura Valentini's distinction between interactional and systemic coercion, the paper will argue that the global basic structure is only systemically and not interactionally coercive (no group agent meaningfully coerces other individuals or group agents in the same way as a state coerces citizens). On the other hand, the domestic basic structure is both interactionally and systemically coercive. Moreover, for a state to exist, there necessarily has to be an interactionally coercive structure. Thus, the paper will maintain that Rawls' suggestions in *Law of Peoples* are meant to make the current global basic structure less coercive and thus, if fully realized, there is no reason to impose on the global system the same requirements as for domestic systems.

Secondly, after claiming that the international system can be made less coercive, the pervasive impact theory (Abizadeh 2007) shall be rejected. According to this theory, the duties of global are triggered not because of coercion, but because the basic structure has pervasive impact on the life of individuals. Yet, it can be argued that internal democracy in a non-coercive world of just states allows for peoples to decide on their economic future at the domestic level. In the world of Rawls' *Law of Peoples* the only pervasive impact would be that of the domestic basic structure.

Finally, against Buchanan, the paper will argue that Rawls's principles allow enough space for states to democratically participate or to have an important say in the global affairs. Under the current, conservative arrangements, based on state sovereignty as they are, even small states can participate and have an important word to say. Therefore, Rawls' apparently conventional principles can give enough satisfaction to Buchanan's more stringent demands.

I. LITERATURE REVIEW

John Rawls takes up his discussion of the basic structure as a subject of justice and establishes the normative premise on which the argument will follow in, among other places, the third part of *Political Liberalism*. Against utilitarians, Rawls establishes that different moral principles are necessary for the conduct of individuals and for the assessment of institutions. He asserts that the principles of justice, which he had established in *A Theory of Justice* are not applicable for a general theory, but only to the basic structure of a society. This can be argued due to the fact that these two principles, applied to other cases,

would give self-contradicting results. For example, an internally just, in Rawlsian terms, church, would be impossible (Rawls 1993, 260-61).

Secondly, against libertarians, Rawls defends his concept of basic structure by showing that their own conception of justice, as a series of internally just transactions is not self sufficient. For example, Rawls argues, even if justice is established at the beginning and then all transactions are fair, due to historical contingencies and social trends, the society will move away from just conditions. In other words, some will accumulate far too much power and therefore subsequent transactions will end up not being fair (Rawls 1993, 265-67).

Finally, Rawls establishes his notion of basic structure, as “the institutions that comprise the social background” and “those operations that continually adjust and compensate for the inevitable tendencies away from background fairness.” (Rawls 1993, 268) The main reason for which it should be the subject of justice is that it deeply and unequivocally shapes the life prospects and expectations of individuals. Moreover, the way the basic structure is fashioned is the basis for the types and degree of inequalities which will be present at any time in the given society. The basic structure is the one which allows the development or under-development of natural talents, as well as for the advantage or lack of advantage given by birth. Finally, individuals cannot escape the basic structure they are born into without great costs. If they disobey the law they are coerced and if they leave the state they are born into, they lose everything. Thus, in Rawls’ conception, the basic structure is the crucial decider in the life of individuals (Rawls 1993, 268).

However, in *Political Liberalism*, Rawls leaves aside the problem of justice among nations and places it merely in a footnote. In this rather ambiguous footnote, Rawls claims that we are “better prepared” to take up the problem of justice for a society, which we can see as a more or less self-sufficient scheme of social cooperation. He does admit that we must find the ultimate system, the one which is the ultimate background of social transactions, but still remains at the conclusion that since culture is also part of this background and since only a national society possesses a complete culture, we should look for justice primordialily at the national level (Rawls 1993, 272).

Rawls comes back to the problem of international justice in *The Law of Peoples*. There, Rawls starts from a two-step original position mode. In the first step, citizens establish just internal arrangements for their domestic societies. Then, peoples, understood as politically organized communities, connected by just democratic institutions, a common culture (“common sympathies”) and a moral nature, come together in the second original position. In this second original position, the representatives of peoples, modeled as equal and rational, choose principles for the law of peoples (Rawls 1999, 33-34). However, instead of offering a theory of distributive justice among peoples, Rawls comes up with surprisingly modest principles of the law of peoples. Chief among such principles is the principle of equality between peoples, followed by *pacta sunt servanda*. The third principle looks like a combination of the first two, while the rest sanction a duty of non-intervention, a duty not to instigate war, a duty to honor human rights, a duty to act humanely in war and finally a duty

of assistance to less developed societies. Moreover, no hierarchy between the principles is clearly established, and even if Rawls claims that the duty of non-intervention should be qualified by the general requirement to protect human rights, he places the duty towards human rights lower in the list than the principle of non-interference (Rawls 1999, 37).

One thing to be kept in mind at this point is that later in the book, Rawls directly contrasts his work to the cosmopolitan ideal of global distributive justice and rejects the latter. His rejection is based on the argument that it would impose unfair burdens on societies that have cultural prerequisites for economic development. As long as societies that do not have these prerequisites are well ordered, Rawls' argument goes, the richer societies have no duty of assistance. One of his examples is based on two well ordered societies, one which has a decline in birthrates and one which, due to cultural reasons, freely accepted by women, keeps a high birthrate. The society with the lower birthrate will now be considerably richer, and it would be unfair to subject it to the stringencies of a global principle of distributive justice (Rawls 1999, 40).

The first attack on Rawls comes from Allan Buchanan. Buchanan argues that, when conceiving the principles of the Law of Peoples, Rawls had in mind a Westphalian world. In other words, Buchanan claims, the empirical premise on which Rawls bases his argument is false. Unlike the Westphalian world which Rawls envisions, the world now has a global basic structure.

Buchanan, however, is quite conservative in his portrayal of how the existence of the global basic structure can affect the situation. Rather than globalizing the original position to its very end, Buchanan accepts the two-step model. The representatives in the second original position are still representatives of peoples and the law of peoples remains a law for the conduct of business among peoples. Thus, the basic subject stays the same. However, the principles chosen are rather different. These would involve a principle of equality of opportunity, a principle of democratic participation and a principle of limiting economic inequalities. The first principle would involve the participation of peoples in international financial and political institutions regardless of their natural endowments with resources or other material benefits. The second principle would signify the equal participation of the peoples in international institutions rather than allowing for the disproportionate powers of certain wealthier or more powerful nations. Finally, the third principle is supported by Buchanan by arguing that if the relevant actors are still peoples, even inegalitarian societies would support an equalitarian global principle of redistribution (Buchanan 2000, 711-12).

In a text ten years older than the *Law of Peoples*, Thomas Pogge goes much further in his criticism. Rather than accepting the two-step model, Pogge demands the full globalization of the original position. He argues that because there are certain inconsistencies in Rawls' texts, he will interpret Rawls' arguments in lights of his moral individualism. Thus, starting from the only notes on global justice available from Rawls' texts at the time, Pogge views two possible conceptions of a global basic original position. The first possibility Pogge discusses is still based on the two-step model. However, unlike

in Rawls, the representatives in the second session of the original position represent individuals rather than states. The second possible interpretation is more akin to Rawls and Buchanan's. It views the representatives in the second session as the representatives of states. Pogge then proposes his own alternative of the original position: he jettisons the two-step model completely and states that the only valuable situation is a single, global original position, which includes all individuals (Pogge 1989, 245).

Pogge then moves to the charge against Rawls' conception. He proceeds by comparing his own alternative to both constructs of Rawls and argues the global position is better. His first argument compares his proposal to the two-step model with representatives of states in the second step. His accusations look similar to that which Rawls himself had brought against the libertarians. In a Rawlsian world, Pogge claims, the same processes would take place that Rawls himself claims would take place in a libertarian world. Even if the initial distribution was fair, Pogge argues that free bargaining enforced by *pacta sunt servanda* among societies would lead to a concentration of power in the hands of some and the possibility of less than free deals at a later time. Moreover, even first order principles would be compromised in such a world. Certain societies would lack enough material resources to ensure basic human rights. War and the fear of war will turn peoples against each other and make them live in a perpetual state of nature. Finally, Pogge argues that Rawls' commitment to moral individualism is incompatible with giving states a voice in the global original position (Pogge 1989, 244).

Then, Pogge continues his argument by showing how the global, one time original position is superior to the individualistic two-step model. Firstly, representatives who have chosen principles of domestic justice would regret their choices once they find out that their society is part of a global institutional system. Secondly, any two-step model would accept that national principles of justice could be developed without looking to the international system. Eventually, Pogge concludes that a global one-time original position would not take the state system for granted, would allow for cultural diversity and would not suffer from the over-complexity associated with inter-state rules (Pogge 1989, 244).

II. ON THE GLOBAL BASIC STRUCTURE

Once again, before proceeding to the discussion of the arguments, the paper will accept the empirical premise on which Pogge and Buchanan's argument lie: that there exists a system of global interactions, which, at this time, affects the distributional autonomy of states and deeply shapes the life prospects of individuals. The paper will defend the thesis that this system should be reformed, but that realizing Rawls' proposals in the *Law of Peoples* is all that can be morally demanded of the global system. Asking to subject the global system to Rawls' principles of justice for domestic societies is too much.

Firstly, the global system is not coercive in the sense that its national correspondent is. While financial transactions and intellectual property rights exist, they are still enforced by the respective states. One should remember the history of the church and state during

the medieval period to understand that, as coercive and unjust the verdicts of the church were, people were burned at the stake not by agents of the church but by representatives of the secular power. Similarly, financial institutions might force states into high-interest loans, but it is their own states which, for example, ban the right to strike and to enter trade unions.

Anti-cosmopolitans have rallied to the same argument in defense of Rawls. Thomas Nagel (2005) and Michael Blake (2001) have argued that, since only states use coercion, and only coercion needs justification, only states need to be internally just. Because a person needs to feel that he is coerced "in his name" (Nagel) and because only physical coercion violates autonomy (Blake), the two argue against global justice. They were criticized by Arash Abizadeh (2007), who pointed to coercion at the borders as a case for global justice. The criticism of Laura Valentini (2011) goes even further, as she reinterprets the very meaning of the term coercion and maintains that coercion can be also systemic. She argues that "a system of rules *S* is coercive if it foreseeably and avoidably places nontrivial constraints on some agents' freedom, compared to their freedom in the absence of that system" (Valentini 2011, 212). In a clever fashion she distinguishes between interactional coercion (that performed by an agent, even a group agent, such as the state) and systemic coercion, created merely by a system of rules (Valentini 2011, 215). On the face of it, if one accepts Buchanan's empirical premise (that a global structure exists, which affects distributional autonomy of states), then Valentini's argument would establish the cosmopolitan conclusion. Yet, the global system of today is only systemically coercive, since no global authority corresponding to a coercive group agent exists.

Valentini (2011, 218) herself realizes that her argument does not necessarily lead to cosmopolitanism. Discussing the case of the WTO, she accepts that all her argument might require is smaller bargaining power differentials in the WTO, which would lead to fairer results. All that Valentini's argument establishes is that coercion can be understood more widely than before, as either systemic or interactional coercion. Yet, a system like the current global one can be reformed in two ways (as one can imply from Valentini's above mentioned WTO discussion): it can be made to conform to Rawls' two principles of justice, while keeping its coerciveness, or it can be made less coercive. Fully realizing Rawls' principle of equality of peoples would solve the problem of possible and currently existing coercion at the global level.

However, if one argues that the international system can be made to avoid the problems of the internationally coercive global structure argument one would have to show that and why the domestic system cannot. This can be simply done by arguing that cooperation between individuals necessarily requires assurance between participants and thus coercion (of the interactional type), while international cooperation does not. A system of states might be coercive (either interactionally or systemically) but it does not necessarily need to be in order to function as a system of just states. Cooperation between individuals has to be coercive, at least in the case of a modern, industrialized society. Thus, conceptually, a society of individuals requires a coercive state and socioeconomic justice,

but a global system in which interactions are not coercive (the society of Rawls' *Law of Peoples*-even accepting wide scale international interaction) the demands of justice are not triggered.

Secondly, once it has been established that a non-coercive (either systemically or interactionally) international system can exist, other justifications for it triggering duties of justice have to be rejected. The most obvious one is the pervasive impact thesis: that the global system has (and would also have in the world of Rawls' *Law of Peoples*) a pervasive impact on the lives of individuals. But, there is no reason not to believe that in a non-coercive world of internally democratic states societies cannot choose the extent to which they are affected by the global system. Although poor, if a society is internally just, its members have a voice in the domestic arena. Therefore, they can freely discuss measures to end any subservience, can apply them and enforce them against non-compliance. Once internal Rawlsian justice is established, a just state can, in a system like that suggested by Rawls in the *Law of Peoples* freely choose to enter or abstain from entering into economic relations with other states. Moreover, in such a system, both the commencement and the content of economic relations would be non-coercive. There is no reason to believe that in such a world the nightmare scenario which Pogge describes would take place. A one-time global original position would not be required.

The same argument can be made against Buchanan's less sweeping statement in favor of a two-step original position, which, however, results in several principles of justice among states. It can be said that Rawls' theory fully includes Buchanan's demands and that it is not necessary to develop it in the way Buchanan does.

Firstly, the principle of equality of peoples presupposes sovereignty and equal participation in the world's institutions. For example, no institution can be established unless there is unanimous agreement of the participant parties. Moreover, most institutions, so established will make decisions by the rule of unanimity, or when departing from it, will only depart to the extent that all members agree. The most quoted example is the UN Security Council voting rules, which confers a privileged position to certain powerful nations. Or, alternatively, the IMF, in which the share of votes is given by the economic contribution of each state, is also quoted as an example. However, what these critics refuse to say is that most other institutions actually offer a great deal of democratic participation. It has to be remembered that in the General Assembly of the United Nations, all countries count as equals. Moreover, certain majorities actually are carried by smaller countries against larger countries. For example, resolutions which condemn Israel and which would have been blocked in the Security Council, were adopted several times in the General Assembly. Moreover, countries like Sudan and Saudi Arabia have ended up in the United Nations Human Rights Committee. In addition, the IMF takes decision by a supermajority and the US only has the power to block a decision. In other words, rather than being the preferred playground of the few and powerful states, the current international order, based on principles similar to those averred by Rawls offer a

wide chance of democratic participation for small states. Rarely there is a departure from unanimity, and when there is, it still must have a unanimous decision in the background.

Buchanan's second claim is that states would choose a principle of fair equality of opportunity, which implies their equal participation in the global arena regardless of their natural endowments. However, this seems also included in the duty of assistance to the point in which the society becomes well-ordered. Once again, at the moment in which a society becomes well-ordered, it can participate meaningfully in a well-ordered international system. In order to prove that more than well-orderedness is necessary, Buchanan would have to show how a well-ordered but poor society is precluded from having an equal share in the global community. In a society based on equality, all well-ordered societies have the opportunity to engage others equally, regardless of their own lack of resources.

The arguments made by Pogge and Buchanan seem to take the world as it exists today for granted (with a systemically coercive global system and internally unjust states) and argue that the only way out of this problem is full Rawlsian justice at the global level. In addition to the theoretical challenges presented above, it can be argued that, attempting to make the international system Rawlsianly just at this time can lead to counterintuitive and undesirable consequences.

It is true that many societies are not internally just and therefore their citizens do not have a voice. Thus, it can be argued that, if these societies are left to their own devices, and if Rawls' proposals in *Law of Peoples* are implemented, then there is no duty imposed on the just societies to minimize poverty in unjust societies, in which elites keep their populations in poverty without necessarily egregiously infringing human rights. Moreover, such societies could not freely raise the question of their own dependence and try to find democratic solutions to it. Therefore, the global original position would be needed to impose duties of justice on the affluent societies rather than to hope in vain that less affluent societies would first become internally just.

However, such an argument would run into the trouble of demanding unacceptable actions from the affluent well ordered societies. Rather than insisting that these help the less affluent and less well-ordered societies become well ordered, it would demand that the affluent and well-ordered societies impose well-orderedness on the less well ordered. This conclusion can be reached by looking how the situation of the global poor can be maximized. Firstly, just a transfer of resources, through their unjust states would rather have deleterious effects, in the sense that it would strengthen rather than weaken the power of local oppressive elites. Therefore, before maximizing the share of resources that the global worst off enjoy, the affluent, well ordered societies would have to either make sure that these societies are internally just and transferred resources are not squandered. This could be done either by first imposing well-orderedness or by finding ways to transfer resources without any interference of local elites. The second is probably difficult to achieve. The first could be achieved by two ways: either non-violent promotion of democracy or massive military intervention. The second also leads to other moral dilemmas, which

will not be discussed here. But, those that support the cosmopolitan conclusion would have to accept that at least in principle, military intervention for democratization could be considered a moral duty in case other means, non-violent promotion of democracy fails. Rawlsians on global justice would not have to face such a conclusion because they would support only non-violent means to promote democracy included in the duty of assistance.

III. CONCLUSION

This paper has reviewed some of the arguments which Thomas Pogge and Allan Buchanan bring against Rawls' *Law of Peoples*. It has offered arguments to defend Rawls from the criticism of being too cautious and conservative when designing the *Law of Peoples*. Moreover, it has done so by accepting the empirical premise of Rawls' opponents, that there currently exists a coercive global system. By using Valentini's distinction, the paper has argued that a systemically coercive system can be made less coercive, but one that requires interactional coercion to exist does not and has to conform to justice. Rawls' suggestions in the *Law of Peoples* are nothing else than a way to make the global system less coercive.

stoian_valentin@ceu-budapest.edu

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The Globalization of What? Some Neo-Rawlsian Remarks on the Justificatory Limits for Global Criminal Justice

Andrei Poama
Sciences Po, Paris

Abstract. This article examines whether, given the Rawlsian procedural distinction between pure, perfect and imperfect procedural justice, a purely procedural theory of global criminal justice is conceptually possible. It argues that it is not. It does so against the recently held view – I call this “the strong proceduralist thesis” – that procedural fairness is sufficient to ensure justificatory rightness. The strong proceduralist thesis is found wanting on two accounts. First, it cannot address the specific normative logic of punitive practice. Second, it leads to an unacceptable justice principle for the regulation of societies, whether national or international. Such a principle would amount to justifying the existence and functioning of societies on account of their punishing their own members.

Key words: procedures, global criminal justice, pure proceduralism, justification, normative tracking.

This article is addressed to two possible audiences, although unequally so. First, I mean it to be a lateral contribution to a strand of legal theory that goes against a strong proceduralist justification of global criminal justice¹ (Luban 2010). The idea, at this level, is that criminal law procedures do not provide a sufficient justificatory basis for the institution of international criminal justice. In short, procedures are not sufficient justificatory assets as far as criminal justice is concerned. Second, this paper is an effort to reflect, from a non-ideal political theory perspective², on the procedural nature of criminal justice. I do this by following, elaborating on and defending John Rawls’s (1971; 1993) distinction between pure procedural justice, on the hand and impure (perfect and imperfect) procedural justice, on the other hand.³ The upshot of this latter argument is that, pace some contrary positions (Gustafsson 2004; Morss 2004), (global) criminal justice is a form of imperfect procedural justice.⁴

The proceduralist justification thesis in matters of criminal justice has been recently put forward by David Luban (2010). The thesis states that international criminal justice is justified insofar as it ensures and increases the likelihood of “norm projection” (576) at

1] My understanding of *global* criminal justice is quite broad. I take global (or international) criminal justice to refer to all practices that qualify as non-domestic criminal justice practices. Global justice therefore includes transnational, universal, and international criminal justice practices.

2] For a clear account of non-ideal theorizing, see Sher (1998) and, more recently, Simmons (2010).

3] The implication is that there is no distinction of nature – neither substantive nor procedural – between global and domestic criminal justice.

4] Indeed, I will go further than Fisher (2006) and argue not only that a purely procedural theory is not able to justify in a principled way the existence of international crimes, but that, because of conceptual reasons, it *cannot* do so.

a global level.⁵ This can be interpreted in two ways. In its more reserved understanding – I call this the *special proceduralist thesis* – it states that the emphasis and the visibility of fair procedures justify the internationalization of certain criminal justice trials, that is, the transfer of specific cases to the international level.

In its more radical reading – I call this the *strong proceduralist thesis* – the justification of international criminal justice is taken to reside in the broadcasting of a message about the procedural fairness of the criminal trial. Luban suggests that the punishment of horrendous crimes such as genocide, war crimes or crimes against humanity does not – and, according to him, cannot – rely on the kind of substantive justification practiced at the national level. Retribution, special deterrence or rehabilitation lose their normative force when it comes to international crimes. This is because, as he puts it, the crimes perpetrated by political leaders like Goering, Milosevic or Charles Taylor are so terrible that they *cannot* have an adequate retributive match at the individual level characteristic of criminal punishment. Moreover, the accused is not very likely to engage in similar crimes in the future and thus the idea of rehabilitating him seems morally off the mark. Given the putative absence of a sound substantive justification of international punishment, the only justification available lies in the unfolding of the legal procedures at the international level. To put it in Luban's terms:

[T]he legitimacy of international tribunals comes not from the shaky political authority that creates them, but from the manifested fairness of their procedures and punishments. Tribunals bootstrap themselves into legitimacy by the quality of justice they deliver; their rightness depends on their fairness. During the first Nuremberg trials, prosecutors fretted that acquittals would delegitimize the tribunal; in hindsight, it quickly became apparent that the three acquittals were the best thing that could have happened, because they proved that Nuremberg was no show trial. (2010 579; emphases added)⁶

This passage seems to say that what *distinctly* justifies global criminal justice is, when substantive reasons are insufficient or inadequate, the fact that the criminal law procedure has been properly followed. As long as procedures are applied in an appropriate way, the outcome of the international criminal trial is the right one. International criminal justice, then, is justified on account of the existence and due application of fair procedures. Fair procedures are the criterion for the justification of just punishment. This is the crux of the

5] Following Cassese (2009), other, alternative justifications for the internationalization of criminal justice are the failings of the national courts to deal with certain crimes, the need for spreading human rights doctrine at an international level, the idea according to which certain crimes concern the international community as a whole or the conviction that the international criminal courts are better situated in adjudicating international crimes in a more consistent way.

6] Luban does not seem to operate a strong distinction between justification and legitimation. Although I consider this to be conceptually unsound (cf. Rawls 1993, 428-430), this is internally consistent with his position, according to which justification is, in the end, reducible to legitimation, i.e. to the proper following of the formal rules of the "punitive game."

proceduralist thesis, i.e. the idea that procedures can *independently* function as justificatory assets for punishment.

I consider the proceduralist thesis to be essentially defective in both of its versions. The special version is easier to dismiss from the start and will not grab my attention for too long. I am therefore simply satisfied with indicating that it is a *non sequitur*, insofar as the existing international procedures are in no way different from the national ones. International procedures are, if differently combined, the same as the national ones. Saying that the legal procedures justify the internationalization of criminal justice is like saying that national criminal justice systems represent a sufficient reason for international criminal justice. The argument is visibly unsound.

The strong version of the proceduralist thesis, however, deserves closer critical scrutiny. At this level, I argue that international criminal justice, like its national counterpart, cannot be completely divorced from a substantive justification. My argument is structured as follows. In Part I, I take out some of the more legal objections to the strong proceduralist thesis. In Part II, I try to rephrase these objections within a political theory framework. I do this by appealing to John Rawls's (1971; 1993) distinction between three types of procedural justice: pure, perfect and imperfect procedural justice. Rawls's distinction, I think, should be understood typologically, with pure procedures being meta-ethical and meta-institutional and impure ones first-degree moral and institutional. The upshot of this typological interpretation is that criminal justice cannot possibly rest on a purely procedural justification. Finally, in a rather sweeping Part III, I indicate the way in which legal procedures can play a crucial, if limited, role in justifying punishment. I argue that punishment construed as legal punishment is not possible in the absence of established legal procedures. The claim is that procedures can and should fulfill a *normative tracking* function in matters of punishment, whether national or international. More specifically, procedures can help criminal justice decision-makers and students of the system to reconstruct and assess the way in which a particular legal judgment has been reached or enforced. To this extent, procedures might assist one in locating possible judgment errors and rectifying them when possible.

I. THE LEGAL LIMITS OF THE PROCEDURAL JUSTIFICATION

I shall begin with the specifically legal objections to the strong proceduralist thesis. As far as I am aware, there are at least four different such objections that can credibly be put forward. First, as Antony Duff (2010) affirms in his reply to Luban, procedures, however fair they may be, cannot independently exert a justificatory force. In order for criminal law procedures to justify anything at all, the application of the procedures has to be grounded on a previous right of jurisdiction. This means that one of the main aspects of any practice of judging people for their wrongdoings has to rely on a certain justification of the judges' competence in that particular matter. "Suppose," as Duff analogically expresses the issue,

that a group of my neighbours, worried about the decline in marital fidelity, take it upon themselves to bring local adulterers to book, and turn their attention to me, as an alleged adulterer. I might not deny that adultery is wrong, or that I am an adulterer who must answer for his adultery to those whose business it is—to my wife and family, to our mutual friends. But I might reasonably insist that it is not my neighbours' business: they have no right to call me to answer for my adultery; nor can the fairness of their procedure give them that right. (591)

Criminal law procedures, such as the right to counsel, the right to a speedy and public trial, the privilege against self-incrimination, the right to appeal, etc., cannot play a justificatory role at a pre-jurisdictional level. In other words, the *institution* of international criminal justice has to be previously justified so that fair legal procedures can have a justificatory word to say. Procedures do not justify anything by themselves. In particular, this implies that, even if procedures were intrinsically fair, their application could not be justified in the absence of the justification of the competence of particularly defined judges having a right to apply them. This is because the proceduralist justification could just as well be invoked at the national level or, for that matter, at the local or even the individual level. If, in other terms, fair criminal procedures are sufficient justificatory assets, then pretty much anyone owing the required means of enforcement can take it on one's own to ensure that justice is done.⁷ To the extent that this is not the case, the procedural justification is dependent on a preliminary jurisdictional one.

Second, the strong proceduralist justification of criminal justice does not seem to seriously take into account the unstable, hybrid and flexible situation of international criminal law procedures. International criminal procedural law is a normatively and legally unsettled matter. As Richard Vogler cogently puts it, "there appears to be no agreement on what constitutes a satisfactory criminal process" (2005, 1). International criminal justice is, procedurally speaking, a *sui generis* and still undecided mix between the adversarial and the inquisitorial procedural models. Consequently, trying to justify international criminal justice on a strong proceduralist basis is ambiguous at best. This is because, given the fact that international criminal law procedures are constantly changing and that their formulations are quite often being negotiated anew, it is not clear what are *exactly* those procedures that justify international punishment. Even the 'basic procedural rights' Luban is talking about have either been adopted in a too concise, and therefore rather ineffective manner, like in the case of a right to counsel (Tuinstra 2009), or have been reformulated in a radical way, such as the procedure of proving guilt beyond a reasonable doubt, with the onus to establish a defence resting on the accused at the international level (Cryer *et al.* 2007, 434).

7] Luban explicitly doubts the justificatory importance of a right to jurisdiction: "But it is far from obvious that criminal jurisdiction is something a state can legitimately delegate to whomever it chooses. If it can delegate criminal jurisdiction to the ICC, then why not to the Kansas City dog-catcher, the World Chess Federation, or the Rolling Stones?" (2010, 578). This faces Luban with an additional problem, in that there is nothing specifically legal left about this kind of justice in the absence of a previous justification of the criminal justice institution.

Third, the strong proceduralist justification tends to downsize, if not to considerably ignore, the fact that what represents the primary justification of criminal justice – whether international or not – is not the fact that it makes use of various procedural mechanisms *as such*, but rather that procedures are themselves justified to the extent that they lead to a just, i.e. correct outcome. International criminal law procedure is built on a mix between the inquisitorial (civil law based) and the adversarial (common law based) models. Historically, both of these methods draw their justification from a common aim, which is to identify the truth of the matter in a particular criminal case. Even if the specific procedures vary, what properly justifies a criminal justice decision is that it is a correct one, in that it punishes the guilty instead of the innocent and it ensures proportionality between the offence and the punishment. Thus, in matters of criminal justice, the outcome of applying a legal procedure is not justified by the application of the procedure *per se*. Rather, the justification comes from the fact that the outcome resulting from the application of the procedure is the correct, i.e. the right one. As far as criminal justice goes, it is not so much the procedure that justifies the outcome. It is the pursuit of a generally defined outcome that warrants the use of certain types of procedures.

Fourth, and finally, it is widely accepted in legal practice that current procedures cannot absolutely guarantee the just, i.e. true outcomes. Although oriented toward reaching the correct verdict and establishing the adequate punishment, procedural rights and evidence procedures are unable to always or fully provide us with the needed certainty as to the justice of the judicial decisions or of their subsequent enforcement. This fourth feature of legal procedures, and the second one (persistent flexibility) are all the more present in the case of international criminal law procedures. That this is so, it is enough to compare the procedural safeguards of the Nuremberg trial with the current procedures of the International Criminal Court. As Cryer *et al.* (2007, 427) have noticed, the IMT procedures were considered as essentially fair in the 1940s and probably the 1950s. Retrospectively, however, they seem minimal and basically unfair, as they did not provide, for example, for a right to remain silent or to appeal against a conviction.

II. THE JUSTIFICATORY DEAD-ENDS OF PURE PROCEDURALISM

I shall now try to rephrase these objections by turning to a more conceptual language. I do this because, to put it in Rawlsian jargon, the strong proceduralist thesis comes close to saying that criminal justice can arguably be accounted for as a form of pure procedural justice. Before doing this, a remark is in order as to what exactly is a procedure. As I see it, and drawing from Suppes (1984), I take procedures to mean ways of certifying that and indicating how a proof of correctness *can* be given within a specific domain of activity. Procedures, in other words, are more or less standardized methods of arriving at particular outcomes considered to be correct within particular contexts. Accounting for correct outcomes can be done in different ways, given the scope of the possible relations

between procedures, on the one hand, and criteria for assessing outcome correctness, on the other hand.

Let me now elaborate on Rawls's procedural distinction, before weighing up its critical force in relation to the strong proceduralist thesis. The main criterion for the procedural distinction lies in the relationship between procedures and the outcome stemming out of the application of those procedures. Thus, pure procedural justice refers to a relationship of identity between the standards for assessing the outcomes of the application of a procedure and the procedure itself. This means that the justice of purely procedural outcomes depends entirely and exclusively on the application of that precise procedure. There is no outside, i.e. no already given criterion for assessing the justice of a particular outcome resulting from the application of a pure procedure. Pure procedures are pure to the extent that they do not mix with or depend on external, previously given justice criteria. Rawls gives the example of betting games as cases of pure procedural justice:

If a number of persons engage in a series of fair bets, the distribution of cash after the last bet is fair, or at least not unfair, whatever this distribution is. I assume here that fair bets are those having a zero expectation of gain, that the bets are made voluntarily, that no one cheats, and so on. The betting procedure is fair and freely entered into under conditions that are fair. Thus the background circumstances define a fair procedure. Now any distribution of cash summing to the initial stock held by all individuals could result from a series of fair bets. In this sense all of these particular distributions are equally fair. [...] What makes the final outcome of betting fair, or not unfair, is that it is the one which has arisen after a series of fair gambles. A fair procedure translates its fairness to the outcome only when it is actually carried out. (1993, 75)

Pure procedural justice points to a justificatory context whereby there is no independent criterion of justice for assessing the justice or the injustice of the particular outcomes resulting from the application of the (pure) procedure. When it comes to games such as betting, there are no fixed substantive standards concerning the justice of a particular distribution. All distributions are just to the extent that they respect the rules of the game. Saying, for example, that betting procedures should satisfy a specific justice criterion other than the betting procedure itself is simply a way of not understanding what betting games are about. It makes no sense to want to adjust the result of a properly applied betting procedure in order to increase the *justice* of the results of the game. We might prefer, for some personal reason, that one of the contestants win the game. This, however, is irrelevant to the justice of the gaming position. To the extent that every participant to the gaming situation has freely agreed upon the betting procedures prior to their application, the results of the game are to be considered just in their turn.

Distributive justice considered at the level of the basic structure is, for Rawls, instructively analogical to the gaming position. Like in the case of bets, the purpose of an ideal theory of distributive justice is to identify the procedures that all individuals who are part of a society could agree on, thereby ensuring the justice of the basic institutional

scheme that particular society rests upon. The purpose of Rawlsian theory is to identify the type of procedural arrangement that ensures the justice of a specific institutional scheme of cooperation. More specifically, Rawls argues that, as far as distributive justice is concerned, the “social system is to be designed so that the resulting distribution is just however things turn out” (1993, 243).

Pure procedural justice thereby points to a justificatory context whereby individuals, generally considered, have to agree to general moral principles regulating the functioning of the basic social institutions. The only way for individuals to agree whether particular distributions are just or not is for them to agree to a set of principles in relation to which one can assess the justice of the institutions coordinating those distributions. Pure procedural justice, then, is about the justice of the basic institutions as regulated by principles and not about the justice of particular distributions or particular rules falling under those institutions.

The idea is that agreeing on those principles cannot concern all the individuals forming a society, as long as some of the individuals are already committed to specific moral and political principles. Pure procedural justice is about those principles we can all agree with in the absence of previous moral attachments. Seen from a pure procedural perspective, individuals “do not view themselves as required to apply, or as bound by, any antecedently given principles of right and justice” (Rawls 1993, 73). All that is given in the pure procedural situation is a willingness to deliberate on the acceptable principles of justice through a commonly agreed to procedure.

Pure procedural justice can then adequately be considered to be meta-institutional or, differently put, pre-political: the justice standards that define and regulate particular existing institutions should not, as such, force us to choose or prefer certain moral principles for assessing those institutions over other moral principles. Our particular institutional identity should be irrelevant as to what we *all* can agree as far as moral principles go. Rawls considers that the existing moral theories – identified as theories of justification via moral principles – are linked to specific institutional positions. Moral theories are “accounts of the reasons expected in different offices” (1955, 6). What singles out a pure procedural theory of justice as a moral theory is that, unlike other moral theories, it does not rely on a specific institutional position. A theory of pure procedural justice is supposed to hold unanimously across the institutional board. It is a theory about what we can all agree upon in terms of moral principles, in spite of our differences in terms of institutional positions.

Pure procedures are logically prior to specific institutional arrangements. Their justificatory role is to lead to the formulation of unanimously accepted principles of justice. Principles of justice, in their turn, are used for purposes of just institutional design, i.e. for justifying the choice of particular social institutions. The main example of a pure procedure as articulated by Rawls is that of the original position. The original position, with its inclusion of the device of the veil of ignorance, is supposed to point the way to the

principles that compose a potentially unanimously acceptable theory of justice. “The idea of the original position,” writes Rawls,

is to set up a fair procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory. [...] Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. [...] [I]n order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations. (1971, 118; emphasis added)

The original position is a mechanism for setting aside the moral influence that contingent considerations might have on our conception of basic social justice. In addition, the original position is used as a means for weighing the principles presented by some of the explicitly articulated moral philosophies. In short, it functions like “a general analytic method for the comparative study of conceptions of justice” (Rawls 1971, 105). The goal of the original position is, as Thomas Scanlon clearly indicates, to justify the principles of justice by proving that they can be reached in the *right* way, i.e. without imposing a prior conception of justice on any of the individuals that look for a conception of justice taking the basic structure as its subject. This is why the original position is not limited by institutional considerations: its justificatory scope cuts across institutional boundaries. The original position *qua* pure procedure can be appealed to any time a general, extra-institutional kind of justification is needed (Rawls 1971, 17). Pure procedural justice, in other terms, does not presuppose any prior substantive moral commitment. All that is needed in cases of pure procedural justice is that the individuals using it have some general characteristics in terms of rationality and a willingness to agree upon commonly defined principles of justice (Rawls 1971, 103-20; Rawls 1951). From this viewpoint, pure procedures are both meta-institutional, in that they do not allow any particular institutional commitment, and meta-moral, in that they go beyond the details raised by particular moral and practical problems.

Impure procedures do not have any of these two features. Impure procedures can be said to be intra-institutional, in that they are part of an institutional setting that they both constitute and serve. Impure procedure are constitutive of an institution to the extent that an institution is partly defined as a series of procedural mechanisms; they are subordinate in that they are supposed to attain a goal as substantively defined by a particular institution. Impure procedures are, on the other hand, first-degree moral, in that they belong to an institutional history of dealing with and trying to solve particular moral and practical problems.

For the sake of more clarity, I shall consider the distinction between pure and impure procedures from a different, if concurrent, standpoint. The criterion of the distinction, this time, should not be taken to be the relation between the justice criterion and the characteristics of the procedure, but the *object* of procedural justification. There

are, I think, three different objects of justification, although the list is not necessarily exhaustive. The first class of objects of justification is represented by *principles*: when we are trying to justify principles, we are trying to show that there are good and sufficient reasons that allow us to apply these principles over a wide range of cases. The second class of objects of justification consists of *judgments*: justifying judgments is about proving that a particular judgment is both locally reasonable, given some particular circumstances, and potentially applicable to other relevantly similar situations. The extension of the third class of justifiable objects is populated with *persons*: in this case, to be justified means to hold a particular view for reasons that one knowingly considers to be the right and the sufficient ones.⁸

Seen from the perspective of the object criterion, it does not make sense to say that the justification of a judgment or that of a person's action can be done based on a pure procedure, i.e. in the absence of an independently and previously given criterion for justice. When I try to justify a judgment or my acting in a specific way, I do so by appealing to a contextually and previously given criterion of justice. A judgment in a sports competition, for example, is justified to the extent that it relies on the right and sufficient reasons that allow me to realize the objective of the competition, which is that the best contender win the contest. I am, at a different level, justified in acting on a particular judgment to the extent that I really consider that my decision will be based on the right and sufficient reasons. Justifying a judgment or a person's action makes no sense without a previously given goal defined by a particular practice or institution.⁹ Thus, from a justice perspective, there is no justification of a judgment or of a person's convictions *in general*, that is, without a series of normative goals defined by and substantively embedded within a given practice.

Justifying principles, on the other hand, can be seen to play a regulative role *in relation to* institutions and practices. This means that what we are asking from principles is for them to justify institutions and not so much to be subsequently justified *within* those institutions. A justified institution is an institution that is capable to express, uphold and enforce a generally justified principle. The market institution, for example, is justified to the extent that it relies on and is normatively under the control of the principle of liberty for some or the principle of right allocation of material resources for others. The institution of the free press is justified, among others, in that it embodies and sustains the principle of free speech. When asked what justifies our market and press practices, we normally resort to principles as independently justified in relation to that practice. If the principles justifying a practice would have to rely for their justification on specifically intra-institutional reasons, then our justificatory enterprise would quite rapidly become circular.

8] I take the distinction between judgments and persons from Scanlon (2002). I make the additional distinction between judgments and principles.

9] For Rawls, practices and institutions are largely synonymous, unlike for MacIntyre (1981), for example.

The justification of judgments and persons' actions is done from within institutions, relying on a diverse, if institutionally directed, range of reasons. The justification of principles is, to the extent that principles are used to justify institutions, external to the institutions themselves.

If pure procedures are pure insofar as they do not depend on any independently given criterion of justice, then all the procedures that attempt to realize such a justice criterion will have to be considered as impure. Independent criteria of justice are, generally speaking, criteria defined by various institutions and practices. Impure procedures are, from this point of view, to be considered as being both institutional – in that they constitutively belong to an institution – and moral, in that they depend on a distinctively identified moral criterion that needs to be fulfilled if justice is to be done.

An institution, following Rawls, can reasonably be construed as “a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like” (1971, 47). A basic institutional scheme, therefore, can be plausibly envisioned as a series of cooperatively connected rules and procedures. What Rawls wants from a theory of distributive justice envisaged as pure procedural justice are procedures that can justify the choice of this general scheme of rules and procedures. This implies that *the pure procedures leading to the formulation of the principles of justice needed to assess the justice of the basic social institutions cannot be the same as the procedures forming the institutional scheme*. To justify the choice of the basic institutional structure by using the procedures that are part of it would be question begging. If the basic institutional structure can be defined as a series of rules and procedures, then one cannot justify its choice by a circular appeal to the rules and procedures that compose it. This would be like justifying an institutional system by invoking its existence as a sufficient reason for its justification. That something exists is not the kind of reason we are looking for when we are trying to justify it.

With this distinction in mind, it should be clear that legal procedures of the kind that characterizes the (international) criminal justice system are neither meta-institutional nor meta-moral ones. Rather, they belong to and are part of the penal institution *qua* constitutive rules. These, then, are not the procedures that *can* justify the workings of international punishment from a pure proceduralist standpoint. Saying this is not, however, sufficient to dismiss the strong proceduralist thesis. The question still persists: are there *any* pure procedures ‘out there’ that can point to the specific principles that should regulate the workings of the *retributive*, as different from the *distributive* justice system? My answer is a negative one.

To show why this is so, I appeal to one of Rawls's brief, but quite helpful remark on the relation between distributive justice and criminal justice. He writes the following:

The question of criminal justice belongs for the most part to partial compliance theory, whereas the account of distributive shares belongs to strict compliance theory and so to the consideration of the ideal scheme. *To think of distributive and retributive justice*

as converses of one another is completely misleading and suggests a different justification for distributive shares than the one they in fact have. (1971, 277; emphasis added)

The claim Rawls advances here sounds like a logical distinction. What Rawls actually suggests is that questions of distributive and, respectively, retributive justice, are not to be raised at the same level of conceptual generality. Why not? As I see it, there are at least three reasons for this. The first one is related to what might be called the morphology of Rawls's theory of justice. More clearly, it has to do with the fact that Rawls is theorizing distributive justice at the level of the basic structure. His theory concerns only "the political constitution and the principal economic and social arrangements" (1971, 6-7), but it does so for the *whole* scheme of these major institutions and not for each of these institutions considered in isolation. From this perspective, the assertion that his theory of distributive justice is not to be thought of as the converse of retributive justice implies that the theoretical claims that are valid for the whole are not automatically valid – or, at least, not in the same way or to the same extent – for the part. There are characteristics of the whole that cannot be imputed to the part. In order to better grasp this distinction, one can always go back to the distinction between the kind of justification that goes on at the basic structure level and the one that goes on at the institutional or rule-level. Rawlsian distributive justice deals with the former, criminal justice characterizes the latter.

Second, I think that what Rawls has in mind when he says that criminal and social justice are not converses of one another is that theorizing distributive justice can address only a very specific dimension of punishment, that is, punishment as relevant from a distributive and cooperative viewpoint. When it comes to considering the penal institution, Rawls is somehow closer to the sociologist than to the moral philosopher: punishment is justified insofar as it deters from crime, thus improving the prospects of social cooperation. All that is needed from the point of view of a conception of justice that tries to pin down the principles of social cooperation and distribution is the possibility of justifying punishment as a cooperation-enhancing device. To put it in Rawls's own terms:

[W]e need an account of penal sanctions however limited even for ideal theory. Given the *normal conditions of human life*, some such arrangements are necessary. [...] the principles justifying these sanctions can be derived from the principle of liberty. The ideal conception shows in this case anyway how the nonideal scheme is to be set up; and this confirms the conjecture that it is ideal theory which is fundamental. We also see that the principle of responsibility is not founded on the idea that punishment is *primarily* retributive or denunciatory. Instead it is acknowledged for the sake of liberty itself. Unless citizens are able to know what the law is and are given a fair opportunity to take its directives into account, penal sanctions should not apply to them. This principle is merely the consequence of regarding a legal system *as an order of public rules addressed to rational persons in order to regulate their cooperation, and of giving appropriate weight to liberty*. [...] [I]deal theory [*m.n.* like his] requires an account of penal sanctions as a *stabilizing device* and indicates the manner in which this part of partial compliance theory should be worked out. (1971, 212; emphases added)

While the above consideration deserves extensive discussion, I think that it is enough to underline that Rawls is interested in a particular aspect of punishment, i.e. the possibility of punishment working in the direction of social cooperation. If the penal institution were unable to perform its deterrent, cooperation-enhancing function, then there would be no possible justification for it from the standpoint of a theory of distributive justice. But this does not seem right from the point of view of a theory of criminal justice proper: if punishment is to be justified in the eyes of the judge, the penal administrator, the victim, the offender, and, to a larger extent, to the public, social cooperation does not appear to be the appropriate sort of reason for its justification. One cannot say to the offender: "You are being punished for the sake of social cooperation." The very idea of punishment would then lose its specificity. A theory of *distributive* justice is not, however, concerned with the specifics of punishment. It only addresses punishment from an external, distributive perspective.

These two considerations concerning the relation between the concepts of retributive and distributive justice are preliminary to a more central point I would like to make in relation to the strong proceduralist thesis. The main idea here is that pure procedures – to the extent that they can be embraced by anyone in the absence of any previous institutional commitment – are required to fulfill a specific justificatory role. They are supposed to point the way toward finding the *principles of justice* that should regulate a society as a whole, that is, a society as viewed from the basic structure standpoint. In other words, the *raison d'être* of a pure proceduralist conception of justice is "to establish a suitable connection between a particular conception of the person and first principles of justice, by means of a procedure of construction" (Rawls 1980, 516). Pure proceduralism looks for the principles that are logically prior to any institutional engagement. It asks: what are the principles that a rational, morally competent individual should commit to without having yet committed to anything else? Pure procedures in general – and the original position in particular – are mechanisms that are meant to lead to a consensual answer to this question. This implies that, when a pure procedure is applied, there are no already given moral or political principles that might guide its application. To quote Rawls, once again:

Pure procedural justice in the original position allows that in their deliberations the parties are not required to apply, nor are they bound by, any antecedently given principles of right and justice. Or, put another way, there exists no standpoint external to the parties' own perspective from which they are constrained by prior and independent principles in questions of justice that arise among them as members of one society. (523-24)

This assertion can be interpreted in two possible ways when it comes to theorizing procedures that are pertinent to criminal justice. First, if one agrees that it makes no sense to say that there are pure procedures when a criterion of justice has already been posited, then one would also have to accept that the principles that are the result of the application of the pure procedures are sufficient for the regulation of the criminal justice institutions.

However, this might prove to be normatively deficient in two ways. On the one hand, although the principles that are reasonably agreed to by means of pure procedures concern the penal institution, they only do so from the limited perspective of social cooperation. But, as already indicated, this seems to miss the particular normative logic of punishment. On the other hand, the legal procedures Luban and others like him might have in mind when advancing a strong proceduralist thesis are not procedures oriented toward the consensual identification of potential principles of justice. If anything, the contrary: they are devised according to a series of already-existing moral and political principles. The right not to incriminate oneself or the beyond any reasonable doubt standard are rather expressions of principles than ways to lead to the identification of such principles. More specifically, legal procedures are oriented toward forming judgments and not toward locating generally valid, pre-institutional principles.

The second way to interpret Rawls's assertion in conjunction with the strong proceduralist stance is, to a certain extent, a thought experiment. Let us suppose, for the sake of the argument, that criminal justice *could* be considered as all there is to the basic structure of a society. This is the only logically possible way, to my mind, in which one could apply pure proceduralism in order to justify criminal justice. If pure proceduralism depends on the absence of previous institutional or moral commitments, then the only way to justify criminal justice from a pure proceduralist perspective is to narrow down the basic institutional structure to the institution of punishment, thus rendering impossible the existence of *distinct* institutional commitments. This implies that there would be a single component of the basic structure, i.e. the practice of punishment.¹⁰ This would be morally appalling, to the extent that it implies that the main justification for the existence of a society is the punishment of its individuals. To the question "What justifies the existence of a society?" from a justice standpoint, the pure proceduralist's answer available from a criminal justice perspective would have to be "The punishment of the members of that society."¹¹ This, however, hardly sounds like a moral principle that would meet the consensus of the representative parties engaged in the application of pure procedures. Pure proceduralism in matters of criminal justice carries, therefore, either conceptual confusions, like in the first interpretation of the strong thesis, or strongly objectionable moral consequences, like in its the second interpretation.

III. PROCEDURES AS NORMATIVE GUIDING DEVICES

The upshot of the above discussion is that the justification of criminal justice and criminal trial decisions cannot be completely made in proceduralist terms. Procedures are

10] Note how this contradicts the very logic of the basic structure, i.e. its *systematic* character.

11] This hypothesis is alluded to by Rawls himself: "for a society to organize itself with the aim of rewarding moral desert as its first principle would be like having the institution of property in order to punish thieves." (1971, 275)

not sufficient justificatory devices as far as criminal justice is concerned. Proceduralism, therefore, is not a tenable theoretical option for approaching criminal justice. This does not mean, however, that procedures have *no* justificatory role to play. What criminal law procedures can provide us with in matter of justification are two things. First, they allow us to recognize particular decisions as being distinct criminal justice decisions, as opposed to arbitrary or purely intuitive ones. Second, juridical procedures offer the infrastructure of subsequent legal and moral justificatory talk.

This sends me back to Rawls's distinction (1955) between the summary view and the practice view of rules. In the summary view of rules, says Rawls, rules are seen as way of capturing and condensing past experience in the form of general, rule-like statements. Rules are, on this account, considered to be useful, to the extent that they represent decisional shortcuts: based on past experience, they are means of increasing the likelihood of reaching the correct decision in a shorter amount of time.

Conversely, in the practice view of rules, rules are not past experience precipitates; rather, they are what constitute and *define* a practice, generally speaking. Unlike the summary view conceptions, rules are, in the practice perspective, logically prior to any particular case. Thus,

given any rule which specifies a form of action (a move), a particular action which would be taken as falling under this rule given that there is the practice would not be described as that sort of action unless there was the practice. In the case of actions specified by practices it is logically impossible to perform them outside the stage-setting provided by those practices, *for unless there is the practice, and unless the requisite proprieties are fulfilled, whatever one does, whatever movements one makes, will fail to count as a form of action which the practice specifies.* What one does will be described in some other way. (1995 25; emphasis added)

Rules, on this second approach, are what enable us to recognize specific actions as part of more general practices. Legal procedures in general and criminal law procedures in particular are rules that can be fruitfully interpreted from the practice view as rules constitutive of criminal justice practices. They are rules that allow us to recognize, in particular cases, whether we find ourselves or assist to the practice of justice. An action that does not follow the procedures of criminal law is harder to qualify as belonging to criminal justice. Take the example of reaching a verdict by inspecting the liver of a sacrificed sheep *instead* of applying the beyond a reasonable doubt standard. Certainly, we would have trouble in identifying this particular action as belonging to the criminal justice practice as we currently understand it. Legal procedures, therefore, are what allow us, at any given time, to recognize, by their application, the fact that a particular action belongs to a specific practice. They play, at a certain level, the same role as the Hartian rules of recognition (Hart 1961).¹² The existence and the application of criminal law procedures

[2] What I want to suggest here is that, much like law is impossible in the absence of the secondary-order rules of recognition, the practice of criminal justice is not possible in the absence of legally defined procedural standards.

thus play an identification and guiding function: they tell us whether X or Y is a criminal justice decision or not. They do not, however, guarantee that X or Y is a successful, that is, right criminal justice decision.

Legal procedures are, second, more than recognition devices. As far as recognition function goes, Rawls gives the example of games:

If one wants to play a game, one doesn't treat the rules of the game as guides as to what is best in particular cases. In a game of baseball if a batter were to ask "Can I have four strikes?" it would be assumed that he was asking what the rule was; and if, when told what the rule was, he were to say that he meant that on this occasion he thought it would be best on the whole for him to have four strikes rather than three, this would be most kindly taken as a joke. One might contend that baseball would be a better game if four strikes were allowed instead of three; but one cannot picture the rules as guides to what is best on the whole in particular cases, and question their applicability to particular cases as particular cases. (1995, 26)

Sure enough, some of the criminal law procedures work like the three-strike rule in baseball. This is particularly the case of procedural rights like the Miranda rights and the right to appeal. Not all criminal law procedures, however, are procedural rights.¹³ Furthermore, procedural rights can be reformulated, amended or replaced by more fair ones.

The practice of punishment and the role of legal procedures within it do not entirely match a baseball game from a justificatory perspective. In a game, procedures are more clear-cut than in a criminal trial. The three-strike rule is both easier to apply and more straightforward than the right to remain silent rule. Furthermore, when asked to justify a particular judicial decision, we do not justify it on account of a particular procedure *only*. We do not punish an accused individual in the same way we eliminate a baseball player from the field. A particular judicial verdict is not justified *because* a procedure has been applied. Rather, it is not unjustified to the extent that the existing procedures have been properly applied. When justifying a verdict, we need something more than procedural reasons. As Stanley Cavell aptly argues,

If it is ever competent to raise a question to whether a given person, or any person, ought to be punished [...] then *it cannot be morally answered by referring to the rules of an institution*. [...]. One may, of course, refer to the rules of an institution in one's defence; the effect of that is to refuse to allow a moral question to be raised. And that is *itself* a moral position; the effect of that is to refuse to allow a moral question to be raised. (1979, 303)

Legal procedures, then, could be construed as appropriate starting points for normative talk and not as devices for closing – and allegedly solving – the justificatory debate. Unlike pure procedures, they offer us with the initial normative platform for theoretical and moral discussion.

¹³] One good example of criminal law procedures that are not *completely* captured by the concept of procedural right is evidence procedures, especially in their scientific and technical dimension.

Rawls himself seems to concede that the rules and procedures that form an institution can be used as starting points for theorizing about future possible rules. He distinguishes between the constitutive rules of a practice and “strategies and maxims for how best to take advantage of the institution for particular purposes” (1971, 49). These latter ones form the stuff of non-ideal theorizing about institutional practice.

Thus, when it comes to non-ideal theory, the starting point is given by existing institutional procedures and the goal is a normative analysis in terms of morally, politically and epistemically more suitable alternatives to them. Conversely, in ideal theory, we start with meta-ethical and meta-institutional procedures, such as the original position device, and end with principles for *definitively* regulating existing institutional practices.

What is needed, as far as the non-ideal theory of criminal justice procedure is concerned, is an empirically rich basis that would allow us to theorize about procedure in terms of optimizing policy strategies and refining moral standards. This is the point where a Rawlsian-like perspective rejoins the non-proceduralist lawyer in thinking about criminal law procedure, in that they both require a thick comparative basis to criminal justice procedures.

IV. CONCLUSION

My intention here was to parallel the legal objections to the strong proceduralist thesis with a more detailed theoretical account of the latter’s conceptual and normative pitfalls. I did so by criticizing the logical impossibility and moral unacceptability of a pure procedural theory of criminal justice and of global/international criminal justice in particular. Two corollaries stem out of this double critique. First, since criminal justice cannot be analyzed other than a form of imperfect procedural justice, there is a need for reflecting upon and designing some sort of meta-procedure able to manage and assess the inevitable procedural imperfections contained within the current criminal justice systems. Second, political theorists will have to stand up from the armchair of ideal theory and immerse themselves into a series of comparative normative examinations of the existing procedures and try to imagine and think inventively about the possibility of new ones. When it comes to criminal justice, what is needed is not a theory of the procedurally pure, but rather an account of the procedurally imaginative.

andrei.poama@sciences-po.org

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Sustainable Development, Liberty, and Global Social Justice¹

Kostas Koukouzelis
University of Crete

Abstract. The paper aims to establish the normative connection between sustainability and global social justice. In order to do so it (a) claims that the concept of sustainability is itself a *normative* concept, because it refers to our substantive disagreements about ‘what should be sustained’ or ‘what matters for current and future generations’ – it has both an intra-generational and an inter-generational dimension, although the intra-generational dimension will be our only focus here (b) involves equally physical sustainability and the conditions of justice itself. A sustainable society which is unjust can hardly be worth sustaining. A just society that is physically unsustainable is self-defeating. Humanity now has the responsibility to make a deliberate transition to a just *and* sustainable global society. The effort to provide a connection between sustainability and global social justice should be based on *interdependence* (which has an economic and an ecological aspect, but cannot be reduced to its being only a fact) and the *physical limits* of the carrying-capacity of the life-support systems of the planet. Based on an interpretation of Kant’s republicanism and Philip Pettit’s modern republican thought we try to justify sustainability using the notion of *common liberty* that expands distributive duties across the globe (and generations). Here, Kant’s telling metaphor of the spherical shape of the earth is crucial. Humanity is, under this interpretation, a just *and* sustainable political community under construction. Climate change provides perhaps the best illustration of such a normative basis.

Key words: sustainable development, Our Common Future, Kant, republicanism, global justice.

The paper aims to establish the normative connection between sustainability and global social justice. In order to do so it (a) claims that the concept of sustainability is itself a *normative* concept, because it refers to our substantive disagreements about ‘what should be sustained’ or ‘what should matter for current and future generations’ – it has both an intra-generational and an inter-generational dimension, (b) involves equally physical sustainability and the conditions of justice itself. A sustainable society which is unjust can hardly be worth sustaining. A just society that is physically unsustainable is self-defeating. Humanity now has the responsibility to make a deliberate transition to a just *and* sustainable global society. I will first try to give a sketchy account of the concept of ‘sustainable development’ through common, but ultimately unsuccessful criticisms of it. Then, I will focus on the normative aspect of it by trying to show that what should be sustained is a notion of freedom as development defined along A. Sen’s line of thought. My argument will confine itself within the framework of global social justice, that is, intragenerational rather than intergenerational, although sustainability should be both global and intergenerational in scope. I will therefore try to focus on the *global* aspect and leave the justice between generations for another occasion. If I am right in my

¹] Many thanks to the participants of the “Global Justice: Norms and Limits” conference at Bucharest (2012), Nicos Avradinis for pressing the right questions on me, and Tamara Carauş for excellent written comments on a previous draft of this paper.

argument global social justice that refers to current generations comes prior to justice across generations, not in the time dimension, but because it *determines* to a great extent who is going to be born in the future. Last, my main focus would be to provide a novel normative justification of the positive obligations we have towards each other. Therefore, the normative foundation lies at a conception of republican cosmopolitanism rather than 'lifeboat ethics' or liberal internationalism. Or so I will argue.

I. THE CONCEPT OF SUSTAINABLE DEVELOPMENT

As it stands, sustainability itself has little, if no meaning, at all. When it is linked to development the meaning becomes something close to a contradiction. On the one hand, sustainability alone is invoked to preserve something like a status quo, a frozen condition, in environmental terms preservation of ancient forests or protection of an endangered species. On the other hand, development implies action of some kind, therefore change. The resolution of the alleged contradiction would mean that "sustainable development" would refer to sustaining a process, not simply a condition. Therefore, we need to be clear about the coexistence of both sustainability and development.

According to, by now, most famous point of reference of the term "sustainable development" the World Commission on Environment and Development or, as it is mostly known as The Brundtland Report, "sustainable development" is defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs."² The definition as it stands refers to physical sustainability, development, the satisfaction of needs and the acknowledgement of certain limits imposed by either environment or our duties to present and future generations. From the outset this formulation proved to be extremely controversial and kicked off a long-standing discussion on its true meaning with criticisms coming from deep ecologists, economists and political theorists. I would like first to focus briefly on these criticisms, before I say something about the status of "sustainable development" as a concept. This is because almost all of them undermine

2]World Commission on Environment and Development 1987, 43. It has been pointed out that this definition has striking similarities with G. Pinchot's own definition, the founder of the Yale School of Forestry in his 1910, 80: "Natural resources should be managed in a manner that recognizes fully the right of the present generation to use what it needs and all it needs of the natural resources now available, but [also] recognizes equally our obligation so to use what we need that our descendants shall not be deprived of what they need." There is also another definition worth mentioning, which focuses on "improving *the quality of life* while living within the carrying capacity of supporting systems [*my italics*]" in World Conservation Union (IUCN), United Nations Development Program (UNEP), WWF 1991.

its relation to global social justice, which will be the main argument of the paper. Our reference to a 1987 document does not mean that there were no further developments. Two successors of that document are considered to be the *Agenda 21* of the Rio Declaration, and the recently drafted declaration called *The Earth Charter*.³ Yet, in more than one way, they do not move the discussion much forward and the basic concepts of the Brundtland Report [the Report] remain untouched, in need of clarification, therefore I will concentrate on this, referring to four main criticisms of the concept.

a) The concept of sustainability itself, even if useful, remains empty, because it is descriptively vague. Many people agree that, on its own, sustainability is descriptively vague, because it does not describe a particular institution, or a specific pattern of activity (mere conservation of plants or animals, let us say), or a specific environmental asset which is supposed to be sustained. Furthermore, it seems we cannot agree on whether there are any measurable criteria that are being met in a development program. So, to voice a common critical question: regarding sustainability, does anything go? (Lélé 1991). That would make the concept itself inefficient in many respects, and a plausible solution would be just to avoid it altogether. Yet, if what is supposed to be sustained is rather a process, the *way* this process can be sustained has perhaps to remain open to scientific evidence and social structures. Therefore, the interesting questions here are where to ground such a process, and what is the nature and scope of duties that follow from this.

b) If the Report tries to combine sustainability and the right to development it becomes anthropocentrically biased or even worse, it might be the smokescreen put up by the rich and affluent North to the poor South (The Ecologist 1993). Such a criticism comes mainly from what is termed in the literature deep ecology theorists or biocentric views, but it can come from other directions as well.⁴ In this sense it is argued that, despite good intentions, *Our Common Future's* reference to "sustainable development" promotes economic growth in favor of human welfare, therefore it can be said it becomes unapologetically *speciesist*. Nevertheless, this seems unfair for the document, as one of its proposals is a shift towards less energy-intensive activities (World Commission on Environment and Development 1987, 51). Such a proposal though cannot suddenly transform it into the opposite, because if interpreted as a purely 'green' concept it can become absolutist or merely ideological, as it could involve preservation of nature in all its forms.⁵ The combination of both sustainability

3] *The Earth Charter* was created by the Earth Charter Commission, which was convened as a follow-up to the 1992 Rio de Janeiro Earth Summit in order to produce a global consensus for a sustainable future. Although it includes many references to the earth community as including all forms of life, refers to ecological integrity and sustainable development in a rather loose way. In that sense it does not manage to clarify things further; see www.EarthCharter.org

4] Regarding deep ecology see for example Naess 1989.

5] See, for example, one of W. Beckerman's fierce criticisms of the concept interpreted as a 'green' concept in Beckerman 1994. The Brundtland report speaks occasionally about "reasonable standards of welfare for all living beings." There are passages that point towards a more biocentric ethic, such as: "the case for the conservation of nature should not rest only with development goals. It is part of our moral obligation

and development saves the notion of these extreme criticisms. Sustainability is environment friendly and it can be curtailed by development, which has to be sharply distinguished from economic growth that follows the same energy-intensive production activities and remains to a great extent unjust to the world's poor. The report stipulates these necessary conditions, and refers to the quality of growth (Langhelle 1999).

c) Sustainable development is “morally repugnant and logically redundant.” Wilfred Beckerman argues, for example, that the concept of *sustainable development* is flawed because it mixes technical characteristics of a particular development path with a moral injunction to pursue it (Beckerman 1994, 194). The concept is, according to him, purely technical and whether one *ought* to pursue what can be sustained over a period of time should be another matter. But why assume that the technical is separable from the non-technical, which refers to our duties?

d) The Report falsely focuses on the concept of needs' satisfaction. This particular criticism is addressed to the link between the concept of needs and the concept of 'sustainable development' on two accounts. First, the concept of needs is subjective and therefore to a certain extent useless, because it does not offer clues as to what has to be preserved for current and future generations. Needs are culturally and socially defined and differ at different points in time (Beckerman 1994, 194). Second, needs satisfaction, especially at a global level can be hugely unsustainable given the fact of population inflation especially in the developing world. But what do we mean by the concept of needs, and why do we have to remain with a narrow and quantitative conception of it? *Our Common Future's* reference to needs might demand clarification, and certainly allows for a more expansive interpretation.

Given all this controversy, even scientists tend now to admit themselves that sustainability *cannot* be defined objectively, that is, in a value-neutral way as to become automatically applicable and more concrete in content. On the contrary, any effort to define the concept of sustainability or sustainable development involves value judgments to a great extent, in contradistinction to many efforts by scientists to find an easy, and measurable criterion of identification (Lélé and Norgaard 1996). The fact that it involves value-judgments means that what is at issue here is a normative problem. This is what we will argue for in the next section with the hope to advance our understanding of the implication of global intragenerational and intergenerational social justice's considerations on the concept of sustainable development.⁶

to other living beings and future generations' (World Commission on Environment and Development 1987, 57). *The Earth Charter* refers loosely to “ecological integrity” and a “community of life” without mentioning any kind of duties towards other living beings.

6] Not everybody think that what escapes objective, scientific definition belongs to the ethical and normative dimension. There is the thought then that what remains in the relationship between self, society and environment is irreducibly subjective and belongs to psychology. This sort of behaviorism, typical of a certain American academic trend, is advocated by Caldwell (1998).

II. THE NORMATIVE QUESTION: SOCIAL JUSTICE

Given all of the above mentioned criticisms, presented briefly, we can at least agree that sustainability is a highly contested concept (Jacobs 1999, 25ff). Yet, one wonders whether our disagreements around the concept of sustainability – as we might temporarily pause the easy and ready made reference to development – are, indeed, disagreements about facts or involve semantic disputations. However, almost none of the above four criticisms refers exclusively to mere facts. Sustainability is an “essentially contested concept,” *interpretive* in its own nature, which means that it involves substantive arguments about political morality.⁷ Yet this is not a reason to dismiss it altogether as some critics suggest, but a reason for us to engage in a substantive public dialogue in order to approximate an answer to what seems to be the normative question regarding its content: If there is some X whose value should be sustained, then the question becomes “What should be sustained?” or what should be the content of this X? *Our Common Future* famously and clearly focuses on the satisfaction of needs as the content of development but other people, mainly economists, tend to focus on utility and preference satisfaction. These are substantive disagreements over the concept, which demand deep philosophical argument, because they are concerned with what in the end matters both for present and future generations.⁸ Brian Barry argues convincingly that the concept of sustainability is irreducibly normative so that disputes reflect differing values, something that, in the end, mirrors the fundamental connection between sustainable development and social justice (Barry 1999; Langhelle 1999). Therefore, what we should be doing is making an effort to define X within social justice itself, trying to justify the best possible conception of it. This is the normative question.

It is true that the concept of needs, without any further clarification – whether we are talking about all needs or just basic or vital ones - leads to certain problems. If needs are the goal of sustainable development itself, how should they be defined? Some people take basic needs as being fixed, objective and universal for human beings, others, mainly economists, take all of them as subjectively defined due to cultural, social and economic parameters. In the first case, such a basic needs approach defines a threshold that is both limiting and questionable, because it is doubtful whether there can be a universal, objective catalogue of these vital or basic needs, and whether such needs have really remained fixed in any plausible way.⁹ In the second case the distinction between needs and want, desire

7] Here I follow, to a great extent, Ronald Dworkin’s *interpretivist* approach in relation to legal concepts, which points beyond positivism’s conventional definitions of them. See Dworkin 1986.

8] Note here that what can be sustained is not of course equivalent to what *should* be sustained. On the other hand, what should be sustained, must *also be capable* of being sustained as well. I think this is a question of physical limits and involves the nature of our freedom.

9] For the basic needs approach see among others Stuart 2006. However, Rawls, himself, refers to the satisfaction of basic needs insofar as their being met is necessary for citizens to understand and exercise basic human rights and liberties; see Rawls 1993, 7, 166.

or preference satisfaction becomes blurred. This second approach tends to give X the content of utility maximization as maximization of preference satisfaction, whatever their content. Nevertheless, both cases imply and involve certain levels of economic growth. Yet, as one could easily tell, economic growth and utility maximization involve levels of consumption and welfare that could prove to be, to a large extent, unsustainable both for present and future generations, especially when needs, and preference satisfaction tend to consume vast amounts of our natural, and fungible resources, due to either our model of production or population inflation. The latter can be equally very important.

If the X that should be sustained is defined over individuals the (d) objection mentioned above puts also a lot of pressure on needs satisfaction when refers to population inflation, something that can indeed be empirically verified in developing countries, the Third world, India and China. If numbers tend to increase rapidly the prospect of facing a human population of 10 billion in 100 years time with the needs and preference satisfaction differentiated following the consumption rates of the American or European countries, the results on natural resources and the environment would be unthinkable. However, we do not have to wait until that point of time in the future to realize that, for example, the prospect of every Chinese driving her own car would entail an enormous waste of resources, but also very high rates of carbon dioxide emissions in the atmosphere. Even J.S. Mill acknowledged the need to control population numbers across time, acknowledging also the fact that man should not strive to domesticate, that is, exploit all nature, but preserve much of its 'wilderness' for reasons not having to do with any religious notion of its sacredness, but with human flourishing.¹⁰ Does this entail we restrict freedom or rethink what freedom means?

Alternatively, if "sustainable development" cannot and should not be defined in terms of needs' satisfaction, it should be defined as a particular conception of freedom. Actually, this is how Amartya Sen defines it (1999).¹¹ In his view economic growth should be evaluated not according to actual GDP production, actual income or utility, but according to the criterion of whether it empowers our *human capabilities*. More fundamentally, development is realized when people are allowed certain powers to govern their own affairs. Sen includes here political freedoms, economic facilities, social opportunities, transparency guarantees and protective security (87ff).¹² Development as freedom is about strengthening all these freedoms. Development has not a quantitative flavor, because it does not involve monetary income or consumption, but a qualitative connotation, it does not take needs as a starting point, but our functioning capabilities, our freedom to flourish and develop, that is, also our freedom to change our patterns of consumption and thus our wants, preference and needs. It also involves equal distribution

10] See Mill's classical essay in environmental philosophy "Nature" in Mill 1985.

11] Sen focuses on development rather than sustainability.

12] One of the reasons for his criticizing the basic needs approach is that it gives an insufficient priority to freedom, because neediness refers to a passive state, and their satisfaction also implies paternalism.

of the right to development, making environmental problems derived partly from poverty issues.

Although Sen's categories are, on their face, largely silent regarding environment they can be easily redefined as including freedom from the consequences of environment's degradation.¹³ Development as freedom makes clear, in our view, that there is a connection between development as freedom and environment on several fronts: (i) poverty eradication, (ii) population stabilization, and (iii) natural resources and environment preservation.

In relation to (i) *Our Common Future* is also clear that poverty is the "major cause and effect of environmental problems" and that the eradication of poverty is a precondition for environmentally sound development (World Commission on Environment and Development 1987, 44, 69). There is no agreement though around the status of this conclusion. Some argue that there might be a possibility it turns out that, under certain circumstances, social and economic inequality is conducive to environmental sustainability. It might be the case that poor people would not consume natural resources in an unsustainable way, thus, for that reason should be kept poor. Therefore, the question whether sustainable development and social justice are compatible is arguably an empirical and functional not a normative issue (Dobson 1998, 243). Sen manages here to redefine poverty along with development. Poverty is not about low income, although income plays its own role, but about deprivation of basic functioning capabilities. For example, unemployment is not just about poor income, which can be balanced by the welfare state through benefits, but deprivation of individual freedom and potential through loss of self-respect or what will be more crucial for our analysis here, through moving to a state of dependency that blocks capabilities. The abolishment of such a status of *dependency* grounds the normative and not empirical link between sustainable development and social justice.

In relation to (ii) we now know that population stabilization can become possible through exactly *voluntary*, not coercive choices made by individual women, who have received education and can apply for jobs outside home. This is the effect of human capabilities being empowered by an institutional structure that provides resources and opportunities. Of course, such an effect needs much time and obstacle removing to become reality, and problems might be very pressing and urgent, but goes further than the basic needs approach or preference satisfaction, because it provides the necessary presuppositions for, as Rawls says, needs and preference formation through free formation of one's conception of the good. Sustainable economic growth and equitable access to resources can lead to lower fertility rates (World Commission on Environment and Development 1987, 96; Sen 1999, 204-26; Scherr 1997).

Finally, in relation to (iii) our response here tries also to give an answer to objection (a) mentioned above as to the vagueness of the term 'sustainable development'. If what

13] For the connection between Sen's conception of development and environment see McDonald 2006.

is supposed to be sustained is rather a process, that is, the process of development itself, the *way* this goal can be achieved has to remain open to scientific evidence and social structures. What has to be said here is that if the way the goal can be achieved remains open, this might have at least three consequences. First, it is only as a prerequisite of development that the injunction to conserve, for example, nature should be understood. The preservation of natural resources, animals, plants, etc., should be taken as attached to human development. Second, an activity with negative environmental effects cannot, in principle, be necessarily contradictory to sustainable development. Human development might sometimes demand the loss of a forest. Third, an activity, which is not itself sustainable could be nevertheless a part of a general process that is sustainable. Let us, for example, consider biodiversity. Loss of biodiversity can deprive people's functioning capability to experience and enjoy the variety of life and to profit from its study for economic, therapeutic and aesthetic reasons.

The normative link between sustainable development as freedom and social justice can thus be argued to be, at least weakly, *anthropocentric*. It is human development that is at issue here, not some archaic 'irreversible nature' or intrinsic natural value' as defended by deep ecology or biocentrism – both being non-anthropocentric approaches to sustainability. Defining what is the X that matters though does not give any reason to adopt sustainability, although it makes clear that if there is a reason to adopt it, it should be *our* reason, which demands it (Williams 1995, 240). There is a further argument missing here as to the interconnection between sustainability and social justice, especially regarding our duties and their scope. This refers to the (b) and (c) objections mentioned at section II above. I will focus on the question of scope first, which should give priority to the intragenerational time dimension and to the global reach of our rights and duties.

III. THE SCOPE OF 'SUSTAINABLE DEVELOPMENT': GLOBAL SOCIAL JUSTICE

Starting from the conclusions we reached above as to the normative content of what should be sustained, we can provisionally assert that sustainable development is a necessary condition of justice both at an intragenerational and at an intergenerational level. If the X, that is, the right of development is not sustainable due to either consumption or population inflation there can be no justice intra or inter generationally (Barry 1999, 111; Langhelle 2000). Yet, we shall focus on intragenerational (synchronic) global justice rather than on intergenerational (diachronic) justice, because what we do *now* could determine, to a large extent the composition of future generations, or shape the tastes, values and the needs of future generations changing perhaps even the value we attach to any given environmental item (Holland 1999, 58). Focusing on global intragenerational justice is a necessary, although not sufficient condition for unfolding our duties to future generations. But again why care about intergenerational justice if one's own children face now extremely poor chances of reaching adulthood? There is then a certain moral and

political priority to intragenerational justice, which means there is a certain priority to global social justice in relation to justice between generations.¹⁴

Our aim now is to argue for the normative foundations of global social justice in relation to sustainable development. Within the broadly anthropocentric approach we have already endorsed above there is a common assumption spread throughout the literature that the sustainability component refers to human solidarity or fraternity across the globe (and across generations). The argument is the following: If the concept of sustainable development wants us to curtail our want satisfaction and put limits on the exercise of our economic liberty in order to meet the needs of present (and future) generations the justification for that is humanistic solidarity to fellow human beings present or forthcoming.¹⁵ However, this is an unhappy marriage forced to take place between economic liberty, on the one hand, and solidarity on the other. It assumes the preexistence of and juxtaposes self-interest on the one hand and fellow feelings on the other, under the hope that solidarity will manage to morally constrain economic liberty. Yet, if human solidarity was the right justification it would only entail an imperfect (moral) duty towards others, not a duty of justice. But our different interpretation of what is involved in the notion of freedom as development should alter the normative foundation of social justice as the goal of sustainable development and ground duties of justice rather than imperfect duties. There is, of course, in relation to our common humanity, the argument that what justifies sustainable development is the rights human beings have, which must be respected by us. I will not make an effort to argue for such rights here, but to derive the normative foundation of the conception of global social justice defended here, which applies equally to them.

This is where the issue of *interdependence* arises in an interesting way, especially in relation to environment, because it significantly marks the difference between two different normative approaches: liberal internationalism and republican cosmopolitanism, as I hope to show here. Rawls and some of his followers, who defend a broadly anti-cosmopolitan view, have argued with force and persistence that the scope of social (distributive) justice is restricted to participants in a system of social coordination with a basic institutional structure that could be a (just) system of social cooperation in which these persons participate. Nevertheless, they claim that a system of social coordination with a basic structure, which is also global in scope does not exist, therefore, the scope of social justice cannot be global, but only domestic. In that sense they significantly misconstrue the nature and scope of interdependence, because they only allow social justice to be applied where a basic structure *already exists*, as a historical fact. This is because only basic structure can trigger duties of social justice (Rawls 1999; Freeman 2006; Nagel

[14] This does not mean that they are not analytically separable, as there is a “prejudice to the near,” which might be checked and controlled by our responsibilities to future generations. The literature on the rights of and duties to future generations is vast and expanding. See among others Partridge 1981; Gosseries 2008.

[15] See for example Langhelle (1999, 144) who mentions Gro Bundtland herself as advocate of such solidarity and also cites as an example Verburg and Wiegel 1997, 259.

2005). Abizadeh (2007) describes the shortcoming of Rawls's insistence on a moralized version of social cooperation in an illuminating way.¹⁶ Suppose, he says, that we take the fantastic Rawlsian assumption of closed, self-sufficient societies as being true, that is, there are two societies who have no flows of capital, people or goods across their borders. Nevertheless, the social activities of members of one society might have pervasive negative impact on the life opportunities of the other society, through "nonsocial" causal relations involved in polluting the atmosphere, because one society refuses to develop a scheme for coordinating action (339). Abizadeh's argument against Rawls's refusal to extend social justice to a global level unveils the fact that liberal internationalism is not enough to deal with the challenges faces sustainable development and environment as a public good. I will thus try to offer a different account.¹⁷

There is indeed an analogy between economic interdependence between countries and what has been termed by the Brundtland report as *ecological interdependence* seems striking (World Commission on Environment and Development 1987, 5).¹⁸ However, I think climate change forms the paradigmatic case here of such a global interdependence (Intergovernmental Panel on Climate Change 1996, 118). Ecological interdependence is not intentional and makes it impossible for a single country to maintain its environmental integrity alone. Nevertheless, what is of relevance here is not empirical interdependence, but normative interdependence. This is what we mean by that. It is true that globalization enlarges the way peoples of the earth come and live together, creating the sense that we all share the same prospects. Such a globalization, predominantly economic, argues that our unlimited economic liberty entails that we should abolish all boundaries and physical or non-physical restrictions exactly based on such empirical interdependence. But we cannot derive an "ought" from an "is" here. In fact, there are people that derive the opposite conclusion, that is, that the tighter economic interdependence, the greater is the need to strengthen our local self-determination and enforce our self-sufficient, closed societies.

Now, the reference to economic freedom and self-determination oscillates between two different conceptions of liberty. Broadly speaking, the former version of freedom is equated with negative freedom conceived as non-interference and the latter version with, broadly speaking, a version of positive freedom. Negative freedom is defined as the absence of actual interference by others, whereas positive freedom is defined by our capacity to act, our autonomy or self-determination. Interdependence on the first case is accidental, as if we bump onto each other through our actual interactions, interdependence on the second case is conceived as being already framed by a community that provides the necessary presuppositions of our self-determination (what basic structure actually does).

16] Abizadeh attacks the statist prejudice of liberal internationalism, arguing that a basic structure is not an existence condition of social justice, but one of its constitutive or instrumental conditions.

17] For a thorough critique of liberal internationalism especially in Thomas Nagel's version, see Koukouzelis 2011.

18] *The Earth Charter* also talks about "global interdependence" without, of course, clarifying what this means.

However, in both cases interdependence is *empirically* conceived as a mere happening. But interdependence is not empirical when it is transformed into, as Kant put it, “lawful dependence” or “independence” following the republican tradition in political thought, which currently has described such a freedom as non-domination. Briefly speaking, to experience domination it suffices that one has the *arbitrary* power to affect others’ plans and choices in a world of such interdependence, where we *cannot even choose those with whom we must cooperate*. We can have domination without actual interference, a form of tyranny that crosses state boundaries and make people dependent on the arbitrary choices of others through the influence of non-individuated effects. “Independence” or non-domination then can only be achieved within a framework of normatively, not empirically conceived, interdependence. As it is theorized by Kant it is not aimed to just permit those affected to give their voluntary, although ultimately, counterfactual, consent – something that would be in any way a Lockean rather than a Kantian thesis¹⁹ – but permits them to participate in an ongoing renegotiation of conflicts and cooperation securing “non-domination” across boundaries. And it is exactly because such a community is always under construction that it is *the capacity* to constitute it that mostly matters here.²⁰

What is the link between development as freedom and freedom as independence or non-domination? From the description of development as a set of functioning capabilities we offered above it seems that Sen’s aspiration is not about simple destitution, but exactly about the eradication of dependency. This is the centre of his approach, and in that sense, the link to freedom as non-domination should be obvious.²¹ As Pettit emphasizes, Sen’s ideal of freedom is that it gives the agent a sort of power over what happens in her life that is independent of both how her preference happens to go and of whether they happen to enjoy the favour of the rich and powerful (Pettit 2001, 16). Therefore, it is not solidarity the basis of normative justification of sustainable development, but common liberty, which extends at a global level. Insofar as the right to development is asserted it raises problems about the extent to which countries have a right to define development in their own ways, claiming their liberty as self-determination.

There is though a further argument backing the view of interdependence defended here. Actually, there would be no normative interdependence if there were no *limits*, either physical or non-physical posed by the whole. One such limit is the biosphere’s capacity to absorb the carbon dioxide emissions, which cause global warming, exactly the problem

19] That is why Kant is talking about a notional rather than an actual consent. Actual consent would entail participation rather than the status of membership in a cosmopolitan community.

20] A plausible version of the anti-cosmopolitan argument focuses on the *unfeasibility* or undesirability of a global basic structure, understanding it mainly in the sense of a global state form. Our insistence on the fundamental capacity to be an equal member of a global scheme of cooperation aims to sidestep such criticisms as irrelevant. Furthermore, unlike Nagel’s version of global justice, republican cosmopolitanism does not use the state’s use of coercion in order to justify distributive justice. For the coercion theory of distributive justice and its anti-cosmopolitan stand see also Blake 2002.

21] In fact Pettit himself argues for such a connection in Pettit 2001, 16-19.

of climate change. The existence and significance of such physical limits can be portrayed in our view in Kant's telling, but largely neglected metaphor of earth's spherical surface. The reference to the spherical shape of the earth is not just an empirical determination of its physical limits, although it cannot be denied that it is also this as well.²² It is essentially the basis of the normative interdependence we described above forming at the same time an intrinsic component of the distributive character of earth's original possession in common. If earth did not possess a spherical shape it could not be, distributively speaking, an object of possession in common. One has to contrast this view with John Locke's metaphor of "the whole world like America" (Locke 1980[1690], ch. 5). The thrust of the argument here is that what is being implied is that spherical shape conditions our common liberty by creating the duty to establish a global political community through establishing global institutions.

This is not to imply that physical limits could, in any plausible sense, 'dominate' our freedom. We need to say something here about the question of the nature and role of limits. This is because what has indeed physical limits might be transformed into an unlimited exercise of human freedom through *human action*, which is self-conscious of their existence. However, this claim should not be interpreted as a claim about the irrelevance of scarcity of natural resources. There are arguments, which remain sceptical as to whether natural resources even matter for global justice, imposing limits. On the contrary, it is claimed that human ingenuity and knowledge, through technological innovation, can and will overcome scarcity, also believing in an indefinite substitutability of natural resources (Sagoff 1998). Such an argument is however unfounded, and unveils, in our view, a quasi-religious faith in technology. Physical limits will always exist, in some way or another. First, no economic system can grow beyond the limitations set by the regeneration and waste absorption capacity of the ecosystem. Second, despite the fact that natural limits cannot be fixed once and for all (the amount of ecological space available is contingent on the efficiency with which natural resources are exploited), one cannot infer from this that there are no such limits. In any case, people who have experienced diseases or displacement, because, e.g. of climate change, have already encountered physical limits.²³ But the spherical shape of the earth and common liberty might, on another reading, imply that physical limits might correspond to sustainable, therefore *unlimited* human development, provided we interpret development not as mere preference satisfaction or GDP growth. Without physical limits freedom is like spinning in a void.

What we have been trying to describe here is captured by *Our Common Future's* insistence that 'developing countries must operate in a world in which the resources gap between most developing countries and industrial nations is widening, in which the industrial world dominates in the rule-making of some key international bodies, and

22] Kant 1902[1797], VI, 262-63. For a notable exception regarding the use of the metaphor in relation to cosmopolitanism see Flikschuh 2000.

23] For a critique of Sagoff along these lines see Hayward 2009, 286-87.

in which the industrial world has already used much of planet's ecological capital. This inequality is the planet's main "environmental" problem, it is also its main "development" problem (World Commission on Environment and Development 1987, 5-6). I take it that from exactly such an argument the relationship between sustainable development and social justice cannot be empirical and contingent, but normative. Let us finally try to be more specific about the duties implied under such a normative basis.

IV. DUTIES OF GLOBAL SOCIAL JUSTICE

The priority given here to intragenerational global social justice means that, along with the Brundtland report we also give priority to the world's poor. This kind of priority forms a moral-political constraint on possible alternative trajectories that freedom as (sustainable) development could, but should not take. One thing must be also clear from our argument thus far: the problem of global social justice in relation to sustainable development should not be understood as merely a problem about the minimum level of need satisfaction or the simple eradication of poverty, but fundamentally about (a) basic human capabilities that can secure basic non-domination across state boundaries, (b) the *upper limits of energy use*, and in the case of climate change, our duties regarding greenhouse gas emissions, which cause global warming. This is because mere need satisfaction of expanding population rates could prove highly unsustainable. Such duties that link sustainable development and global social justice would not be grounded on a version of liberal internationalism, which still favors state self-determination, and only a minimal duty of assistance to societies in dire straits.

Sustainability is about (physical) limits, but which point to our interdependence that conditions our common liberty on the one hand, yet unveil its own potential to go beyond these limits. One cannot even choose those with whom she must cooperate in order to achieve sustainable development. This is, I think, a case that refutes Nagel's claim that freedom of association demands that we can choose and pick those with whom we want to cooperate or, as he says, one cannot be obliged to get married and have children (Nagel 2005). Such a view should be compared with what has been termed as "lifeboat ethics," although it surely is less extreme. Take for example the following notorious passage:

[E]ach rich nation amounts to a lifeboat full of comparatively rich people. The poor of the world are in other, much more crowded lifeboats. Continuously, so to speak, the poor fall out of their lifeboats and swim for a while in the water outside, hoping to be admitted to a rich lifeboat, or in some other way to benefit from the 'goodies' on board. What should the passengers on a rich lifeboat do? This is the central problem of the ethics of the lifeboat. (Hardin 1977, 262)

Dilemmas, like the one Garrett Hardin describes here, we already face nowadays as in the case of the so called "environmental refugees," who due to climate change are forced to evacuate their homeland and immigrate. Hardin thinks that we should not admit more swimmers to the lifeboat, yet this position implies that there are many lifeboats around

the globe, whereas, in our conception there is only one lifeboat. The interdependence we described so far cannot allow us to consider “lifeboat ethics” as an option. Allowing such a possibility to take place is like carrying present injustices into the future, and hiding the fact that due to the spherical shape of the earth what is common is our liberty, which is at issue.²⁴

Therefore, sustainable development, according to republican cosmopolitanism, is attached to our fundamental *duty* not to dominate others, which comes with the positive obligation to establish a new form of political community, that is, a cosmopolitan framework for sustainable development. This is because the scope of justice should be given by the range of persons engaged in a system of social interaction, which could become a scheme of social cooperation. Sustainable development shows that others depend on such a scheme, and their liberty is intrinsically involved (Maltais 2008).²⁵ By contrast, Nagel argues that global forms of political authority would be desirable, but not obligatory, including the provision of a global public good like that of environment (through perhaps climate change mitigation). Individuals or political communities cannot be “morally obliged to expand their moral vulnerabilities in this way” (Nagel 2005, 144).

By contrast, a cosmopolitan institutional framework becomes necessary for sustainable development. Securing basic non-domination differs from the strictly juridical model of self-determination here, because the idea of liberty conceived as non-domination decenters self-determination and requires that citizenship and its accompanying normative powers be exercised in a variety of overlapping states. If the situation is one of interdependence on several levels, then domination in such circumstances can take the following form: one is ruled by another, when one is able to prescribe the terms of cooperation at a global level where one’s inclusion is non-voluntary, therefore it doesn’t constitute a real inclusion on an equal basis. Basic non-domination could be expressed in terms of a ‘democratic minimum, which makes people able to form and change the terms of their common life globally speaking. People have a right to an institutional order, where those affected by a decision have an equal opportunity to contest it (Bohman 2007, 45-55, 92-97; Laborde 2010).

Now, the upper limits of energy use can trigger further positive obligations. This is especially so when we think of what might contribute to climate change. New needs and consumption standards, which are admittedly socially and culturally determined can be outside the bounds of the ecologically possible. Even if we manage to stabilize population numbers across time, our everyday preferences might turn out to be energy consuming beyond what can be absorbed by earth’s atmosphere. From such a conception there can

24] A recent example of “environmental refugees” are the inhabitants of the Kiribati complex of islands, who will be forced to evacuate their homeland due to the rapid rising of the sea levels; For the issues of global justice such a forced immigration raises see Risse 2009.

25] Maltais’s political conception of justice considers environment as a public good, thus, bases his normative justification of the non-voluntary duty to establish global institutions on the “collective goods justification of the state.”

be duties not only to refrain from domination on other people's choices, but a positive obligation to change production and consumption standards. This is of course something that goes to the heart of what is at stake with the republican justification of sustainable development, because it does not involve the equal sharing of economic benefits as liberalism might argue, but of the earth's capacity to sustain human action. Deciding for the upper limits of energy use then is a problem of distribution. There is a sense that the affluent are 'ecological debtors,' when deprive the planet's poor of their fair share of the earth's 'ecological space,' which is, according to the image of the spherical shape of the earth, limited, because refers to natural resources.²⁶ On the one hand, it is the developed countries that have such an obligation, on the other hand though, and if republicanism here has a cosmopolitan scope, it is also an obligation of the better off irrespective of which country they live to alter their patterns of consumption (Harris 2010).

What is the basis of such duties here? Common liberty, in the way we defined it, demands that it is not enough not to interfere with others, so long as one's own way of life already affects others by dominating their own preferences and make them adopt policies and ways of life that will threaten the life-supporting natural systems of the earth. One has to adopt a different pattern of consumption and production, that is, one has to *change oneself* in order to persuade the worst off to adopt a similar attitude.²⁷ The alternative would be, indeed, to prevent developing countries from aiming and attaining living standards that are equivalent to those of developed countries and to argue that developed countries have an exclusive right to their present standard of living (Langhelle 2000, 312).²⁸ The conception of common liberty presented here shows that there is more than one way we can or do affect other people's preference formation, yet there is only one way, normatively speaking, we do not exercise domination over them. Our common future is attached to our common liberty in a planet we all share.

kkoukouzelis@phl.uoc.gr

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26] For the concept of *ecological debt* see Hayward 2009, 283.

27] Would this be an act of (new) domination through persuasion? I do not think so. It would only reveal, from another path, that people are not just external limits of one's freedom, but presuppositions of its exercise.

28] Langhelle talks here about the 'principle of universality', meaning that the consumption standards are to be such that we all reasonably can aspire towards them. However, one does not need a separate principle of universality as universality is a formal feature of the validity of moral judgments. The problem is whether that universality can be extended to our conceptions of the good, as Rawls would say. The answer, I think, is no. However, Kant again might offer a way out here through his account of the universality of aesthetic judgments. I do not have the space to pursue this issue here.

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Global Justice Considerations for a Proposed “Climate Impact Fund”¹

Cristian Timmermann & Henk van den Belt
Wageningen University, Centre for Society and the Life Sciences

Abstract. One of the most attractive, but nevertheless highly controversial proposals to alleviate the negative effects of today’s international patent regime is the Health Impact Fund (HIF). Although the HIF has been drafted to facilitate access to medicines and boost pharmaceutical research, we have analysed the burdens for the global poor a similar proposal designed to promote the use and development of climate-friendly technologies would have. Drawing parallels from the access to medicines debate, we suspect that an analogous “Climate Impact Fund” will increase the already very high scientific and technological supremacy of the developed world over the Global South. We advocate countering this dominance on the ground that countries with scarce research and development capacities will be in a difficult position to reject technologies and will not have a say on how such technologies should look like. Further, addressing global hazards should be an inclusive endeavour and not only a privilege reserved for the developed world. Incentivizing grassroots innovation would be a major step to promote scientific and technological inclusion.

Key words: technology transfer, distributive justice, health impact fund, development aid, climate change, priority, scientific participation.

Climate change is a major global hazard that differentially affects the regions of the world. While some areas will experience positive effects, such as increased yields in agriculture, the highly populated tropical regions will suffer negative consequences, such as a decrease in harvest yields and a wider prevalence of tropical diseases. Generally, a broad consensus holds that the current rate of greenhouse gases emissions cannot be sustained. Even if there is some scepticism whether catastrophic tipping points exist, the magnitude of potential hazards to life far outstrips the costs our and next generations would have to pay in order to mitigate greenhouse gases emissions. Therefore, we have strong moral reasons to give the benefit of doubt to the existence of such tipping points and advocate concrete proposals that could foster mitigation efforts (Singer 2004, Chap. 2). In what follows, we would like to examine in how far the concept behind the “Health Impact Fund” as formulated by Aidan Hollis and Thomas Pogge 2008 could be applied to the promotion of climate-friendly technologies. While earlier work (see Timmermann and van den Belt 2012) discussed some of the practical problems such type of fund might encounter, we wish to concentrate here on global justice considerations that have to be taken into account.

1] We would like to thank the participants of the “Global Justice: Norms and Limits” conference at the University of Bucharest (2012) for their valuable comments on our paper presentation. A special thanks goes also to Thomas Pogge for his comments and criticism on an earlier draft of this paper. This article is the result of a research project of the Centre for Society and the Life Sciences in The Netherlands, funded by the Netherlands Genomics Initiative.

After a short discussion of (1) the moral justification of the Health Impact Fund proposal, we will expose (2) that the fund might aggravate inequality in the distribution of research locations, (3) the reasons why such inequalities are condemnable, (4) that the attempt to correct this injustice is more problematic than is apparent at first sight, (5) the special role grassroots innovators could play and (6) briefly elucidate the conflict that might arise in concentrating on mitigation efforts alone while leaving adaptation needs aside.

I. INCENTIVIZING INNOVATIONS

In accordance with Rawls' theory of justice, we could argue that an intellectual property (IP) regime can be legitimately established if under that regime the least advantaged would be better off than without such an incentive mechanism. However, this type of reasoning does not resolve the question in how far the industrialized world is obliged to institute an incentive regime that not just barely matches this minimum constraint, but up to what degree it should aim at increasing the position of the worst-off to the maximum sustainable level. Addressing this one question has become a highly polarized never-ending debate with a strong clash of diverse schools of thoughts. The situation of not being able to find wide consensus for a clear answer has been aggravated by the fact that we cannot provide empirical evidence of how the well-being of the worst-off would change (or if it would change at all) if we had not the current incentive system for innovations in place.

In order to make today's intellectual property regime of patents more acceptable to the worst-off and to civil society in general, Thomas Pogge and Aidan Hollis have elaborated a detailed proposal to redress its negative consequences. The global extension of Western European, North American and Japanese standards of minimum recognition of intellectual property has increased the access and availability problems. Access to objects of innovation has become more limited, since the obligation of governments to recognize product patents (i.e. patents on the object itself, not merely the process by which it was produced) has limited the possibilities of generic manufacturers to develop cheaper alternatives to the original product for people with less financial resources. The availability problem is indirectly increased by this global extension of standards, as companies all around the world can recoup their research and development costs by selling the products resulting from their investigations on the world markets. When a particular market can pay much more for its desired objects, this creates an incentive to satisfy this particular demand, leaving other markets with less purchasing power unsatisfied.² On the other hand, when a market is very poor and has different needs, it will not be able to

2] Here the high income inequalities come for the poor as a double penalty, they not only suffer from their limited purchasing power, but also from the rich being so much richer and thus attracting nearly all research efforts to satisfy their wants (cf. Pogge 2008).

pay high enough mark-up prices to cover the costs incurred to develop the customized objects. When no third party jumps in, the research and development of the technological solutions needed may not occur and the products will never be available.

After the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement started to come into effect in 1994 universalizing the mentioned standards, generic companies that tried to fill in a market gap by developing innovations specified for resource-poor markets (such as single-dosage medicines) had to change business practices as selling reverse-engineered drugs became illegal. Now more than ever, companies all over the world focus on providing products primarily designed to meet the richer markets' appetites.

As other incentives systems to promote research and development that better suit the interests of the global poor – we may think of prize-systems³ – are conceivable but have not been implemented, we can identify the current way innovations are incentivized as an institutional injustice. Arguments stating that countries voluntarily decided to sign the TRIPS agreement lose ground when we look at historical circumstances (cf. Drahos and Braithwaite 2003, Pogge 2008, and Singer 2004, Chap. 3). The implementation of the TRIPS agreement is more a story of a reckless imposition of a treaty than a textbook example of good global democratic decision-making practice. Making available the necessary resources for establishing the Health Impact Fund can be seen as a compensation for having violated the negative duty of not imposing an oppressive regime on others. The global trade regime, with its tariffs regulation and intellectual property rights standards, acts as an oppressive regime as far as competition possibilities for newcomers in the world economy go and the real prospects of using technology to address welfare issues are taken into account.

II. DISTRIBUTION OF RESEARCH FACILITIES

The Health Impact Fund addresses the two problems of access and availability previously introduced. The cost of medicinal treatment is often dictated by the sale price of medicines, thus reducing the price tag of medicines can make treatment more widely accessible. Pharmaceutical companies, holding exclusive rights, set prices and research agendas according to market incentives that are commonly driven by consumers' ability to pay. The idea of the impact fund is to offer an extra incentive based on the impact the medicinal innovation has on alleviating the disease burden measured in its capacity to increase quality-adjusted life years (QALY). A company that has a patent on a new medicine will have the option to either exploit its exclusive rights in the traditional way, i.e. by maximizing profits through sales or could commit to the proposed impact fund, selling its drugs at production cost and receiving a reward that would be dependent on

3] Prize-systems reward innovators that first reach pre-specified targets from public funds. For a characterization in the pharmaceutical area, see Love and Hubbard 2007.

the drugs' ability to add QALY anywhere in the world. If a company has a new drug that will primarily alleviate the disease burden of those who have less purchasing power it will rationally opt for the impact fund's reward.

The main concern of the Health Impact Fund is to make medicines available to the poor. We can fear however that by focusing on this noble goal, the implementation of the HIF may actually undermine other human rights, particularly the right to share in the advancement of science, as specified in article 27.1 of the Universal Declaration of Human Rights (1948, henceforth UDHR). The HIF uses the international patent regime for its goal of meliorating global health. Hence, it does not seek to abolish the use of patents for pharmaceutical innovations, as the proponents of the fund believe that the existent regime with a substantial addition (i.e. the HIF) leaves the worst-off better off than in a world prior to the TRIPS agreement (cf. Pogge 2009).

A widely shared critique to the HIF is that the fund does not actively tackle the distribution of IP rights themselves.⁴ IP rights do not only give the possibility to exclude others from copying the product, but may also hinder research *with* the product. This facilitates monopolizing follow-up research preventing particularly poorer competitors from entering the market. The HIF would therefore leave the situation where research and development is almost exclusively done in the Global North unchanged, as it does not introduce additional incentives to remedy this inequality.⁵

Our concern is how far the HIF may use the patent system for its own purpose (i.e. improving global health) before becoming complicit of supporting the other inequalities brought up by the existing intellectual property regime.

The HIF seeks to make at least \$6 billion additionally available to incentivize pharmaceutical innovation a year. The companies interested in claiming those monies have to develop a new medicine. Given the way the fund is designed, there will be a stronger incentive to develop medicines for diseases that burden a high number of people. This mechanism will favour research on diseases that are now affecting a huge number of individuals but for which no cure (or insufficient remedy) is available – particularly widespread neglected diseases. Research institutes that are located in the areas where such diseases are prevalent (nowadays mostly the tropical region of the world) may have an initial advantage by having better samples of the pathogen, knowledge on how the local population has dealt with the disease, ties to the affected population and scientific expertise on the subject (cf. Timmermann 2012a). However, we should not underestimate the huge power the expensive scientific infrastructure located in the developed world has in attracting the best researchers in the field, as well as its capacity to accelerate research. Even among research institutes in the developed world there is a firm competition in

4] This criticism can be found in DeCamp 2007, as well as in Timmermann and van den Belt forthcoming, but it is also a point raised by Knowledge Ecology International (see keionline.org).

5] Further, the HIF only requires from industry to give up their price-setting privilege and not to surrender patents. This is a concession made to industry in order to reduce the amount of money needed to create the fund.

who manages to attract the best researchers with the most appealing start-up packages and cutting-edge facilities (cf. Stephan 2012). We can fear a further brain drain of the top scientists in the field of neglected diseases to the developed world.

An additional problem is that the HIF in its present form does not provide any financial assistance to help resource-poor institutes to carry out clinical trials on their newly developed substances, therefore they will have to rely on partnerships with companies that do have the financial means to further develop the drug.⁶ Here the terms of scientific participation within the partnership will end up being shaped by ideals of corporate social responsibility held by the stronger partner. At the end, the subjects of the right to share in the advancement of science will have to rely on corporate social responsibility to see if they will have a chance to participate in scientific endeavours on an equal standing relative to comparable merit. Reshaping an institutional order that clearly strengthens access to medicines, but leaves the fulfilment of the human right to participate in the advancement of science to the goodwill of companies whose behaviour is primarily moulded by market incentives, unavoidably entrenches a normative standpoint that advocates prioritarianism.⁷

Another issue is the status of clinical trials as a private good. The testing for biosafety and efficacy represent the biggest expense in drug development, consisting in a huge hurdle that impedes most companies to bring new medicines on the market on their own. Treating clinical trials as a public good, would allow also small and medium-sized companies to develop new medicines (Reichman 2009). If the needed safety and efficacy testing is publicly funded, many conflicts of interest could also be avoided. When stakes are so high for demonstrating success, scientific accuracy is at risk. Outcomes are prone to be biased, standards might be weakened by a favourable selection of patients for testing the compound and publication of unfavourable results might be suppressed or delayed (Reiss 2010, 431-33 and 439).⁸ Generic companies cannot rely on the data submitted by pharmaceutical companies to regulatory agencies before a specified time (that varies according to drug type and jurisdiction) for the market approval of their drugs. In practice this can act as an extension of the exclusivity time, as most generic companies do not have the means to repeat the clinical trials in order to provide a new set of data to prove the already recognized performance of the compound in question. However, in theory, regulatory data shall only be protected from “unfair commercial use” (TRIPS, art. 39) – originally this phrase was defined in terms of misrepresentation (i.e. confusing and misleading consumers), but US and EU authorities illegitimately invoke this article to

6] The need to rely on foreign partners could be aggravated if high fees to be able to register a drug with the Health Impact Fund apply.

7] Here we understand prioritarianism as the position that seeks to raise the well-being level of the worst-off, regardless if this comes at the cost of a lower aggregated welfare level for the global population as a whole.

8] It is to note that the HIF provides an additional incentive for scientific accuracy as it pays out for measured health impact (in QALY) and not for claimed health impact. However making the public aware of long-term side-effects is still not directly encouraged.

justify a new type of proprietary rights over the data on efficacy and safety that companies have to submit to regulatory agencies (see Correa 2004 and Wadlow 2008). Generic companies are therefore compelled to present a separate set of data in order to gain market approval. In order to avoid "unfair commercial use" of data, repetitions of tests involving the exposure of human and animal subjects to drugs with no therapeutic or scientific intentions are deemed acceptable. Some duplicative work could be avoided with a careful draft of the HIF proposal, as companies can be asked to give up data exclusivity rights after the ten-year reward period.

We have not been able to identify a clearer statement of what constitutes an "institutional order that is feasible" (cf. Pogge 2002) and one that is not. Drawing the line between "real-world" possibilities and theoretical feasibility, does not only satisfy philosophical cravings, but builds a solid foundation for follow-up political legitimation. As the natural rights basis of intellectual property is hardly tenable and other forms of incentivizing innovations are conceivable, a world without pharmaceutical patents is theoretically feasible. Some pessimism might be implied when stating that such a world is in principle politically *infeasible*. However one has to be quite blind to current-day political power plays to believe that a radical reform in how innovations are incentivized will occur within a relatively short time frame. Here is where the HIF gains much support, it has much higher chances to be implemented in a shorter period of time, as it constitutes only an addition to the current intellectual property regime and does not seek to build a new incentive system from scratch. The implementation of the HIF does also not hinder people to continue advocating reforms that seek a fuller realization of human rights. If the HIF gains legitimacy as a temporary solution before a more fundamental reform can be carried out, it has to show that it will have a substantial effect on human lives before becoming out-dated – something that intuitively will be self-evident, but still may need a quantifiable estimate in order to contrast a scenario of inaction. For the arguments previously spelled out, we do not believe that the HIF is the best reform that can be conceptualized, however political realities make it a very good and feasible option that can be realised within a foreseeable period of time.

Advocates of the HIF who accept compromise for the sake of political feasibility ought to admit openly that we should give priority to having a higher number of healthy people over having a lower number of healthy people with eventually more people participating in scientific endeavours. This approach aims at minimizing suffering related to disease while categorizing unhappiness due to lack of scientific engagement possibilities to a lower order of urgency. This compromise has to also acknowledge that the duplicative work necessitated by the current proprietary regime of clinical data is morally acceptable in order to reach the higher goal of improving global health. The fact that people who severely suffer from a disease cannot participate in science may help gather popular support for preferring one human right over the other, but if an institution formally acknowledges that it wishes to pursue one right at the cost of another, it will go

against the progressive realization of human rights and thus violate international law⁹. The extra research money the HIF attempts to attract will most likely not reduce the number of people who enjoy the right to share in the advancement of science in resource-poor countries, but there is no guarantee that it will not enlarge the distributional gap of research facilities between the developed and the developing world.¹⁰ History of innovation shows us plenty of cases where prolific patenting at early stages of research has been detrimental for further product development – many such “patent thickets” have been avoided by prudent researchers, fewer are the cases where governments have succeeded in taking action (cf. Henry and Stiglitz 2010). Making research in neglected diseases profitable will first of all create a race to the patent offices, restricting freedom to operate in the few areas where poorer research institutes could work with little fear of infringing patents.

There has to be a general awareness that spending less than 0,01% of the global income (calculated from Pogge 2009, 547) for an Health Impact Fund cannot address all major inequalities raised by the implementation of the TRIPS agreement, but merely constitutes a much better situation for the global poor than not spending that money at all.

Thomas Pogge 2011 justifies his prioritarian position with an investigation on how nongovernmental aid organisations should allocate their limited resources. However this justification presumes that actors cannot change the fact that the available resources are limited and thus are obliged to make sacrifices in order to reduce the maximum amount of suffering. Governments of larger economies or supranational bodies cannot use this same argument to justify a prioritarian position that neglects significant efforts for scientific capacity-building in developing countries in favour of improving global health as they are responsible for fixing the available resources for tackling injustices. Nongovernmental organisations (NGOs) have to justify “solely” what they have accomplished with the entrusted resources. Governments have to justify not only how they have allocated the resources collected, but also the amount they have found prudent to collect and the incentive systems framed. The slightest appeal to maximize welfare improvement per euro spent globally (cf. Singer 2009) will fail to justify any accountability based on proportionality. On that account, a net official development assistance that amounts to a 0,32% share of the gross national income of the 23 Development Assistance Committee countries (OECD 2011, 139) would hardly give a solid ground to morally justify this type of prioritarianism. A country like the Netherlands could finance the HIF with the

9] A comment on the International Covenant on Economic, Social and Cultural Rights (1966, henceforth ICESCR) article 2.1 notes that “any deliberately retrogressive measures in that regard [i.e. under the obligation of progressive realization] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources” (Office of the High Commissioner for Human Rights 1990, § 9). It is to note that a right to share in scientific advancement as spelled out in the UDHR, cannot be as clearly interpreted in the corresponding article 15 of the ICESCR.

10] An outline of how research and development facilities of multinational corporations are distributed is offered in von Zedwitz and Grassmann 2002. An insight on how this distribution affects the propagation of climate-friendly technologies is offered by Sarnoff 2011.

current official development assistance rate on its own, while Germany could pay twice the amount the HIF needs to start with its missing portion to meet the UN targeted 0,7% share for development assistance (data taken from OECD 2011, 140).

III. WHAT TECHNOLOGICAL SOLUTIONS SHOULD BE DEVELOPED?

There are a number of reasons why poorer people should not be excluded from being able to develop technological solutions.¹¹ Here we will discuss only one aspect: the lack of possibilities in influencing research agendas. Technologies are taking an ever more important role in our daily lives and participating in civil life without them is getting closer and closer to being impossible. On a global level there is hardly a democratic decision-making process to identify which technologies should be developed and what form they should take. Today most of the research is done in the developed world. For this part of the world we cannot say that the development of new technologies underlies strict democratic resolution, but there is nevertheless a strong civil society influence by the offering of governmental financial aid to specific business branches or the development of products by direct request. Technologies that cause public controversies can be banned altogether, but this liberty can only be made use of when a country can rely on alternative products or can expect to be able to develop such alternatives within a time frame that is compatible with the public urgency the availability of such alternatives demands. Here is where this particular liberty is especially at stake for countries in the Global South, as they almost exclusively have to make use of technologies already developed by the Global North without being able to question the local acceptability thereof.

Mitigating climate change with the aid of technology could be a much more inclusive effort than the battle against neglected diseases. When taking climate change mitigation as a global effort, researchers from poorer institutes could develop high impact solutions that do not necessarily rely on investigations made under an expensive infrastructure. The technologies developed would still count as an invention, being a public good – thus non-excludable and non-rivalrous in consumption – but will not necessarily have to continue with the trend of “complexity being better”. Technologies that might be easily copied and thus nowadays do not have enough market incentives to be developed since exclusivity cannot be made full use of in practice, could be stimulated by the climate impact fund’s reward system.

Here we can differentiate between a core invention, which will be applying for the fund’s rewards, and subsequent local adaptation of the core invention. The company that brought up the core invention will benefit from the extra impact gained by the wide distribution of the invention and its local variation. When local variations have mutated

11] It has been argued that intellectual property affects the diversity in research practices (Timmermann 2012b) and work in progress concentrates in how far the current IP regime limits (or fails to secure) human flourishing and development (Timmermann 2012c).

to a new invention altogether, specific policies should be formulated to be able to draw the line between the new and the old product as well as to establish the fair shares each inventor should get.¹²

A second argument concerns the possibility of raising the bar independently as a group. If a society is dependent upon the technological innovations made by others, it will have to subject itself to a level of risk toleration that it cannot influence. Risk affinity varies among societies. Nowadays most countries do not have the infrastructure to develop alternatives or own solutions. In the case that predefined standards of quality, levels of toxicity or climate change mitigation targets are deemed unacceptable locally, poorer countries have no possibilities to take action and will have to content themselves with alien criterions.

Finally, climate change mitigation is a global goal in which everybody should be able to participate as it counts as a worldwide hazard. Here access to the technologies becomes important on moral grounds. For example when insufficient public transport infrastructure is available, some people will have no other option then to go to work with their energy-inefficient car. In other cases technical solutions to allow poorer people to play a role in climate change mitigation are not even available. People should have the freedom to contribute to a good cause, i.e. mitigating greenhouse gases emissions, and not to be in a situation where they can only cause further damage to the earth's atmosphere.

IV. CORRECTING THE INJUSTICE

Subsequent publications to the 2008 Health Impact Fund proposal have dropped the strict patent requirement. This was done mainly for two reasons, some high impact medicinal improvements are not patentable (cf. Syed 2009) and the potential of traditional medicine can play an enormous role for global health and therefore has also to be harnessed (Mendel and Hollis 2010). The current version of the proposal, Hollis and Pogge 2009, suggests that researchers who gain the approval of a major regulatory agency, e.g. the U.S. Food and Drug Administration (FDA), should be eligible to receive the fund's rewards. Herewith we have a slightly wider opening of the 'filter' that decides which innovations can apply for HIF rewards and which not, as more innovations will qualify. The contour of this 'filter' does not only define the hurdle that actors will have to pass in order to receive the reward, but if shaped differently will also change the spectrum of actors attracted to the fund's rewards. Making the circle of potential applicants less exclusive will stimulate a higher competition among applicants to the fund. As the reward rate is self-adjusted by competition (Hollis and Pogge 2008, 23), participating companies will have an economic interest not to have the rules of the game changed after the fund comes into existence.

12] The HIF mechanism makes the development of "me-too" drugs (i.e. drugs that have no substantial benefits over existing medicines to treat a particular disease) not lucrative. While this makes sense for diseases, the existence of me-too products to mitigate climate change has to be judged using different parameters and taking a wider scope of social implications into consideration.

When we make it possible to reach the target (maximizing QALY) by more means we will increase the number of potential competitors and thus drive down the size of the reward.¹³ Making the HIF rewards accessible for new competitors will primarily hurt the established large corporations mostly headquartered in the potential donor countries, something that small and medium-sized companies around the world will welcome, but which may provoke resistance from major business lobbies.

There is also another political catch, however, in dropping the strict patent requirement for HIF eligibility and settling for approval by a major regulatory agency alone. In the latter case, a company could be asked to give up some of the exclusive rights that derive from its proprietary control of the regulatory data in exchange for becoming eligible for the HIF rewards. The catch is that this might indirectly reinforce the international legitimacy of the principle of "data exclusivity" allegedly based on article 39 of the TRIPS Agreement, a principle that is currently being promoted by the US and the EU but that is fiercely resisted by India and other developing countries. The HIF could thus be seen as implicitly taking sides (and even the 'wrong' side) on this contentious issue.

Since especially in the case of climate-friendly technologies many non-patentable but high-impact innovations may emerge, the relaxation of the patent requirement deserves further elaboration.

It is in the public interest that a medicine has been approved by a regulatory agency for efficacy and safety. We can say that loosing up this requirement for any purpose whatsoever not only contradicts public interest, but may also jeopardize the health of people who are relying on the claimed benefits of the medicine in question. A Health Impact Fund that will not demand such safety tests will not do justice to its name. However this limits "impacting" global health to medicinal innovation and the making available of new drugs, leaving other ways to improve health unrewarded by the fund. There is a very good reason to concentrate on the development of medicines: the knowledge involved in their making is a public good. As a public good it is non-rivalrous in consumption – a welfare improvement that will survive wars and civil unrest. Medicinal treatments and cures can play a key role when natural or human disasters occur, as diseases that spread out by the collapse of infrastructure, overcrowded confinement of people and rape, can be controlled. As no society can completely insulate itself from such vulnerabilities, preventive measures for disease control can never do the full job.

13] The exceptional success of one candidate drug can also affect considerably the expected pay-out for other participating companies. The HIF considers having a pay-out ceiling for a single drug (Hollis and Pogge 2008, 20). A minimum pay-out rate per QALY added could reduce uncertainties if clearly fixed. Designing the HIF with a self-adjusting pay-out rate comes with the price that every change in the scope of inventions that are allowed to apply for the fund's reward will encounter strong resistance with people having already products destined for the HIF in their research pipeline.

As far as a Climate Impact Fund is concerned, regulatory approval plays a far lesser role.¹⁴ It is easier to estimate the difference in emission output a new technology may have over an older one, than it is to measure the efficacy a drug has on combating a disease. The distribution of the innovation landscape has the potential of being much more dispersed than in the area of medicinal innovation, as a lesser minimum infrastructure is required. However there is a fundamental difference between climate-friendly technologies and medicines: the harm caused by manufacturing the products of innovation may supersede the claimed benefits. Estimating the total emissions caused by making the product available on a massive scale is a quite challenging undertaking. The debate around biofuels has become a classic example. Therefore, some kind of hurdle to be able to apply for a Climate Impact Fund's reward seems also necessary. Some kind of certification body similar to the Technischer Überwachungs-Verein (TÜV) will be needed to set the standard of what kind of innovations could apply for the rewards. The selection of technologies will probably have to be limited to technologies whose total environmental production costs can be reasonably measured. The reward has to be fixed in relation to the total impact the technology has (reduction of emissions minus additional emissions caused by production and operation). To make the climate impact measurement cost-effective, we may not only have to restrict the types of technologies that can opt for the fund's rewards, but also demand a fairly specific standard in homogeneity of the objects of innovation.

Shifting the threshold line from having a patent with FDA approval to having FDA approval alone for eligibility for the Health Impact Fund may change fundamentally how the fund is perceived. The basic mechanism of the impact fund relies on an exchange. Innovators have to give up some type of exclusivity, mainly price-setting privileges facilitated by patents or by being the sole "owner" of clinical trials data, in order to be eligible to apply for the fund's rewards. Now, for the sake of the argument, let us imagine that a philanthropic organization systematically undertakes clinical trials to show the efficacy of traditional medicine. This organization applies for the fund's rewards for no other reason than to give the indigenous communities that brought up the traditional medicine the entire impact fund's reward monies. The decision is based solely on notions of desert – the indigenous community created a public good, a gift to society, something that has to be reciprocated.

In the case of medicines, this case might be nothing more than a thought experiment, due to the high costs of running clinical trials. While considering climate-friendly technologies, this possibility ceases to be utopian, as certification costs may only be minor. There might be some cases where the impact fund may have the possibility to

14] Regulatory approval might also be relevant for new agrochemicals and new agricultural crops which could potentially play a role in climate mitigation. Data exclusivity is not only claimed for medicines but also for agrochemicals, as the latter are also mentioned in article 39 of the TRIPS Agreement. Agri-biotech companies would also like to see regulatory data on the biosafety of GM crops being treated as proprietary.

reciprocate such kinds of gifts to society. Now having the possibility to do so and choosing not to, demands a justification. If the invention happened to enter directly into the public domain, should the impact fund reward the inventor solely on notions of desert? Does society want to use the scarce resources for addressing global hazards to reward something that is already in the public domain? A Mausean conception of gifts clearly demands some kind of reciprocity. Forgoing the possibility to reciprocating such gifts will send a very particular message on how society perceives them. Prioritizing the creation of new tools to combat current global hazards could count as a strong argument, but as we are conceptualizing a global solution we should not underestimate the social importance the reciprocation of gifts has for some societies in our world.

V. HARNESSING THE POTENTIAL OF GRASSROOTS INNOVATORS

It has been suggested that the possibility to adapt an invention to local needs and even to be able to build an equivalent using local resources is vital for distributing it to areas where the market does not have its expected effect (cf. Gupta 2010). When climate change mitigation is the central goal, there are limitations (at least economic limitations) to what we can reach with the help of standardized highly technological inventions. The huge inequalities in the world limit access to the objects of innovation and the diversity in educational backgrounds may hinder the effective use of standardized inventions in all corners of the world.

We may think of the newest generation of light bulbs showing great efficiency in energy saving. Those bulbs are expensive to acquire and require special environmentally safe disposal. In how far the next generation of light bulbs can take into account the purchasing power of the poorest half of the planet, as well as its recycling limitations, remains open, but there is some justified scepticism on how far development further down this road will be as cost-effective as a strategy that aims at a diversification of innovation projects. There are a number of inventions that can be amended according to local needs or can be locally reproduced.

By contrast, the knowledge involved in a method to convert agricultural waste into a soil enhancer, biochar, does not only add to climate change mitigation efforts but can also play an important role for food security.¹⁵ If the method is taught to farmers in remote areas, many could develop variations thereof to adapt to the local environment and through a process of trial and error keep improving local variations. People developing particularly successful variations could be incentivized to teach other communities about their skills.

¹⁵] An extensive presentation of the popular reception of biochar is offered in www.biochar-international.org. A brief historical introduction as well as a sketch of problems that have to be overcome for a wider use in East Africa is presented by N. Hagemann 2012.

VI. CONFLICTS OF LEAVING ADAPTATION NEEDS ASIDE

In an earlier sketch of the practical problems of a Climate Impact Fund (CIF), namely Timmermann and van den Belt 2012, we came to the conclusion that such a fund would only be feasible and cost-effective if it concentrates on incentivizing technologies that can be assessed by a broad across-the-board metric (in close analogy to how the original HIF uses the QALY metric [Hollis and Pogge 2008, Chap. 3]). Therefore a CIF should concentrate, at least in its initial stage, on climate change mitigation only. At least for some technologies we can measure its relative improvement in reduction of greenhouse gases emissions to existing technologies, as mention earlier. Constructing a broad metric for climate change adaptation will be close to impossible due to the heterogeneity of the various coping strategies.

This whole path will lead inevitably to a series of disputes. Firstly, it is far from self-evident that choosing a metric for its simplicity will provide a sufficient justification for its implementation. Focusing on lowering the carbon footprint might undermine other very important goals such as maintaining biodiversity, recovering green areas, changing to more sustainable food consumption, etc. Secondly, a major initiative that concentrates solely on mitigation efforts, may lead to neglecting the importance of adaptation needs. Here we should not forget that benefits gained by climate change mitigation are a public good – nobody can be excluded from it. The urgency of climate change adaptation varies significantly, especially when assessing food security (cf. Cline 2007). Local adaptation efforts may not automatically lead to solutions that could be exported to other areas that are also struggling to adapt to the new environmental conditions.

VII. CONCLUSION

Prioritising a global relief of suffering caused by diseases or mitigating climate change are very noble goals. However the need of reshaping our incentive system for technological innovation in such a way that we can achieve those goals in a reasonable time frame should not prevent us from questioning the acceptability of the methods used in the process. We, as people participating in society, are still responsible for the institutional order that has been set up and that we maintain with our daily habits. As a collective we are deciding what is feasible and thus we cannot escape accountability.

We fear that by advocating an incentive mechanism based on the concept behind the Health Impact Fund we might implicitly confirm the moral acceptability of our global intellectual property regimes by failing to formally reject it. Even if this addition to the patent system is the best thing we could establish under given political realities and therefore solely support this type of innovation system to achieve our goals, we are still adding to the stability of a system that could be rejected on moral grounds altogether. Supporting the patent system in this way might make it harder for future policy makers

to combat it. Generally, settling for the low minimum global justice commitment the HIF suggests, might not be without negative consequences for future policymaking.

Enabling people to participate in the advancement of science cannot be addressed solely by corporate social responsibility. We therefore suggest an "innovation inclusion clause" to be set in any proposed impact fund. There are multiple ways to incentivize inclusion, some more restricting, like limiting the availability of rewards to companies that have less than a defined percentage of scientific activities in the developing world (something that might bring other problems into existence that have to be addressed accordingly). Another way is to reserve a fixed portion of the available funds to help poorer companies to overcome the clinical trials hurdle (or the required approval of comparable regulatory agencies). Such a clause can still be framed in terms of negative duties: if the HIF adds to the research gap, it has to address this negative externality.

cristian.timmermann@wur.nl

henk.vandenbelt@wur.nl

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Climate Change, Intellectual Property, and Global Justice¹

Monica Ștefănescu & Constantin Vică
University of Bucharest

Abstract. The current situation of climate change at a global level clearly requires policy changes at local levels. Global efforts to reach a consensus regarding the reduction of greenhouse gas emissions have so far been focused on developing Climate-Friendly Technologies (CFTs). The problem is that in order for these efforts to have an actual impact at a global level we need to be concerned with more than just promotion and info-dissemination on the already existing CFTs, but also with costs, implementation and the international intellectual property and trade system necessary for this strategy to work. Currently, almost 80% of all patent applications belong to OECD countries like Japan, US, Germany, South Korea, Great Britain and France. The obligations climate change imposes on developing countries represent a technological shift that depends on Technology Transfer (TT) and implementation of IP laws. The current IP framework, especially patent law, copyright and trade secrets produces another kind of obligations. The main question is if the conjunction of these two sets of obligations (rules) is fair from a global justice point of view. Also, it is questionable whether this conjunction helps developing countries to produce their own CFTs. When discussing the demands of global justice one cannot skip the very important distinction Pogge makes between negative and positive obligations. In the context of global warming and the measures that the world's states ought to take to prevent it, there seems to lie another conjunction between the positive obligation of preserving the natural environment that we all share and a negative obligation of allowing the less developed countries to help us all do so. Because one cannot impose regulations that cannot be put into practice, it is more and more obvious that a new framework of action and development needs to be drawn in the field of TT of CFTs.

Key words: global justice, climate change, Climate-Friendly Technologies, intellectual property, patents, institutions, public good.

There is a new tendency in the current discursive techniques that account for globalization and its effects, one that distinguishes itself from the global market imperative and that tries to overcome the large inequalities it has imposed on developing countries. Rather than maintaining the old North-South exploitation scheme, these proactive universalizing forces seek to transform it by offering trans-local alternatives to the a priori theory of market globalization. This is called justice globalism and it is structured as a network of networks intertwined to address the social contradictions regarding global capitalism. Due to its open-endedness in scope it offers a large area of multi-access points like environmental issues or human rights issues.

In this paper we are going to explore this network, accessing it through what we believe is one of its most vulnerable points nowadays - that is, the conjunction between the obligations of climate justice and the international intellectual property laws (or régime). We will explain why and how climate change translates into climate justice, why this is a meta-imperative to live differently in both North and South, and why this imperative is currently unachievable especially due to the legal framework of IPRs worldwide.

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It is well-known that industrialized countries are mostly responsible for the current worldwide concentration of greenhouse gas (GHG) emissions and the effects they have on the global climate. Human activity has increased the concentration of carbon dioxide and other GHGs ever since 1750; in fact, the charts show that in the pre-industrial era the concentration of GHGs was 100ppm lower than it is today. It is also true that natural sources of carbon dioxide are 20 times greater than those due to human activity, but the Earth had its own way to balance them. Increasing the natural concentration of GHGs had a considerable impact on the Earth's climate and thus on many physical and biological systems.

This impact of anthropogenic warming on the earth's natural environment will unfortunately be felt firstly by the low-income peoples of the world. According to the IPCC report of 2007, urbanization and industrialization already put a lot of pressure on the natural resources in new and emerging economies; the pace imposed by the global market being far too alert, their capacity to adapt and to develop in an environmentally, economically and socially sound way is relatively low. The UN Human Development Report of 2007 also recognizes that developing countries will be the first to suffer from it and in the highest amounts, although they contributed the least to the current deterioration of the climate. It is due to these asymmetries that we are now faced with the necessity to rename the climate problems of global warming and call them global justice problems, namely climate justice.

So what does climate justice actually bring to the table that is new? Its discourse is mainly scientific, we roughly know what to expect, we know what the causes are, global warming is measurable and so are the GHG emissions, so it is basically explicit knowledge which makes its discursive potential in policy matters a rather strong one. But climate justice is also about politicizing the origins of the climate crisis because it addresses the question of who has something to gain from the emissions and who bears the responsibility for mitigation. Recognizing the difference between industrialized nations and developing countries regarding their capacity to reduce GHG emissions, climate justice is basically about numbers and principles and about admitting the fact that capitalist growth was built on a carbon economy.

I. DIFFUSION OF CFTs AND IPRs

There has been a tremendous recent effort in establishing a consensus on the role developing countries should play in GHG reduction. The development of new CFTs and their dissemination at a global scale is the main measure to take to stabilise greenhouse gas emissions in the atmosphere, which makes technology the main hot-spot in discussions that followed the Post-Kyoto regime. The debate regarding the policies that need to be implemented has a few neuralgic points, one of them being the fact that, although CFTs are being developed in developed countries, their adoption in fast-growing and emerging economies is compulsory and urgent. Developing countries are currently the main

producers of GHG emissions but their ability to reduce them is constrained by limited financial resources, weak regulatory institutions, and the perception that they should not have to bear the costs of mitigating a problem primarily created by industrialized countries.

In other words, CFTs dissemination at a global scale faces numerous economic and policy difficulties because, on the one side, developing economies cannot bear the financial costs of adaptation and implementation alone, and, on the other, private developers refuse to give up too much of their IPR-protected information. Research in economic theories of technology diffusion shows that there are a great deal of policy levers that can be used to speed up the diffusion of CFTs in developing countries. However, the solutions may not be equally appealing to both sides. Investigations regarding tech-diffusion on an international level echo those at national levels, and they clearly show that, even if CFTs that lower production costs and diminish GHG emissions can be transferred (although they usually require additional adaptations), their diffusion can still take anywhere from 5 to 50 years – an enormous amount of time. This is due to several differences between developing and industrialized countries regarding human capital, infrastructure, prices, learning by doing, institutional factors and lack of or lax enforcement of formal regulatory pressure.

Allen Blackman offers a few policy prescriptions with regard to CFT diffusion, considering the lack of a guarantee that new technologies that have successfully been developed and diffused in industrialized countries will diffuse as widely or rapidly in developing countries, or that they will diffuse at all (Blackman 1999, 10). According to Blackman, in order for these technologies to be successful, they need to be “appropriate” to developing countries. Firstly, information on new technologies is a key point of the diffusion, but it is likely to be imperfect or unreachable, which is why he proposes the subsidies method for activities that improve information flows, such as demonstration projects, testing and certification of new technologies or consultancy services. Secondly, he emphasizes the fact that environmental regulatory taxes and other forms of formal or informal constraints, even reduction or abolition of energy subsidies, might be an incentive for the dissemination of energy saving technologies and CFTs. Thirdly, he raises the problem of investment in RD and human capital and infrastructure, noting that intellectual property restrictions do indeed have countervailing effects on the diffusion of new technologies, because although intellectual property does stimulate RD, it stimulates the already existing markets rather than keeping an open access system in new and developing economies. Moreover, IPRs attach significant additional costs to the existing CFTs and make their adaptation almost impossible as almost all the technical information on them is under patent law.

Ricardo Melendez Ortiz, chief executive of International Centre for Trade and Sustainable Development (ICTSD), suggests a parallel between technology transfer in the CFTs domain and the issue of access to medicines (2009, vi). He goes on to say that “a declaration comparable to DOHA in the case of IPRs and climate change may

be useful in the progressive development of international law so that it properly balances the rights of innovators and access by the public to the benefits of environmentally sound technologies” (innovation and tech transfer to address climate change ICEDTS issue no. 4), emphasizing the urgent need for further evidence-based analysis to inform current discussions on climate change, technology transfer and IPRs.

When discussing the problems imposed by patent law with regard to green technologies, we are actually referring to the difference between those for whom IPRs become a *problem of livelihood* and even survival, and those for whom they simply assure a *certain (upper) living standard*. Intellectual property is a legal construct that protects (by control) different types and sources of knowledge, and different countries have formulated different regimes of protection for IP. These different regimes can affect both the use of knowledge and its development, in the sense of knowledge applied for innovation. IP law decides what can be patented, what these rights of IP are, how they are granted, who can receive them, what their purpose is and for how long they are available. Many of the legal aspects of IP have been the subject of lawsuits. Moreover, property rights, IP included, are not absolute; there are situations in which public interest should prevail and so legislative changes should be made. The question is how can we update the IP regime so that it will reflect the actual socio-economic circumstances at a global level? After all, we must not forget that one of the purposes of IP law is to represent a social convention meant to promote and sustain social welfare, defined as both access to and participation in the production of knowledge.

The form of IPR usually associated with innovation in the field of technology is the “patent”. It consists of a bundle of rights granted to the inventor to exclude third parties from making, using, offering for sale, selling or importing the patented product, using the patented process or importing a product made with the patented process for a period of typically 20 years from the filing of the patent application. A patent is granted to the first person that makes an invention, allowing this first person to exclude subsequent inventors of the same product or process from the market, even if those subsequent inventors had no knowledge of this first person’s activity and even if they finalized their invention the day after this first person. The second form of IPR customarily used to protect technological information is the “trade secret”. Trade secrets protect confidential commercially valuable information that its holder has taken reasonable steps to protect from disclosure. Trade secrets may take many forms, including customer lists, recipes and computer software design. Unlike the patent, trade secret protection has indefinite duration and it does not require disclosure of the invention even if it may be relevant to the public.

These hard forms of IPRs, that are usually joint to better protect a certain invention or innovation, are due to a key policy assumption: that it is only by providing the possibility of a significant financial reward in terms of market exclusivity that you can encourage investment in innovation, thus leaving the process of deciding where and how innovation

should take place in the hands of private investors and outside the grasp of governmental institutions.

According to Schumpeter (1976, 45) there is no higher virtue of a prosperous market like its capacity to stimulate innovation; capitalism is therefore based on the dynamics of technological advance. But the experience of the past 30 years demonstrates that there are no optimal solutions to assure Schumpeterian competition. Certain fields seldom receive more funds and interest for research than others do, and, although competition is essentially one of the most powerful stimulants for innovation, this cannot mean we can translate “the competition for the market” into “competition inside the market” – this being exactly what international agreements on IPRs are doing.

II. THE INTERNATIONAL RÉGIME OF IPRs

The World Trade Organization agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which introduced IPRs into the international trading system and remains the most comprehensive international agreement on the topic, is of particular interest and concern in ongoing discussions of the transfer of climate-related technologies. Under the false pretenses that it assures competition inside the market, TRIPS actually closes the market for new-comers by protecting sources of knowledge that used to be open and by blocking the route early industrializers had taken to get where they are now; such international agreements enlarge the spatiotemporal coverage of the monopoly and force the states to get more and more involved in protecting them. In other words, Schumpeter was wrong to say that monopolies would inevitably be temporary. Companies have, nowadays, both the incentive and the legal instruments to assure their monopolies and destroy their competitors.

Written and proposed by “the twelve” (i.e. a list of companies: Bristol-Meyers, CBS, Du Pont, General Electric, General Motors, Hewlett-Packard, IBM, Johnson & Johnson, Mosanto, Pfizer and Merck) (Sell 2003, 67) TRIPS is the best example to illustrate the increasing role of private power in international politics. With it, the industry proved to have the means and the power to identify and define IP as a problem of trade, to offer a solution, and to reduce it to a concrete proposition in order to then sell it to governments. There are several essential critiques one can formulate against TRIPS. Susan K. Sell identifies four of them: firstly, TRIPS is a mirror of what the twelve members of the Intellectual Property Committee wanted the legal framework of IPRs to look like globally. Secondly, the agreement is based on a controversial definition of IP, *one that favors protection rather than dissemination* and the claim that this particular way of defining IP will sustain global economic development has not been certified yet (Sell 2003, 59). Thirdly, the uniform standard it imposes on all the member states of the WTO and the “one size fits all” policy are highly doubtful and disputed. And fourthly, TRIPS only refers to the rights of private actors and not to the goods in question, and it fails to circumscribe an area for acceptable

politics, but obliges governments to take positive action to protect IP according to the same legal standard worldwide.

However, it is generally assumed that much of the foundational technology of the CFTs field is well known. Just like the basic idea of using wind to turn the blades of a turbine that generates electricity is common knowledge that evolved from an ancient history of using water and wind to turn waterwheels and windmills to grind grains into flour. The problem is usually wrapped around the ways to improve the efficiency of such mechanism, to adapt them to a certain environment or to find the adequate materials according to that particular environment, or, to put it differently, it has to do with technology transfer. The financial advantages that accrue to technological “first movers” may become embedded by different mechanisms than patents alone, such as agreements among potential competitors to share markets. Although the assumption was that patents would be used as a mechanism for market allocation, they tend to develop in the opposite direction as conceptually, market entry by third parties would otherwise be much more permeable.

According to the Draft International Code on the Transfers of Technology of 1985, “transfer of technology” (TT) can be defined as the transfer of systematic knowledge for the manufacture of a product, for the application of a process, or for the rendering of a service. It thus involves more than the simple transmission of hardware, but also requires facilitating access to related technical and commercial information and the human skills needed to properly understand it and effectively use it. The domestic capacities to absorb and master the received knowledge, innovate using that knowledge and commercialize the results are critical aspects of the TT process. In this context, the existence of IPRs is again a source of controversies because it is potentially both an incentive and an obstacle. Dominique Forray (2009, 19) emphasizes the fact that the complexity of TT is based on the different development levels between the two parties of the transfer, on the very intricate conceptual distinction between information and knowledge and on the institutional inadequacies met when shifting the locus of decision-making to local agents.

Determining the role of IPRs in the transfer of climate-related technologies in the context of the UNFCCC is not proving any easier. The UNFCCC and the Kyoto Protocol contain specific commitments on technology transfer. Article 4.5 of the UNFCCC urges developed country parties to take all practicable steps to promote, facilitate and finance the transfer of, or access to, environmentally sound technologies and know-how, particularly to developing countries. Article 10 of the Kyoto Protocol reaffirms these commitments. Developed country parties are also required to provide the financial resources needed by the developing country parties to meet the agreed full incremental costs of implementing their obligations, including for the related transfer of technology. Technology is needed in developing countries both as an engine of development and to help blunt the impact of growth on global climate change.

III. GLOBAL JUSTICE AND INSTITUTIONS

In the first part of this paper, we tried to see what is happening when the demands/obligations of climate change and the rules of intellectual property collide. It is a short list of implications that can be expressed as follows:

(1) Climate change *implies obligations* to action on reducing GHG and producing CFTs.

(2) CFTs, like many other technologies, *implies* the obligations of IP, i.e. *protection by patents*.

Therefore, (3) climate change implies at least one form of IPRs protection, the patent.

The debate around climate change and climate justice could not neglect the prominent role of patents in knowledge control. The proactive implication of climate change - CFTs' creation - is bound to a system of allocating resources which is highly criticised from the point of view of fairness. As we have showed in the previous section, technological transfer (TT) is a thin palliative for intellectual property enclosure and we cannot rely on it to sustain environmental change.

In Nagel's vision on global justice (2005), intellectual property is one of the *institutions* we have to watch and improve if we want to acquire impartiality and genuine equity at the global level. The role of institutions in realizing global justice is paramount; but to make it happen, it must be grounded in a non-arbitrary, widespread and acceptable (by majorities in privileged nations) *political conception of justice* (Nagel 2005, 126), in opposition with the cosmopolitan view of justice. Nagel proposes a derivative kind of political conception with special features.

There are three families of international institutions: for human rights protection, for provision of humanitarian aid and for provision of public goods (Nagel 2005, 136). Intellectual property and environmental protection are part of the latter, so their intentionality (by design) is to provide the public good. Institutions on global level "put pressure on national sovereignty" (136) with their claims of democratic legitimacy and socioeconomic justice. Therefore, a classical dilemma arises: developed nations want more global governance by these institutions, but they are less willing to follow the obligations and demands subsequent to it (136).

In our global economy, Nagel asserts, we need a stable "system of property rights and contractual obligations" to keep the flow of commerce alive (2005, 137). This system is a network of institutions (imposing obligations upon states and other actors), and people all over the world are connected by this institutional design (137). This is one of the core ideas of Nagel's vision on global justice: not only are the states and other big constituencies part of the network of international institutions game, but *each world citizen is linked to others* by this normative network. It is a fact we must accept: the flow of goods, services, ideas and capital is borderless and touches each citizen beyond her/his will or knowledge.

We are bound to this network, and the problem is that we are bound at its periphery. To quote Nagel again, international institutions “are not collectively enacted and coercively imposed in the name of all the individuals whose lives they affect” (138). Between the individual level of political reality and the international level are the states, which demand and impose the kind of action the international institutions could do. Global justice is limited to nation-states and individuals are not *de jure* members of the continuous political bargain negotiated on a global level.

IV. HOW TO SHAPE INTELLECTUAL PROPERTY INSTITUTION?

Intellectual property is a set of obligations, permissions and interdictions in respect to the creation of knowledge (artistic, scientific or technological) and the flow of information. This set is always *contingent* and, from an epistemic point of view, always *undecided* (it is impossible to verify or to falsify it). The contingent character must be explored to understand why IP as an institution will always be under scrutiny and why its rules evolve (or must evolve by an artificial, societal selection) at the same pace with the realization of fairness and justice at the national and global level. The question is if the aim of IP is taking the same path as the purpose of global justice. Given the current state of affairs, the answer, unfortunately, is a negative one.

The development of intellectual property laws is the result of “compromises and contingency” (Sell 2001, 496); intellectual property is not a transhistorical concept (Sell 2001, 473) - it is a historical construction (and also geographical) produced by a continuous struggle of forces like mercantile interests, domination positions, ideologies, and technologies. The environmental policies (under the threat of climate change) are also historical constructions; the difference between the two institutions is on the level of justification. For IP as “property” the justifications were unhistorical, essentialist and aprioristic; climate change is a matter of debate and arguments from the historical point of view (not only the *present* environmental situation is taken into account, but also the problem of *future* generations) and we emphasize the contingencies (that is why the technological progress is expected). The long history of IP is often downplayed just to focus on the current state of affairs. For the climate change discourse, the history of climate is a fundamental matter for empirical arguments (e.g., the GHG emission is observed *in time*).

The official mantra of WIPO and Western nations is that IPRs are “the key economic resources of the future” (Sell 2001, 468). The conceptual problem behind this punchline cannot be ignored: there is no consistent international system of IPRs - i.e. it is full of contradictions -, the definitions cannot pass logical tests and the scope of IP is uncertain. This uncertainty reflects upon the trade system and upon incentives for innovation. The practical problems of IPRs are manifold and studying all of them is beyond the scope of this paper, but a global analysis is compulsory to see how they can be circumvented in the future. Peculiar to IP is the tension between protection (& exclusion) and dissemination

(& competition) (Sell 2001, 468). This tension is a great source of debate and contestation, as the not-so-short history of IP proves each time we interrogate it. A strong form of contestation arose under the *Ancien Régime* against the *privilegé du Roi* offered only to several book printers and sellers. The contestation of this monopoly took the form of book piracy and informal networks of communication, like rumors - both illegal. The French language conserved the linguistic fertility of that era still using terms like *craque*, *mauvais propos*, *bruit public*, *on-dit*, *pasquinade*, *canard*, *libelle*, *chronique scandaleuse* in the oral discourse and this could be a sign that the original tension between privilege and free speech is not totally out-of-date. The Statute of Anne (1710), the first copyright law in history, was the result of a collision between authors and publishers and also a form of contestation against royal intervention upon the market of ideas, opinions and critique. In the USA, from 1850 to 1875, there was a tension between those defending the protection of innovation by patents and those demanding an international system of free trade (Sell 2001, 483). TRIPS and the new proposal of Anti-Counterfeiting Trade Agreement are maybe the most contested commercial agreements related to IP. With TRIPS, the world saw the establishment of an international regime of IPRs, a movement which emerged in the 19th century with the Berne Convention. Can this history of contestation break down and be replaced by a “cosmopolitan peace” over IP? To be sure, it is not possible to break the dialectical movement of IP (Sell 2001). And, also, it is not desirable.

The process of institutionalization of IP has many phases (Sell 2001, 468) and it will never reach “the end of history.” It is driven by ideological shifts and technological change (Sell 2001, 468), and this dialectical movement brings to power those who can control technologies and public speech. This leads to a classical observation about IP: in opposition with physical property, for which one condition is the scarcity of resources, IP is a construct made to generate *artificial scarcity*. Knowledge and information are not scarce resources – firstly, because they are beyond consumption; secondly, because they can accumulate indefinitely and produce positive externalities. In the 1960s, there was a debate between Arrow and Demsetz about the market efficiency of information (understood in a broad sense, from data to knowledge). From the welfare point of view, asserts Arrow, any new information “should be available free of charge” (1962, 616-7). This will generate *optimal* use of information, but no incentives to research and to produce any new piece of information (like the CFTs in our case). Therefore, we have to impose an artificial scarcity of information, which is suboptimal, but efficient from the innovation point of view. The institutional arrangement this artificial scarcity brings about is an “imperfect” one (Demsetz 1969, 1). But, as Demsetz puts it, what is more important: to keep comparing the imperfect institution with an ideal norm (in our case, offering CFTs “free of charge” for developing countries) or to choose from different real and practical institutional arrangements? Avoiding the “nirvana fallacy” (Demsetz 1969) under IP & environmental policy conjunction is difficult, but not impossible, as we will show at the end of this paper.

Sell and May establish three perspectives on IP: realist, functional and critical (Sell 2001, 469-74). The realist perspective is limited to only one kind of powerful actors: the states. Those actors act monolithically under this perspective, which neglects the emergent groups and the struggle between the old groups in power and the newcomers (Sell 2001, 470). The functionalist perspective is holistic in nature: it accepts that there are institutional arrangements produced by settlements, but it fails to see the interest, power and ability of actors behind them (Sell 2001, 470). Functionalist theories, like Demsetz's, emphasize the role of efficiency in establishing property rights and ownership (not only on tangible assets, but also on ideal objects) and set into this efficiency (inside the market) the regulatory condition for the institution of property. The problem with functionalism is that it "begs the question" (Sell 2001, 471): who defines efficiency, from what point of view, in what dimension and for how long? For a functionalist, property's role is to foster coordination between individuals. However, what is efficiency when coordination is impossible? In the case of information, what is efficient from the welfare point of view is the lack of IPRs (with free dissemination and competition of building new information on common resources). Efficiency for the "owner" of information is acquired by protection and exclusion (the control of information) through IPRs (Sell 2001, 471). Functionalism fails to see the real struggle for control and dissemination in informational resources wars, and thus it cannot take into account the two different efficiencies (or expectations of).

The critical approach, in which our essay is inscribed, looks at the interaction "between ideas, material capabilities and institutions" (Sell 2001, 473). The legal construction of IP is just an actor in this general game of informational resources; technologies are also important along with creators/innovators. The institution of IP is linked to other institutions (as in Nagel's vision of institutional network), technologies are built on other technologies and the creators are part of a long history of the instantiation of ideas.

Institutions like IP consist of a set of rules which impose deontic constraints on different agents in several contexts. All statements about intellectual property, equal access and information responsibility can be expressed in a structure of deontic, action and epistemic terms (van den Hoven, 2002). Patents, for example, are *a right* to exclude the use of information by the others (so they impose obligations on others not to use the information), but also *an obligation* to make information public (so they also set permissions to access information). The action of exclusion and the action of publicity are related to information; the relationship is always between two agents: the information haves and have-nots. In this network of obligations and permissions, some actors are winners and the others are losers.

The question to answer in the last part is: why not oppose IP obligations to equal access obligations under a global justice demand? How can we do this while also avoiding the "nirvana fallacy"?

V. A FAIR SOLUTION: CFTs AS PUBLIC GOODS

The problem of access to CFTs is not isomorphic with the problem of medicine access in developing countries, but an analogy could help to seek the solution to CFTs access for developing nations. According to Pogge (2010, 144) the Lockean natural right of appropriation, though considered the friendliest philosophical tradition to the global intellectual property rights system, actually fails to be consistent in this exact case. The inventor may initially seem to be like the person who, by mixing his labour with a previously unowned object or resource, while leaving enough and as good for others, is now entitled to call himself owner of that object. But, in the case of patent protected objects, the inventor is preventing others from doing exactly what he did, simply because he was the first to do so. While supposedly this does not infringe upon their access to such resources, it does take away their freedom to use them in the same way, and, by mixing their labour with those resources, to acquire what they themselves have legitimately obtained.

Using this failed application of the Lockean natural right of appropriation, Pogge explains why the best way to level pharmaceutical prices is to take a turn and, instead of imposing unjust monopoly prices on the poor, find a way to grant open access at competitive market prices to both the poor and the affluent. To do so, he proposes the public funding solution through push and pull programmes that should be funded by governments and further suggests to treat health impact rewards as public goods. Moreover, he says complementary funding should be global rather than national and should fall under an international agreement strong enough to impose the public goods perspective on such patent applications worldwide. We believe that this is a very strong argument that can also be applied to other types of patent applications and that, especially in the CFTs sector, could help level the market inequalities that may arise.

In a biased study done by John Barton in 2007 on several CFT industries (photovoltaic, biofuel and wind energy), the Stanford researcher observed three different problems on the CFT market, but none of them, in his vision, incriminated the IP institution of patenting (Barton 2008). Barton begs the question when he tries to explain that the tariffs are barriers, not the IP - the tariffs are a by-product of patenting. Otherwise, he acknowledges the asymmetry between developed countries capacities in CFTs (production and export) and the situation of developing countries. According to Barton, patenting is a problem for CFTs only in business-to-business procedures, i.e. "patent fights" between companies in the same industry. He ignores the social effect (in terms of costs) and the chilling effects for innovation of patenting. For example, the wind sector is based on patents even though the technical concept (the windmill) lacks novelty and it is so obvious. In this case, the patents are a barrier for other companies entering the market and this is highly artificial, the wind technologies being obsolete innovations open only to incremental improvements. The cases of photovoltaic and biofuels are more complex and they deserve a special discussion.

The other two problems of CFT industries are the market concentration and the big subsidies from the state (Barton 2008). Fighting against the market concentration is first of all a national public policy endeavour and we will not assess it here. But the problem of big subsidies could be in fact converted into the solution for CFTs from the global justice point of view. As Barton observed, national states are encouraged to support the companies that produce CFTs through financial subsidies and heavy regulation (e.g. obligation to use a certain percent of their total energy from renewable sources). The cost of research is also socialized and the profit privatized: companies use public research funded by the state and enclose it under IP laws. The effect is a bigger gap among nations.

In respect to these findings, i.e. the development of CFT is socialized, but the profit privatized, is it not possible to argue for a public good approach in this case? Can the developed states renounce their “national favoritism in licensing publicly funded inventions” (Barton 2008)? If we accept Pogge’s position - “responsibility is negative - to stop imposing the existing global order and to prevent and mitigate the harms it continually causes for the world’s poorest populations” (Pogge 2001, 22), then we can ask developed countries to stop imposing the actual patent institution and to refrain from national favoritism in the case of CFTs. Those are mainly publicly-funded technologies, public goods supported by all citizens. A second line of this argument comes from Nagel’s idea of citizens’ network: each world citizen is linked to others.

A global public pool under an international agreement for developing and spreading CFTs could bring the just measure back into climate change obligations. Seeing CFTs as public goods (non-rivalrous and non-excludable) is a better way than the compulsory licensing alternative because it allows the creation of an international agreement that would impose a stronger perspective on the necessity of their development and application, while also better dealing with the financial mechanisms involved in the process of creation and dissemination. By doing so, we could manage to escape the disadvantages of allowing an arbitration court to deal with the proper price of the invention and develop better and internationally sound push and pull programmes to obtain public funding in the CFTs field of research.

monica.stefanescu4@gmail.com
constantin.vica@gmail.com

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The Clash between Global Justice and Pharmaceutical Patents: A Critical Analysis¹

Mihail-Valentin Cernea & Radu Uszkai
University of Bucharest

Abstract. In the following paper we will talk about the issue of the access of the poor countries of the world to pharmaceuticals and it could be solved just by wholly renouncing the current Intellectual Property regime. The first section of the paper will be concerned with an outline of the problem at hand, namely how the TRIPS agreement was detrimental to the medical conditions of the impoverished from less-developed country. The second section of the paper will outline Thomas Pogge's and Aidan Hollis' solution to this global justice problem: The Health Impact Fund. We will also sketch some criticisms of this proposed solution from a libertarian perspective. The final section of the paper, and the largest, will summarize what we think is the better solution for this conundrum, one that involves dropping patents because, as we will try to show, intellectual monopoly is not a necessary way to incentivize creativity and innovation in the pharmaceutical industry.

Key words: intellectual property rights, pharmaceutical industry, patents, Global Justice, Health Impact Fund.

I. AN ETHICAL ISSUE: THE PATENT SYSTEM AND ITS IMPACT ON PHARMACEUTICALS

Since the introduction of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement, for short) in 1994, the poor of the less developed countries of the world have had huge problems in getting their medical needs properly cared for.

The situation before the TRIPS Agreement, while far from being ideal, was better because there was no interference with national regulations regarding patents. This meant that in third world countries, for example, where there was little to none patent legislation, those in need of what would be expensive medical goods in the west, could, at least in theory, have access to either those meds sold at competitive market prices or generic drugs. What TRIPS did, in short, was to force the globalization of Western patent laws. Thus, membership in the World Trade Organization was conditioned by signing of the TRIPS Agreement. Now, because the poor countries needed the advantages that joining the WTO brings (trade liberalization), they were forced to accept the rules of intellectual property much more suited to richer nations.

Thomas Pogge has a very good analysis (2010, 139-40) of the problems that are generated by the current patents system in regard of the access to medical services in developing states around the world.

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Firstly, one of the problems associated with the pharmaceutical industry and patent legislation, comes from the expensive nature of the research and development of new medication. The process being extremely costly, it motivates patent holders to sell their product at a price determined by the market demand from richer countries, at the expense of poor people everywhere. Secondly, development of new drugs will be mostly concentrated on diseases and other medical conditions that affect the wealthy, rather than the poor. This happens mainly because of two things: If a company would develop a drug for a third-world affliction, the final product's price will have to be in line with the manufacture and distribution price, generating quite a small mark-up. There is also the risk that pharmaceutical companies will be required to make their drug available for free or for dumping prices, making recouping development costs impossible. Thirdly, the existing patent regime encourages the production of maintenance drugs (those drugs that improve the condition of the patient without removing the disease), because they guarantee a steady stream of income all along the patent's legal lifespan. In the fourth place, filing patents and monitoring their possible infringement across tens of national jurisdictions is a very expensive process. This incentivizes high drug prices and doing whatever the company can do to extend the expiration dates of the patents. Fifthly, the lack of legal options someone may have to acquire a certain drugs will encourage that person the appeal to the black market, where she might get hold of dangerous counterfeited versions of the medicine, that may not be effective or, worse, that may hurt her health. In the sixth place, the current intellectual property rights system causes pharmaceutical companies to invest large amounts of funds into marketing, be it scaring customers that they may need a drug that they do not actually need or providing doctors with certain advantages if they prescribe their version of the drugs. This vast marketing budget will be reflected in the product's final market pricing. Last, but certainly not least, we have the infamous last-mile problem involving the distribution and proper use drugs. The current patent legislation offers no incentives for pharmaceutical companies to ensure that their products are getting to their customers or that they are competently administered. Moreover, it makes curing a disease bad of business.

These seven issues must always be accounted for by a solution that could ease the access of the poor to the medicines that they so desperately need. In Pogge's view, one must take into account the counter-productive effects that a proposal could have (2010, 142). Thus, something like compulsory licensing could very well lead to abandonment of the markets of less-developed nations, in favor of those that allow a pharmaceutical company to fully recoup its R&D investments. Also, whatever solution to this pressing global ethical and practical problem one might find, it is imperative that innovation and creativity are not stifled. For all its woes, the current patent system encourages the development of new drugs and treatments, by effectively enforcing the creator's monopoly on the use and distribution of her idea. What we need to do is to find some way to incentivize medical R&D, while at the same time making sure that a large number of people, regardless of their financial status, get to profit from those new innovations.

II. THOMAS POGGE'S SOLUTION: THE HEALTH IMPACT FUND

Thomas Pogge with Aidan Hollis came up with a proposal (Pogge 2010, 148) in this general direction: the Health Impact Fund (HIF), a global agency that could reward pharmaceutical companies that make their drugs available to those in need. This kind of reform would exclude the poor from the patents system. This Health Impact Fund does not mean that we should renounce the current patent system, it just provides a complementary way in which pharmaceutical companies could make money from the drugs they produce without hurting the poor.

How would the whole thing work? "First," Pogge writes, "just as the patent regime provides a general innovation incentive, so its complement encourages pharmaceutical innovation through an incentive that is specified in general terms: as a promise to reward any successful new medicine in proportion to its success." (2010, 148-49) Being successful doesn't mean being profitable, like in the patent system; it means reducing premature mortality and other health concerns on a large scale, regardless of the financial status of the patients.

The ideal scenario for the Health Impact Fund would look as follows: In the first place, as many countries as possible must cooperate on a long term basis and contribute to the fund. Afterwards, various pharmaceutical companies start developing drugs with the highest potential in reaching as many people as possible so that, in the end, the companies whose medicines have been most effective get rewarded. The research and development of a drug takes quite a long while, thus the need for the stability of the HIF and the need to guarantee funding even in fifteen years in the future, so that pharmaceutical companies can be sure that if their medicines have a high and positive impact on worldwide health, they will get to recoup their investment. Also, in Pogge's view, there would be need of a rule that divided the cost of the Health Impact Fund between the contributing members taking into account their gross national incomes. In terms of the reward, the discussion seems to be still open whether to allocate funds in a proportional manner to registered drugs or whether to promise a fixed monetary account per unit of health impact.

Now let's see how the Health Impact Fund would solve at once all of the seven issues stated above (Pogge 2010, 151-52): Medicines registered to the HIF would not have high prices, as investors would not risk limiting the access to the drug, because that would lower the health impact, thus lowering the funding. Furthermore, diseases concentrated among the poor would a prime target for medicine companies, as it would surely increase the health impact of their product. Defining success in terms of human health also makes away with the bias towards maintenance drugs, mainly because companies would get funded if they manufacture drugs that reduce mortality, no matter how they do it, through cure, symptom relief or prevention. In regard to wastefulness, with no need to enforce patents around the world, this issue would disappear as well. Also, the counterfeiting of HIF-registered drugs would not be profitable, as they would be sold at the lowest possible price anyway. Moreover, the HIF takes away the incentives that other pharmaceutical

companies would have to develop similar drugs, thus making the need for excessive marketing unnecessary. The last-mile problems would be a non-issue as well, as the drug companies would have to ensure that their products gets into as many hands as possible and that those patients use the medicine competently so as to increase its health impact.

Critiques of the Health Impact Fund

There have been objections both from a theoretical and a practical point of view with regard to the Health Impact Fund. The theoretical issues raised range from Pogge's conceding of the fact that "companies need better economic incentives to solve the healthcare problems of the poor" (Liddell 2010, 159) to the more libertarian critiques that we will sketch in the following paragraphs. Also, on the practical side of things there have been proposed alternative eligibility criteria for drugs, it has been questioned how the HIF would handle dispute resolution between competing pharmaceutical companies or how does one exactly calculate a medicine's health impact (Liddell 2010, 162, 170, 173).

For the remainder of the chapter we will constrain ourselves to more classical approach in critiquing the Health Impact Fund. We will assume a type of libertarian perspective that is closer to Robert Nozick's views and ask whether it is justified to gather the money of the Health Impact Fund from the tax-payers of the world. While the goal of the HIF is admirable, we do not think that forcing the citizens of some state to finance medicines for anyone other than themselves is wrong, as it infringes on those individuals' property rights:

Taxation of earnings from labor is on a par with forced labor. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. (Nozick 2001, 169)

There is also an open discussion whether a moral issue should become a legal issue. The way the funding of the HIF is structured forces, in the end, well-developed nations to pay for the healthcare of less-developed countries. This happens because each state's contribution is proportional to its gross domestic income, while the most rational action a pharmaceutical company could make is develop drugs for poor nations, curing diseases that may not even affect the people who are contributing with most of the funds. This actually makes the HIF become an endeavor that rests on forced philanthropy. From a Nozickian point of view, there is no good reason for a person to pay for the healthcare of another person, in this case, someone from the other side of the world, unless she wants to do so. While it is a kind of behavior that is ethically desirable, this does not seem like a good reason for the state to infringe on their property rights. You don't go around solving a type of global injustice by committing another type of global injustice.

Furthermore, the Health Impact Fund solution does not seek to do away with the whole of the patents system – the main reason why there is limited access to life-preserving drugs.

III. A PHILOSOPHICAL AND EMPIRICAL ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS AND PATENTS

The purpose of this section is that of exploring the philosophical foundations and limits of intellectual property rights in general and pharmaceutical patents in particular. The path we follow from this point could be broken down into a series of steps which will be structured starting from the following issues. First of all, we wish to explore the nature of intellectual property rights and pharma patents. We then set forth to present the paradigmatic justification arguments in favor of protecting and granting property to researchers who “produce” valuable ideas in the field of pharmaceuticals, namely the natural rights and utilitarian perspectives. Afterwards, we proceed to formulate a critique of the arguments previously analyzed. In other words, we wish to show that ideas cannot be appropriated because there is a fundamental ontological difference between ideal objects such as the concept for a new drug on the one hand and material objects like an actual pill. We proceed then to ask ourselves whether pharma patents are a necessary strategy to spur and protect innovation in order to produce necessary medical products or if they represent a state granted monopoly for rent seeking pharmaceutical companies. Our option will be for the latter alternative, so we also wish to explore the social cost of the current monopolized pharmaceuticals market, highlighting the situation of third world countries. Last but not least, we will sketch the coordinates of a possible solution: would abolishing the current patent system all together help people who live in developing countries gain access to much needed drugs? Or would a milder patent system aimed at reducing the IP protection for drugs be a better alternative?

Intellectual Property Rights and Patents. Towards a Minimal Definition

One of the main assumption of a classical liberal is that material objects could be legitimately appropriated by individuals. However, as Tom Palmer reveals in his article *Are Patents and Copyright morally justified? The Philosophy of Property Rights and Ideal Objects*, “intellectual property rights are rights in ideal objects, which are distinguished from the material substrata in which they are instantiated” (1990, 818). Another starting point in our analysis of IPR is the assumption that the concept of intellectual property is quite wide, circumscribing a whole area of recognized rights in relation with a certain type of intellectual production. For example, in our current legal system, whether national or international, we distinguish between copyright, patents, trademarks and industrial secrets. In this context, Stephen Kinsella suggests that patents represent a property right regarding an invention, a machinery or a certain type of process which has a useful function. A patent grants a researcher a limited monopoly regarding her invention because she has the right of excluding others from benefiting or utilizing without her permission the results of her work with a certain type of intellectual production. For example, in our current legal system, whether national or international, we distinguish between copyright, patents, trademarks, and industrial secrets. In this context, Stephen Kinsella suggests that

patents represent a property right regarding an invention, a machinery or a certain type of process which has a useful function². A patent grants a researcher a limited monopoly regarding her invention because she has the right of excluding others from benefiting or utilizing without her permission the results of her work.

How to Justify Intellectual Property Rights and Patents. Between Natural Rights and Utilitarian Arguments

In his article *Against Intellectual Property*, Stephen Kinsella distinguishes between two strategies of arguing in favor of the existence of a property right in ideas and intellectual 'products' The first one dwells on the theory of Natural Rights. Kinsella sums up this position as follows: ideas should be protected because they are created. Tom Palmer also notes that

[M]any defenses of intellectual property rights are grounded in the natural law right to the fruit of one's own labor. Just as one has a right to the crops one plants, so one has a right to the idea one generates and the art one produces" (1990, 819).

Both Kinsella and Palmer discuss the example of Ayn Rand as a paradigmatic one for this approach. They show that for Rand the existence of intellectual property rights is a necessary condition for the protection of intellectual 'products,' protection which stems from the fact that they are the result of the intellectual labor of a person. As a consequence,

[T]he theory depends on the notion that one owns one's body and labor and, therefore, its fruits, including intellectual "creations". An individual creates a sonnet, a song, a sculpture by employing his own labor one has a right to the idea one generates and the art one produces. He is thus entitled to "own" these creations because they result from other things he "owns." (Kinsella 2001, 10).

To sum up, we can easily observe that the natural rights strategy for justifying the protection of ideas dwells in a Lockean framework, with its emphasis on self-ownership as a precondition for property rights³. As a consequence, the existence of pharmaceutical patents is natural consequence of the existence of a researcher who invents for example a new chemical structure for a future drug as a result of his own labour.

On the other hand, utilitarian arguments tend to focus, as we should expect they would do, on the effects of the existence of a legal system which protects scientific

2] According to the U.S. Supreme Court, not all inventions or results of a research are patentable. For example, the American legislation prohibits the patenting of laws of nature, natural phenomena or abstract ideas. For more details see Kinsella 2001, 5.

3] In John Locke's own words: "Though the Earth and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State of Nature hath provided, and left it in, he hath mixed his *Labour* with, and joined to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state of Nature placed in it, it hath by this *labour* something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer [...]" (Locke 1988[1689], 287-88)

innovation. The implicit assumption of this strategy is that, in the absence of the protection guaranteed by patents, researchers or developers of new drugs would lack the incentive to proceed with their activities because there would constantly be other researchers or companies who would “pirate” their discoveries and use them to make profit even though they had nothing to do with the intellectual development of that particular product. So, due to the fact for a utilitarian the goal of a legal system is that of maximizing the overall welfare which exists in society and taking into consideration the fact that drugs and other pharmaceutical products contribute to the well-being of individuals, we need a legal system which recognizes the intellectual property of researchers and companies, protecting their work with the use of patents.

So far we have presented a sketch of the trademark defenses of intellectual property in general and of pharma patents in particular. However, we consider that the above discussed arguments present a series of fundamental flaws. Therefore, our purpose in the next section will be to provide a critical analysis of both the natural rights and utilitarian strategies.

Two Ways of Failing to Justify Intellectual Property Rights and Patents. A Critique of Natural Rights and Utilitarian Arguments

Our goal in this section of the paper is that of exploring the limits of the above cited ethical strategies in favor of the existence of patents.

First of all, let's take the case of the natural rights strategy. Even the philosophers who argue in this tradition admit that not all ideas should be granted the right for a patent. For example, even Ayn Rand admits this inherent limit when she distinguishes between philosophical or scientific discoveries which identify laws of nature or events and certain practical invention with a social utility. In her perspective, the first ones are not patentable, because they are not the creation of a researcher but merely a discovery of a certain phenomena from the objective world. On the other hand, the latter type of intellectual ‘products’ are patentable. But, as Kinsella suggests, this distinction is quite fuzzy and not at all clear as Rand might have thought. According to his opinion, if we accept that distinction as being philosophically warranted, no one creates anything. What we are forced to admit is that, if we are referring to a researcher trying to invent a new drug, he is merely rearranging “matter into new arrangements and patterns” (Kinsella 2001, 16). To paraphrase Kinsella's, the researcher doesn't invent the matter out of which the drug is made, but neither laws of nature or facts which have to be exploited in order for that drug to be created and to have a specific effect. We could sum up our first objection against the natural rights approach as residing in the arbitrariness of granting or not granting a patent.

Leaving aside the problem which we analysed before, we consider that another difficulty of this strategy has to do with the emphasis on creation as a way of appropriating something. Kinsella explores this limit when he advances the example of forging a sword (2001, 27). Let us consider the following two scenarios. In the first one, I own a piece

of raw metal which I mined from the ground and I wish to forge a sword. After I finish with the process, the resulting sword will be mine because I've manufactured it using my property, namely that raw material. In the second scenario though, let's assume that I still have my wish to forge a sword but I do not own any type of raw metal. As a consequence, I steal some metal from someone else and I forge the sword. Would anyone consider, like in the first case, that the resulting object is mine? The most probable answer would be no, because in the first case the sword is mine because the raw material is mine, not because of the simple act of creation. This because more evident in the second scenario. The act of creation does not make the sword which I manufactured using someone else's material mine.

In effect, the natural rights approach has its inherent limits. First of all, the granting of patents in this perspective has to be arbitrary. Secondly, creation appears to be neither a necessary nor a sufficient argument for justifying the appropriation of some object, be it material or immaterial.

What about the utilitarian perspective though? Surely the argument which focuses on the absence of incentives for researchers in the absence of patents has at least an intuitive plausibility. Even though we admit this point as a warranted philosophical argument, the path we should follow has to be structured with a focus on an empirical analysis of the particular way in which the pharmaceutical industry works. In this context, a starting point of our critique is the absence of clear correlations between patents and the number of useful inventions. Moreover, the current global patent system, in which TRIPS plays a fundamental role, presupposes some inherent costs which a company that engages in research has to incur, costs which determine the high price of products such as drugs or other medical products. It also appears legitimate to ask ourselves whether, in the absence of patents, companies wouldn't be more incentivized to be creative and innovate more. We shall return to this critique of the utilitarian approach after we discuss our main objection towards namely the ontological difference between ideas and material objects and their relation with property.

The Ontology of Immaterial Objects or Why Ideas Can't be Appropriated

An essential distinction which we made earlier was that between material and immaterial objects, namely that between a chair, a DVD or a laptop and ideas or mathematical formulas. Our hypothesis is that we can speak about property only in relation about the former. Why? Well, to put it simple, property is essentially linked with scarcity. In a world of overabundance, the institution of property would be useless. In Kinsella's words,

[A] little reflection will show us that it is these goods' *scarcity* - the fact that there can be *conflict* over this goods by multiple human actors. The very possibility of conflict over a resource renders it scarce, giving rise to the need for ethical rules to govern its use. (2001, 19)

To make this point clearer, we regard property as an ethical institution which emerged in the context of reiterated conflict between agents for tangible goods. A useful analogy would be, for example, the particular way in which David Hume discusses the emergence of justice in the context of scarcity in which agents pursue their own interests⁴. As a result, the purpose of property rights would be that of avoiding or minimizing the possibility of conflict and that of increasing the costs of free-riding or trespassing. Let's take the following example which will illustrate better our point. Assume that X is a philosophy student and has a copy of Immanuel Kant's *Groundwork of the Metaphysics of Morals*. Y is a college of him but he does not have the book. They both have to write an essay on Kant's categorical imperative. Because Y does not have the book, let's assume that he decides, whether by the use of coercion or fraud to take his book. As a result, the theft leaves X without his property because tangible goods are rivalrous in consumption. Both student can't, at the same time but in a different place read about Kant's categorical imperative from the same copy. Now a different example: suppose X invents a new way of harvesting corn and Y harvests his corn accordingly. This situation is quite different in comparison to the case we presented earlier, because Y does not leaves X without either his new harvesting mechanisms which he created but neither without the idea behind the mechanism. It would be hard to say that Y stole something from X because the consumption of intangible goods such as ideas does not have the same rivalrous property as a copy of a book written by Kant. Actually, the existence of the patent system fosters the scarcity of ideas. In this context patents represent unjustified state-granted monopolies. Moreover, intellectual property rights has another profound immoral consequence: it limits the use of tangible objects which we acquired fully in line with market rules.

Are Pharma Patents Necessary for Useful Innovation on the Drugs Market?

The previous section could be summed up as an a priori argument against the existence of patents. From this point onward we will focus, drawing on David Levine and Michele Boldrin work, on an empirical analysis of the implications of the existence of pharma patents. Do they increase innovation? Is there a connection between patents and useful drugs?

In *Against Intellectual Property*, Boldrin and Levine advance the hypothesis that the existence of patents is not a necessary condition for scientific research, even in the case of the industry which is considered the "poster child" of the proponents of IPR, namely the pharmaceutical industry. The pharma industry is a paradigmatic example because it has a specific industrial typology: high fixed costs (Levine and Boldrin estimate 800 million \$ for the development of a drug), small marginal cost, innovation is the main method of entering in competition with other companies and also the market is concentrated mainly in rich countries. Dwelling on these particularities, some argue that patents represent

4] See Hume 1978[1739], 481- 84. For an interesting reconstruction of Hume's account of the emergence of justice see Socaciu 2009, 265-66.

the only solution for maintaining a high level of innovations and useful inventions. Historically speaking though, the situation is a little different. First of all, the statute of patents varied dramatically according to periods of time or geographical regions. Interestingly enough though the first countries to introduce such a legal system like the United States of America or Great Britain were, according to Boldrin and Levine, the least productive and competitive on the drug market, in comparison to Switzerland, France or Germany, countries in which such regulations were either absent or much lighter. Another interesting fact is that some important countries on the pharmaceutical market such as Italy implemented a patenting system only after foreign countries exercised an important pressure, in 1978. Nevertheless, patenting did not brought the Italian pharmaceutical market closer to success. For example, the number of active chemical compounds invented did not explode in Italy. According to Boldrin and Levine, in the period 1961 - 1980 there were discovered 1282 active chemical compounds in the world, with 119 (9,28%) coming from Italy. After the implementation of patent system similar to the one from the US or UK, the number did not increase accordingly to what some people might have thought as warranted predictions. From 1980 to 1983, out of 108 active chemical compounds discovered in the world, only 8 (7,5%) were from Italy. As a consequence, we could quantify the existence of patents in Italy as the 1,78% difference in the innovation.

The example of Italy is clear evidence that the existence of pharma patents does not necessarily lead to a more competitive and innovative drug market. On the contrary, it seems that they actually tend to inhibit innovation. In defense of their hypothesis, Boldrin and Levine also cite a series of relevant studies. For example, they discuss the results of a study prepared by the FDA (Food and Drugs Administration) on the US drug market (Boldrin and Levine 2008, 206). According to the FDA, only 25-30% of new drug approvals represent an improvement of former treatments, while the rest have a different use. They also discuss the findings of another report compiled by the *British Medical Journal* regarding drugs which they consider truly useful but also their source. The list is summed up by Boldrin and Levine as follows: "penicillin, X-rays, tissue culture, ether (anesthetic), chlorpromazine, public sanitation, germ theory, evidence-based medicine, vaccines, the Pill, computers, oral rehydration therapy, DNA structure, monoclonal antibody technology, smoking health risks" (Boldrin and Levine 2008, 229). Out of all these, only two of them were the result of a previous patenting, namely chlorpromazine and the Pill. They discuss a similar study by *Chemical and Engineering News* magazine (Boldrin and Levine 2008, 229), which focuses on the 46 most sold pharmaceutical products. According to the study, 20 products have no link with the patent system, including products such as aspirin, ether, insulin, penicillin, Ritalin or morphine. The remaining 26, Boldrin and Levine emphasize, owe their existence more or less to patents. For example, four were discovered by chance and patented afterwards (Librium, Thorazin, Taxol, and cisplatin), two were discovered in University labs (cisplatin and Taxol) and a few of them were simultaneously discovered by more companies or researchers.

In addition to this, even though the pharmaceutical industry argues that developing a new drug is costly, we might argue otherwise. First of all, the large fixed costs for developing a new drug are not just costs of R&D. Actually, a company invests a lot of its time, money and effort in the marketing of a new drug (such as contracts with doctors, advertisements) but also in lawyers specialised in the field of Intellectual Property. In addition to this, it also appears that, at least in the US, Big Pharma companies invest less in R&D in comparison to public funded universities and laboratories. A report cited by Boldrin and Levine (2008, 227) drafted by two researchers from the University of Chicago, K. Murphy and R. Topel argues that, if the private pharmaceutical industry invested 10 billion \$ in research, the federal US government made available to university labs 25 billion \$.

The empirical analysis which we provided here, dwelling on Boldrin and Levine's analysis, reveals that patents are not necessary for the development of medical drugs. Moreover, even though developing a new drug is quite expensive, not all costs are circumscribed within the framework of research. Due to the typology of the market, pharmaceutical companies have important incentives to invest in protecting their own work, in lawsuits or in marketing techniques.

Towards a Solution: Between Abolishing or Reducing the Duration of Patent Protection for Pharmaceutical Products

In the light of the ideas which we presented earlier, we consider that two options would be ethically superior, namely either the complete abolishment or a reduction of the duration of patent protection for pharmaceutical products. Due to the existence of an international patent system following TRIPS, the access of inhabitants of third world countries to essential drugs for fighting diseases like AIDS has become an ever increasing problem. We discussed a possible solution in the beginning of our paper, while analysing Thomas Pogge's approach. In contrast to his approach, what we wish to achieve is actually a similar result but using only a free market philosophy. Up to this point, our arguments focused on the fact that, in the current system, pharmaceutical companies, far from being necessarily the forces of Evil on Earth, act accordingly to the existing market incentives. As a consequence, they tend to be more involved in rent seeking activities rather than full-fledged investments in new and useful drugs.

Surely, we do not know exactly how a world without pharmaceutical patents would look like if we would abolish them now. In a way, a full cost-benefit analysis of this situation would be too difficult to make in the present paper. We should however note that, at least if we take a closer look at some examples from the recent history, there are a lot of cases in which, in the absence of state granted monopolies, countries such as Italy or Germany were able to produce new and useful drugs even if companies did not benefit from the same type of protection in comparison to pharmaceutical companies from the US or Great Britain. Moreover, the absence of patents means that the industry did not

take the current form of monopoly or oligopoly. As a result, the price of drugs was lower in comparison to monopolised markets.

Taking this historical lesson into consideration, we would like to restate our option in favor of either abolishing the patent system all together or, more pragmatically, at least a significant reduction of the state granted monopoly which would allow companies in the developing world to produce generic drugs for their local market. Of course, as someone might point out, our so called solution would only address half of the problem. Namely, even though a freer market might determine a lower price of drugs, people in third world countries would still have difficulties in acquiring drugs for the treatment of health issues such as malaria. We do admit that this would be a warranted objection. But, to conclude, we wish to emphasize the fact that, on the long run, freer markets, whether we are referring to pharmaceuticals or chairs, pave the way to individual fulfillment and prosperity.

radu.uszkai@cadi.ro
cernea.mihai@gmail.com

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Global Injustice as a Threat to World Security

Vihren Bouzov

St. Cyril and St. Methodius University of Veliko

Abstract. The problems of national security are subject matter of interdisciplinary studies in political, economic and military sciences, as well as in philosophy, psychology and social and technical sciences. In this paper, security is perceived of as a process of adequate control by the social subject over adverse impacts of the environment. Today, the world is more insecure than at any in the past: the components of the world security system, inherited from the „Cold war” period, are becoming eroded. Mankind needs a new effective security system, based on a cosmopolitan morale and shared responsibilities. The ongoing process of globalization has entailed growth of inequalities and injustice the world over. Mankind still underestimates their effect as a threat and risk to its security. Global injustice is a source of most of dangers to world security: terrorism, crime and regional conflicts. Existing problems of collective security can only be interpreted with success by means of reference to the political game theory. Its practical advises must be interpreted on the basis of an axiological conception of rationality. The thesis that an effective security system must be built up on the basis of a choice in chime with a dominant option obtaining is forwarded and grounded in this paper. The solution of overall security problems via the use of a model of award of proxy has been proved to be ineffective.

Key words: world security, global injustice, new security system.

The problems of national security are subject matter of interdisciplinary studies in political, economic and military sciences, as well as in philosophy, psychology, and social and technical sciences. In this paper, security is perceived of as a process of adequate control by the social subject over adverse impacts of the environment.

The following classification of principal levels of security is accepted in the present-day security theory: personal, group (communal or organizational), state, regional, and worldwide levels (Buzan and Hansen 2009, 187-224; Slatinski 2011; Ionchev 2008, 16-18). The first three of them are components of the content of the notion of national security. A state's security is the leader in this system; it connects national to international security, while the latter encompasses interactions of various types of agents at regional and world level. Globalization shifts the accent of security problems onto the world level; as regards mutual commitment between global and local levels, it is of determining nature.

The ongoing process of globalization has entailed growth of inequalities and injustice the world over. Mankind still underestimates their effect as a threat and risk to its security. Global injustice is a source of most of dangers to world security: terrorism, crime and regional conflicts. Existing problems of collective security can only be interpreted with success by means of reference to the political game theory (see Bouzov 2011, 58-64).

I. THE NOTION OF SECURITY IN A GLOBAL CONTEXT

A social subject develops, and partakes of the nature of different relationships with the world and its 'environment': in them it strives for realization of its natural forces. Security

can be considered as a notion related to different types of social subjects: individuals, social groups (communities and organizations), society and mankind as a whole.

Security cannot be understood as a 'state of a given social system'; if understood so, it could be interpreted as a desired state of affairs, a system is striving for. Such understanding cannot identify the dialectical nature of relationships creating and supporting security. The latter feature a process, while the state of affairs is stationary and transitory. But, indeed, a coincidence in the development of subject and environment can be achieved, whereby the subject can manage its effects successfully and retain its integrity. The establishment of security is of a dynamic nature, characterized by tension in stability and change.

The transitory nature of security stands out when we treat it in parallel with insecurity. The development of reality involves overcoming of contradictions. Hence, security can be attained by means of overcoming continuously-arising contradictions in a given environment. Such contradictions can be ones of a sharp conflict nature; but they can also be non-antagonistic ones, solvable on the basis of the principles of consent and collaboration.

Security can be defined as a process of support of a satisfactory control by the subject over harmful effects of the environment. Such control can guarantee the existence-per norm-of a given social subject or a social system. The ability of a social subject to successfully cope with harmful effects of environment draws a dynamic dividing line between security and insecurity.

An environment can be natural or social, not affected or created by human intervention. The Copenhagen School of International Security Studies conceives environment, or a strategic part of it, as a referent object in security maintenance (Buzan and Hansen 2009, 13-16, 212-17). The social subject is in active interaction with the environment, and is striving for control over negative effects of the latter, concerned with its own survival. Apart from the 'factor of nature' in human environment, the technological world, developed by human beings, has an import of its own, too. It makes up the main difference between human environment and environment of other living organisms. A vast majority of effects in human environment are caused by different subjects: individuals or groups of such. The participants in a social interaction vie with each other in the distribution of specific amounts of resources and their rivalry struggle is an essential trait of a given security environment. People do not establish relationships with nature only, while endeavoring to transform it in order to fall in with their aims and interests. They establish relationships with other people and human institutions as well - with more important influence on their own development. A security environment can be identified with the system of a subject's social relationships.

These reciprocal dependencies make for perceiving of decisions in the security sphere in a broader context of our political decision and action, as such at the highest levels of security. It involves institutionalized, organized behavior and distribution of definite power resources in searching for response to effects of an environment on a social subject. This view allows of existence of a wider range of different aspects of security –

varying from military and legal to social and ecological ones. The Copenhagen experts of security rightfully say that „a more general sectoral widening of security included societal, economic, environmental, health, development and gender” aspects (Buzan and Hansen 2009, 12).

The relative weight and balance of various factors and levels of security maintenance has become changed in the Global Age. Overall involvement of a great variety of participants active in international relations, plus appearance of a new type of threats and risks, make it necessary to plan acts in the security sphere and their effects in the context of the whole planet. One can say that national states are still unable to ensure their security by themselves: they cease to be the main referent object in the analysis of international relations, as they were in the Modern Times after the Westphalian Peace in 1648.

Security can exist in normal set-ups or in crisis. The normal development of the social subject spells out ability of it to realize satisfactory control over the impact of environment. This means that the social subject would be able to make autonomous decisions and to realize acts falling in with its interests and aims. ‘Norm’ is a prescription for the existence of particular activity or inactivity; it is enacted by specific authority. A norm is valid when it is part of a functioning normative system, regulating a given type of social relationships. Evaluations of the social subject as regards social facts are incorporated in a norm – specifically, its will to transform a status quo (Buzan and Hansen 2009, 19-27).¹ The security of a system is ‘in norm,’ when some prescriptions are fulfilled in the realization of control by the subject over environmental impacts, as necessary and essential conditions for its survival and development. When such prescriptions are neglected, crisis comes up. Then the social subject is not able to control environmental impacts successfully; and its existence and development could be jeopardized.

Crises-determining factors could be classified as challenges, risks and threats. A challenge is a critical state of a security environment, calling for certain response. A threat is also a state of the environment, when it manifests itself in a normal framework. It can be revealed in a direct way, as a phenomenon immediately preceding a crisis. Risks are threats of an unknown, constant duration. They have a strong impact on the appearance of crises and are characterized by uncertainty. Risks can be the result of external factors or inherent flaws.

Worldwide security is the highest level in the study of these problems. In the world today, on the basis of the internationalization of economic relations, advance in information and communicative technologies and intensification of political cooperation and cross border ecological risks, worldwide security is, no doubt, of global importance. The problem of regulation of international relations worldwide as regards guaranteeing security of all participants in them is one of primary importance.

Today, our world is in a state of dynamic insecurity, owing to the fact that the pre-Cold War system of security has been destroyed and no efficient substitute of it has been

1] See Bouzov 2006, 19-27.

found. The number of crises-boding security risks is growing incessantly. The main source of them is the existing global injustice.

II. GLOBAL INJUSTICE AND THE FUTURE OF MANKIND

The first cause for the existence of crisis of global security is the lack of perspective to review and underscore established social distinctions and to somehow do away with inequalities. The world community is not adequately successful in its efforts to reduce poverty and to streamline and bridle environmental hazards. Our planet does not have adequate resources to secure a high standard of living for all humans, on a par with that of the richest people. The latter are altogether not concerned at with any making of corresponding changes.

Neoliberalism cannot be an adequate strategy in this process. As a development strategy it is unable to ensure normal functioning of a social system and just relationships between people. It is justifiable to compare the contemporary neoliberal economists with the theologians in the Middle Ages (Pogge 2005, 30). The global corporative media and neoliberal economists have defended in one voice 'The Washington consensus' and neoliberal strategies. This type of political and social projects is considered as having no alternative (Harrison 2002, 16-17). It coincides with the intimate ideas of the corporative media owners. The neoliberal values claim to be an universal therapy for all economic and social diseases. Mankind is faced up with a steady deepening of the ongoing world economic and financial crisis, as a result of this manipulation.

The deepening of economic imbalance on our planet is a lasting result of the ongoing neoliberal globalization. Capitalist expansion transforms existing relations in the ranks of mankind: dynamic changes in them in recent decades have given an impetus to coordinated work in solving economic, political, social and cultural problems of states and their citizens. However, one can say that these processes could not lead to a fair sharing of existing limited resources. The developing countries in the world have increasingly become moored to the debt trap laid by the most advanced ones. The wealth of the latter is growing rapidly. The uncompromising language of data shows that in 1960 20% of the richest people in the world had incomes 30 times higher than those of the poorest ones, while in 1995 this ratio had already marked a 82 times jump; the wealth of 225 of the richest individuals in the world made up 50 % of the annual incomes of 2,5 billion individuals in the poorest people bracket (Boniface 2007, 194). The data for the preceding growth of this rift in the income ratio was as follows: 3:1 (1820), 7:1 (1870), 11:1 (1913); it went up to 30:1 in 1960, and to 60:1 in 1990 (Pogge 2005b, 549). It accounts for the incredible scope of hunger, poverty and diseases among the population of our planet. The use of information and Internet and communicative innovations is also very unevenly distributed, mainly benefiting citizens of the most advanced countries (Sendov 1993). J. Fulcher is right in saying that although it is often considered that global capitalism

integrated world, it, as a matter of fact, permanently brings about more division into the distribution of wealth (Fulcher 2008, 195).

One could say that the ambitions of the world community to reduce poverty and stake off environmental hazards have relatively no effective means of realization in our divided world. Rather, they entail serious conflicts owing to the pressing demand of developing countries to have no restrictions in their prospects for economic development, rooting in assertions that advanced countries sought to reduce emissions and do away with harmful effects of the global warming. The Copenhagen Climate Summit in December 2009 was the first major arena of this deepening conflict. The ongoing freeing of Latin America from US domination and the rise of the BRIC-S countries are the next stage of this process.

It could be said that social and economic inequalities are prerequisites for the existence of lasting inequalities in the field of knowledge, the most important resource of the Global era. Practically, the developing countries and the poorest people in the world are deprived any social perspective. Their number has increased as a result of the use of neoliberal strategies. This process will continue to sharpen the present-existing conflict between the global elite and other humans. Global injustice has become a threat of an unknown duration and risk for the future of mankind. It needs a new effective security system, based on a cosmopolitan morale and shared responsibilities.

III. THE QUEST FOR A MORE EFFECTIVE SYSTEM OF GLOBAL SECURITY

The world today is dominated by social and economic imbalances in favor of the richest countries. Illustrated below is the possibility of applying the political theory of decisions to the selection of a political strategy of building up a more effective system of international security. Political relations – international ones in particular, can be modeled as game interactions in which there are certain strategies of pursuing success or profit. The interests of the parties in the game are opposed to each other, boiling down to the allocation of resources, whereby a participant seeks to maximize profits. Crises in international relations often become long-term conflicts, without a solution, visible and acceptable to parties. One could well say that in such circumstances, efforts to overcome crises often rely on solutions conjured up in uncertainty and ambiguity of information.

World history of the past decade shows that the world has not become a more secure place after the end of the „Cold War.“ The system of international security inherited from that era is unable to overcome regional conflicts and new threats to mankind. Alternatives are: unipolar world with a monopoly of power-imposed solution to global conflicts, or multi-polar world, based on the balance of power and consensus in the common interests of guaranteeing security and social values. The unipolar world is dominated and ruled by global economic and political elites. The multi-polar world could be based on a social and economic pluralism.

The accepted orientation to the model of making collective decisions by proxy appears to lead to negative consequences for our insecure world. A proxy can be perceived of as an agent managing or coordinating collective efforts: once he has made decisions on behalf of all, no one can play solo. There is a strong requirement that a „proxy’s choices” could be „other-person or *socially* grounded” (Shick 1997, 113). But there are no guarantees that the actual proxy options meet the interests of its constituents, or pupils who have authorized it. Today there exists a widespread view that the „New World Order” of dominance of one superpower, the U.S., committed to settling the world conflicts with power intervention - is not a permanent security guarantee. Unless the U.S., NATO and EU assume the role of proxy in situational coalitions created under their control. Examples of this approach are the crises in the Balkans (Bouzov 2001), and wars in Afghanistan, Iraq and Libya. In all of them there seems to exist a gap between proxy benefit and benefit of others involved, when it is not possible to reach a settlement of a conflict acceptable to all parties. Ambitions of regional leaders to resist imposed power and to realize their own decisions in their respective region, spell out growth of volatility work. Brazil and China are good examples in this case.

The above-said can be illustrated by the failures of global leaders to reach an acceptable agreement at all levels so as to take common measures against the currently ongoing global financial and economic crisis. Each of the major players in it is looking for individual salvation, led by corporate interests. The same could be said about programs to combat poverty and ease up debt burdens of developing countries, about efforts to achieve sustainable, steady development, etc. The desired consensus in Copenhagen in 2009 has failed, because of the selfishness of the developed countries. Corporate interests and conflicts always lead to such negative results.

The model of choice according to dominating option (Shick 1997, 110-21), offers more possibilities for achievement of effective decisions. One option should be dominant for decision-makers, if they prefer its outcome to be the outcome of each other option, making other participants to act; or prefer it in a certain context of their actions, while remaining indifferent to other options. If such option is not available, and if ambiguity exists, an agent might make a choice as per a rationalizable possibility, dominating in a current situation. A choice made in chime with a dominant option, is determined by attitudes and principles of lasting value. More often than not it leads to a decision finding an equilibrium (balance) in the game. It is clear that when the balanced possibilities are more than one, a choice can be justified by value arguments. T. Schelling has such a problem in his *Strategy of Conflict* (1980).

The model suggested above allows the formation of coalitions based on a limited consensus among several parties. It could be said that this is the sole realistic road to finding solutions in the now raging global financial crisis, to the overcoming of poverty and the ecological crisis by means of reducing emissions, with due respect for the interests of developing countries. The choice of a dominant option postulates an option of finding equilibrium or cooperative decisions, acceptable to each party; they do not make their

status worse. In the context of international relations the imposition of such a model of management and settlement of crises calls for overcoming the unipolar insecure world and emergence of new leaders in the ranks of existing global opposition. In economic terms, such perspectives are now taking shape in China, the EU and Russia and also in some new unions such as the Shanghai Organization and the BRIC countries.

Security in such a world would be based not only on a balance of forces, but also on value-motivated consensus around common interests and shared responsibilities.

v.bouzov@gmail.com

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Philosophy, Terror, and Biopolitics

Cristian Iftode
University of Bucharest

Abstract. The general idea of this investigation is to emphasize the elusiveness of the concept of terrorism and the pitfalls of the so-called “War on Terror” by way of confronting, roughly, the reflections made in the immediate following of 9/11 by Habermas and Derrida on the legacy of Enlightenment, globalization and tolerance, with Foucault’s concept of *biopolitics* seen as the modern political paradigm and Agamben’s understanding of “the state of exception” in the context of liberal democratic governments. The main argument will state that the modern Western individual and the modern terrorist are in a way linked together as products of the same biopolitical network. So I shall argue that religious fundamentalism and international terrorism are not external factors to the Western civilization, nor even some radical late forms of ‘Counter-Enlightenment’ threatening the Western ‘way of life,’ but phenomena revealing what we could call, borrowing J. Derrida’s biological metaphor, a “crisis of autoimmunization” of Western neo-liberal democracies. The only long term solution to the threat of global terrorism would have to involve the “deconstruction” of our common notion of *tolerance* and the experience of an unconditional *hospitality* that is actually the inversion of the terrorist action that is threatening us “from within,” according to Derrida. But we cannot reasonably hope for this radical change in our relationship to others unless we aren’t really trying to modify the relationship to the *self* that is prevalent in contemporary Western societies: a vision of us as self-encapsulated *monads* or ‘nuclear’ selves, for whom genuine community life is, at the most, only a nostalgic evocation of a past long gone, and the respect for the others, a strategic name for moral indifference.

Key words: terrorism, biopolitics, war on terror, modern individualism, hospitality, Foucault, Derrida, Habermas.

We are constantly reminded that terrorism poses one of the greatest threats to Western civilization. But we should also ask ourselves to what extent terrorism could be regarded as a ‘perverse effect’ of this same civilization. Here I am not referring only to some specific internal and foreign policies of U.S. and its allies, but rather to a general social and moral structure that has shaped the modern world in the West. As U. Steinhoff rightly points out, terrorism, broadly understood as “the direct attack on innocents,” “seems to be for many the very instantiation of evil, even worse than all crimes of war” (2007, 118). Yet it is hard to deny that the “satanic or apocalyptic connotations” of terrorism are in no small measure due to the fact that the word “terrorism” is usually used to describe “the acts of *others*” and not “one’s own actions,” with obvious “moral double standard” and “propagandistic” fury.

By way of combining a number of philosophical approaches mainly ‘continental,’ I shall try to propose a coherent critical perspective regarding our common understanding of the notion of *international terrorism*. From this perspective, 9/11 should be seen not only as a singularly traumatic event, but also as a horrendous illustration of a negative feature of the process that we call “modernity.”¹

1] I believe this is precisely the kind of interrogation that forces us into rethinking the relationship

I shall argue that religious fundamentalism and international terrorism have to be seen not only as reactions against modernity, secularization or 'disenchantment of the world,' but, in a very important way, as products coming from the *same* 'factory' as the modern individualism. They are not external factors to the Western civilization, nor even some radical late forms of 'Counter-Enlightenment' threatening the Western 'way of life,' but phenomena revealing what we could call, borrowing J. Derrida's *biological* metaphor, a "crisis of autoimmunization" of Western neo-liberal democracies that is confirming, in a paradoxical and most violent way, M. Foucault's reflections about the *biopolitical* paradigm of our modern times. It would then follow that what we have to do is not only reshaping the current discourse on international Law, global justice and great alliances, but trying to alter, to modify the present value of our relationship to others (in a few words, trading the so-called "tolerance for "hospitality"). But this will remain a mere utopia as long as we are not really trying to modify *the relationship to the self* that is prevalent in contemporary Western societies: a vision of us as self-contained, self-encapsulated subjects, as *monads* that are ultimately lacking any power of transcending their solitudes in the open space of communal life, genuine encounter and authentic dialogue.

The method pursued in this investigation will be to confront some of the reflections made in the immediate following of 9/11 by Habermas and Derrida on the legacy of Enlightenment, globalization and tolerance, with Foucault's concept of *biopolitics* regarded as the modern political paradigm and Agamben's understanding of "the state of exception" in the context of liberal democratic governments, in order to emphasize the elusiveness of the concept of terrorism and the pitfalls of the so-called "War on Terror."

I. Giovanna Borradori, who had the brilliant idea of the book of interviews and commentaries *Philosophy in a Time of Terror*, in which she invited Derrida and Habermas "to expose the frameworks of their thought to the hardest of all tasks: the evaluation of a single historical event" (Borradori 2003, XI-XII), that is the devastating terrorist act of 9/11, holds that both of the two great philosophers mentioned above should be placed in the tradition of *social critique* exemplary portrayed by Hannah Arendt. I think that we could easily claim that this is also true for M. Foucault and G. Agamben.

We all know that according to Arendt's famous interpretation, "totalitarianism is a distinctly *modern* political danger, which combines unprecedented serialized coercion with a totalizing secular ideology. The 'total terror' practiced in the extermination camps and the gulags is not the means but 'the essence of totalitarian government.'" (Borradori 2003, 7) But I think that one of the points in which M. Foucault takes one step further Arendt's analysis of the modern political rationality by forging his concept of *biopolitics* is the highlight of the strange, perverse, insidious alliance between the effect of *totalization*

between philosophy and modernity, the modern philosopher's task of trying to seize the characteristics of his own time and place, to link his philosophical discourse to its own present or historical context, to engage in a permanent critique of our own historical being. This would be, following Foucault (1984), the actual legacy of Enlightenment.

and the effect of *individualization* that lies at the very heart of Western democratic societies. Foucault can thus convincingly argue that Fascism and Stalinism, the two great “diseases of power” of the 20th century, actually “used and extended mechanisms already present in most other societies,” i.e., “the ideas and the devices of our political rationality” (1983, 209).

The notion of *biopolitics* designates a network of power relations in which the *telos* of our existence is practically reduced to the ‘ideal’ of physical and economic *health* of the society’s members, and the *subjectivation* of human beings is being realized by a repertoire of disciplinary techniques aiming at the ‘normalization’ and leveling of individuals. “One might say that the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death.” (Foucault 1978, 138) Combining *the disciplines of the body* with *the regulations of the population*, we could state, following Foucault, that “never [...] in the history of human societies – even in the old Chinese society – has there been such a tricky combination in the same political structures of individualization techniques, and of totalization procedures” (1983, 213).

Foucault’s point is that the modern democratic state doesn’t actually offer that open stage where all of the citizens are invited to freely pursue their ideas of happiness or ‘good life.’ The modern individual, the result of a specific relationship to the self and to the others (the ‘social atom’ with rights and duties, the individual *monad*), is himself the *product* of biopolitics, “nothing else than the historical correlation” of a specific (disciplinary) “technology” (see Foucault 193, 222). The modern individualism is therefore not the disclosure of the ‘true’ nature of human beings, but merely “the effect of techniques of separation, isolation, individuation, and differentiation” that shape the modern world (McGushin 2007, 301 n76).

It is of course true that the exercise of disciplinary power in the context of neo-liberal democracies doesn’t amount to the use of physical violence or direct threats; but it nevertheless constitutes a structure of actions aiming to *control* our minds, bodies and actions, “a block of capacity-communication-power” that “incites,” “induces,” “seduces,” “makes it easier or more difficult” to obey (Foucault 1983, 218-220). So the big problem and the seeming paradox, following Foucault’s interpretation, would be that biopolitics tends to hide from view “the fundamental political and ethical question - How will I live? - precisely by saturating space and time, our bodies and desires, with techniques, discourses, and relationships which have the goal of taking care of us and making us happy” (McGushin 2007, XX). Convinced that he is knowingly ‘choosing himself,’ the individual who is in complete ignorance of the ancient “techniques of the self” (techniques of detachment, of analyzing representations, of enhancing attention, and so on) that Foucault investigated in his final writings and courses (1988; 2005) is actually and unavoidably assimilating one of the identity ‘recipes’ that circulates on the market. Each of us thinks he is being ‘himself,’ but we all become the same: people following the latest fashion and trends, hollow, obsessed with material wealth and deprived of any spiritual horizon. At this point, if we were to pursue Ch. Taylor’s critique of modern

individualism, we could agree that “the independence can become a very shallow affair, in which masses of people each try to express their individuality in stereotyped fashion. It is a critique that has often been made of modern consumer society that it tends to breed a herd of conformist individuals” (Taylor 1989, 40).

Having in mind these critical remarks about the modern individual and the contemporary society, how we are to approach the worrisome growth of religious fundamentalist movements and terrorist groups over the last decades?

On the one hand, it is obvious that these movements are trying to present their violent deeds as being desperate reactions not only to globalization, but also to the Western lack of spirituality and leveling consumerist culture. But if we were to look any closer, we could see, as suggested by Habermas, that what we are dealing with are actually “violent reactions against the modern way of understanding and practicing religion” in a pluralist society (Borradori 2003, 18).²

On the other hand and maybe on an even deeper level, what we are confronted with is again not only a violent resistance to the effect of totalization or globalization, but also to the effect of *individualization* in modern societies. What could finally force a young Muslim living in a Western country into embracing the horrifying ends of an Al Qaeda group, if not the sense of belonging to a community of faith and destiny, to a spiritual tradition that provides a higher purpose in life (and death) than the mere individual *biological* existence? In an insightful article, S. Žižek (2005) reminds us W.B. Yeats’s verses: “the best lack all conviction, while the worst / are full of passionate intensity (*The Second Coming*, 1920)”. And then he asks us: “Is this opposition not a good description of today’s split between tolerant but anemic liberals, and the fundamentalists full of ‘passionate intensity’?”

Of course there is nothing romantic or noble about terrorist activities, no matter of their nationalist or religious justifications. As Habermas puts it, “from a moral point of view, there is no excuse for terrorist acts, regardless of the motive or the situation under which they are carried out (...) Each murder is one too many” (Borradori 2003, 34). More than that, we could argue that a terrorist’s relationship to the self is not the result of a process of ethical subjectivation shaped in a traditional communal framework, but rather the effect of a successful brainwashing by his leaders, who will unscrupulously use him and eventually sacrifice him for their cynical and pragmatic purposes. And even if our young Muslim terrorist were to sustain that his affiliation to Al Qaeda is the result of an autonomous decision, we could argue, following a Habermasian argument, that a system of power relations that doesn’t recognize the equality of partners and in which you are not allowed to freely express your views and doubts on various subjects, including the ones having to do with religious faith, cannot constitute a genuine dialogical community. But

2] As Peterson remarks, what seems to justify, in the Islamists’ minds, “a call to arms that suspends the demands of morality when it sanctions the killing of non-combatants” is not only the fact that they consider the Western policies to be “immoral,” but also that they consider them to be an attack on the idea of a “theologically conceived community,” which is essential to all religious fundamentalism (2007, 96).

the fact remains that the modern Western individual and the modern terrorist are in a way linked together as products of the *same* biopolitical network.

II. The idea of reshaping Foucault's concept of *biopolitics* by forging a theory of power that reveals the "hidden point of intersection between the juridico-institutional and the biopolitical models of power" is arguably the most challenging part of G. Agamben's intellectual project (see Agamben 1998, 6). In this famous book, entitled *Homo sacer*, the Italian thinker holds that "the inclusion of bare life in the political realm constitutes the original - if concealed - nucleus of sovereign power. *It can even be said that the production of a biopolitical body is the original activity of sovereign power.* In this sense, biopolitics is at least as old as the sovereign exception. Placing biological life at the center of its calculations, the modern State therefore does nothing other than bring to light the secret tie uniting power and bare life".

In a follow-up of this book, Agamben (2005) develops further implications of his concept of *homo sacer* ("bare life") in the context of contemporary biopolitics by analyzing *the state of exception* established in the aftermath of 9/11. His critique aims at the very heart of Western democracies, arguing that, "faced with the unstoppable progression of what has been called a 'global civil war', the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics" (2005, 2). Living in a "state of exception" means living "on a threshold of indeterminacy between democracy and absolutism", situation that would have been made obvious by the political decisions of Bush administration following the 9/11 terrorist attacks:

The immediately biopolitical significance of the state of exception as the original structure in which law encompasses living beings by means of its own suspension emerges clearly in the 'military order' issued by the president of the United States on November 13, 2001, which authorized the 'indefinite detention' and trial by 'military commissions' (not to be confused with the military tribunals provided for by the law of war) of noncitizens suspected of involvement in terrorist activities [...] What is new about President Bush's order is that it radically erases any legal status of the individual, thus producing a legally unnamable and unclassifiable being [...] The only thing to which it could possibly be compared is the legal situation of the Jews in the Nazi Lager [camps], who, along with their citizenship, had lost every legal identity, but at least retained their identity as Jews. As Judith Butler has effectively shown, in the detainee at Guantánamo, bare life reaches its maximum indeterminacy. (2005, 3-4)³

3] From a similar perspective, some political analysts have argued that "certain anti-terrorism measures practised by Western states and their allies since 9/11 have amounted to state terrorism" (Jackson, Murphy, and Poynting 2010, 9). In the notorious case of the Australian citizen Mamdouh Habib's "abduction, 'extraordinary rendition', torture, and incarceration without charge," Poynting argues that the United States, Australia, Egypt, and Pakistan acted "illegally in common purpose to terrify particular sections of civilian populations for political ends", or more precisely, in order "to send a message to the radical Muslim 'other.'" It should be noted that this view is based on an understanding of the notion of *terrorism* according to which "the spreading of fear or the intent to spread fear is not only a usual but a *defining* characteristic of terrorism" (Steinhoff 2007, 112). The German author judges this idea as being ultimately "misleading" (115). And yet, Steinhoff seems to assume this feature of the definition of *terrorism* when he distinguishes

III. If the policies of U.S. and its allies against terrorism seem to inspire further developing of Agamben's radical critique of contemporary institutions and biopolitics, following the footsteps of Foucault, Arendt and Schmitt, it has to be said that the failure of Western political regimes to prevent the escalation of Islamist terrorism, as well as the growth in religious fundamentalism noticeable in many parts of the world, represent phenomena that are seriously putting to the test the whole theory of "communicative action" developed by the renowned philosopher J. Habermas during his entire career. The dilemma would be the following: based on Habermas's universalist theory of communicative action, how are we to proceed when dealing with exponents of a culture that doesn't believe in the *value* of rational dialogue and tends to consider any discussion with an unfaithful, at least on religious themes, rather as an evil temptation to be repressed than as a mean to reach some kind of agreement or mutual understanding? It could be argued that situations of this kind show the inherent limitations of Habermas's approach.

Without going any further with this general criticism, I shall only mention one important critical point Habermas is making with respect to U.S. policy on terrorism after 9/11, when he considers "Bush's decision to call for a 'war against terrorism' a serious mistake, both normatively and pragmatically. Normatively, he is elevating these criminals to the status of war enemies; and pragmatically, one cannot lead a war against a 'network' if the term 'war' is to retain any definite meaning" (Borradori 2003, 34-35). Thus, we can evaluate, from a very different perspective than the one supported by Agamben, the negative implications and pitfalls of the 'global war on terrorism.'

IV. In J. Derrida's view, the most urgent and necessary action in the aftermaths of 9/11 would be the *deconstruction* of the notion of terrorism, "because the public use of it, as if it were a self-evident notion, perversely helps the terrorist cause. Such deconstruction consists [...] in showing that the sets of distinctions within which we understand the meaning of the term terrorism are problem-ridden." (Borradori 2003, XIII) For this purpose, in the interview given to G. Borradori only a few weeks after the tragic event of 9/11, J. Derrida formulates a number of questions destined to shake our common understanding of the concept of *terrorism*. In what follows, I shall only enumerate some of these questions, without going into further details, in order to focus, in the final part of this paper, on what I consider to be the most challenging thesis Derrida is supporting, a thesis that will also allow us to see what ultimately differentiates Derrida's and Habermas's approaches of public sphere, global justice and modern democracy.

First of all, Derrida is asking if we can really define "terror" in a way that "distinguishes it from fear, anxiety, and panic." This question proves to be extremely important when trying to distinguish "a terror that is organized, provoked, and instrumentalized," from

terrorism from pure genocide, arguing that "genocide *can* be terrorist, for example, when it is used to frighten off the surviving part of the targeted population (making it leave a contended territory)" (119), and also when he states the conditions under which "a one-off act of violence can be called terrorist" (121).

a *fear* that the entire tradition in political thinking embracing the juridico-institutional model of power, “from Hobbes to Schmitt and even to Benjamin, holds to be the very condition of the authority of law and of the sovereign exercise of power, the very condition of the political and of the state” (Borradori 2003, 102). And if it is of course true that “not every experience of terror is necessarily the effect of some terrorism” (103), isn’t it equally true that there has never been a war that didn’t “entail the intimidation of civilians, and thus elements of terrorism” (XIII)?

More than that, having in mind the fact that “the political history of the word ‘terrorism’ is derived in large part from a reference to the Reign of Terror during the French Revolution, a terror that was carried out in the name of the state and that in fact presupposed a legal monopoly on violence,” how are we to deal with the notion of “state terrorism”? And this is of vital importance, since “every terrorist in the world claims to be responding in self-defense to a prior terrorism on the part of the state” (103), in this case, the alleged terrorism on the part of U.S. and its allies. Or how can we decide whether we should speak of a “national” or an “international” terrorism “in the cases of Algeria, Northern Ireland, Corsica, Israel, or Palestine” (104)?

Are we allowed to forget the fact that “terrorists might be praised as freedom fighters in one context (for example, in the struggle against the Soviet occupation of Afghanistan) and denounced as terrorists in another (and, these days, it’s often the very same fighters, using the very same weapons)”?

It is true that we usually understand terrorist actions as being direct attacks on civilians or direct threats posed to the lives of the innocents. But how confident are we that indifference and *nonactions* such as “letting die,” or “not wanting to know that one is letting others die” (the “hundreds of millions of human beings” dying “from hunger, AIDS, lack of medical treatment, and so on” in disadvantaged regions of the world) should not be considered, from a moral and political point of view, as “part of a ‘more or less’ conscious and deliberate terrorist strategy?” (108), asks Derrida.

I shall quote only one more question the French thinker challenges us to answer:

What would ‘September 11’ have been without television? [...] [T]he real ‘terror’ consisted of and, in fact, began by exposing and exploiting, having exposed and exploited, the image of this terror by the target itself. [...] This is again the same autoimmunitary perversion. (108-9)

By this last statement we are touching what is arguably the most provocative thesis in Derrida’s argumentation. The French philosopher is claiming that 9/11 was in fact only the latest manifestation, at that time, of a *crisis of autoimmunization* characterizing the very functioning or the very *life* of our modern neo-liberal democracies. This statement should be understood both on a symbolic level and on a very realistic one, if we take into account, on the one hand, the questions raised after 9/11 about the incapacity of the most advanced Intelligence services in the world to foresee and prevent the attacks and, on the

other hand, the fact that the suicide terrorists that hijacked the planes had been trained in the States during the Cold War.

“As we know, an autoimmunitary process is that strange behavior where a living being, in quasi-*suicidal* fashion, ‘itself’ works to destroy its own protection, to immunize itself *against* its ‘own’ immunity” (Borradori 2003, 94). Derrida had already used the couple immunity/autoimmunization borrowed from *biology* when referring to the question of religion and its complicate relation to science (1998). Invoking it in order to explain what made possible ‘September 11th’, even without an explicit reference to Foucault’s concept of *biopolitics*, seems to support the hypothesis that modern terrorism is, in many respects, an effect of the biopolitical matrix, a reaction somehow coming from *inside* the network of power relations that structure the Western world.

“A hypothesis: since we are speaking here of terrorism and, thus, of terror, the most irreducible source of absolute terror, the one that, by definition, finds itself most defenseless before the worst threat would be the one that comes from ‘within’, from this zone where the worst ‘outside’ lives with or within ‘me’. [...] Terror is always, or always becomes, at least in part, ‘interior’. And terrorism always has something ‘domestic’, if not national, about it. The worst, most effective ‘terrorism’, even if it seems external and ‘international’, is the one that installs or recalls an interior threat, *at home* - and recalls that the enemy is *also always* lodged on the inside of the system it violates and terrorizes.” (Borradori 2003, 188 n. 7)

From this perspective, Derrida can argue that by declaring a ‘War on Terror’, the Western coalition is in a way *at war with itself*. Nevertheless, is it possible to approximate a long term solution to the threat of global terrorism? An affirmative answer to such a question seems to request, in Derrida’s view, a radical rethinking of our relationship to others in the context of modern society, the deconstruction of our common notion of *tolerance* and the experience of an unconditional *hospitality*.

Here lies an essential difference between Derrida’s and Habermas’s approaches. For the latter, tolerance remains an important value in the context of a democratic community, as long as “what is being tolerated is not one-sidedly or *monologically* established but *dialogically* achieved through the rational exchange among citizens.” (Borradori 2003, 73) Nonetheless, it may be argued that tolerance, in this case, does not result *from* the exchange, but rather it is the very *condition of possibility* in order for such an exchange, guided by the idea of reaching an intersubjective agreement, to take place.

From the point of view supported by Derrida, the problem with tolerance is that it is not engaging a real *opening* towards another person. When tolerance is not a name for mere indifference, it is usually a name for a *condescendent* relationship to another: “I am letting you be, you are not insufferable, I am leaving you a place in my home, but do not forget that this is my home...” (127) It is in this respect that we are speaking of a “threshold of tolerance” both to describe a characteristic of a living organism and “the limit beyond which it is no longer decent to ask a national community to welcome any

more foreigners, immigrant workers, and the like.” (128) At the most, “tolerance is a conditional, circumspect, careful hospitality.”

Derrida is then referring to a famous Kantian text⁴ in order to suggest a difference between the (conditional) hospitality of *invitation* and the (unconditional) hospitality of *visitation*:

Pure and unconditional hospitality, hospitality *itself*, opens or is in advance open to someone who is neither expected nor invited, to whomever arrives as an absolutely foreign *visitor*; as a new *arrival*, nonidentifiable and unforeseeable, in short, wholly other. I would call this a hospitality of *visitation* rather than *invitation*. The visit might actually be very dangerous, and we must not ignore this fact, but would a hospitality without risk, a hospitality backed by certain assurances, a hospitality protected by an immune system against the wholly other, be true hospitality? (128-29)

The mere tolerance cannot be the *just* relationship to another person or even to a total stranger, because his or her alterity, the differences between us, cannot be acknowledged as long as I am not really trying to see things from the other’s perspective. And maybe it is only this true recognition of another person’s strangeness that can liberate the stranger *within* me. At this point, I think we could claim that *unconditional hospitality is actually the inversion of the terrorist action*, the one that is threatening me “from within,” according to Derrida’s reading.⁵

But in order for change to take place with respect to our relationship to others, it is first of all necessary to modify our relationship to the self, the way we understand ourselves as ethical and political subjects. In his final interviews and writings, Foucault repeatedly pointed out, as against a naïf conception about personal identity, the need for a permanent self-distancing (*se déprendre de soi-même*), the demand for a specific *unsettlement* and a continuous experimentation, an extreme willingness to place oneself in any position, to judge things from as many perspectives as possible, to think otherwise than before, to think *against* your own ‘intuitions’ and prejudices.

At this final stage, we should recall Foucault’s considerations about the strange alliance between the effect of *totalization* and the effect of *individualization* in the context of contemporary biopolitics. We could then state that the struggle for a modern subjectivity supposes two distinct levels: on the one hand, it is about fighting normalization and asserting “the right to be different;” on the other hand, it is about attacking “everything which separates the individual, breaks his links with others, splits up community life,

4] It is the third article from section two of Kant’s much discussed writing *Towards Perpetual Peace* (2006).

5] Our purely formal understanding of the respect for the others is considered to be a possible root of modern terrorism also by authors drawing from the idea of *recognition conflict* initially formulated by Hegel (see Peterson 2007, 94), or by Feminists inspired, for instance, by Luce Irigaray’s conception of democracy “not in terms of individualistic strategic self-interest”, but in terms of love, respect, mutuality, conceived as the true “basis of a democracy.” The modern terrorism, as well as “the polarizing politics of the war on terrorism,” could be seen as the expression of our “failure to love across differences,” of the brutal opposition between “we citizens” and “our enemies” (see Presbey 2007, 2).

forces the individual back on himself and ties him to his own identity in a constraining way.” (Foucault, 1983, 211-12)

Finally, it is this critical reassessment of the modern individualism that is of vital importance when trying to establish an acceptable meaning of *cosmopolitanism*, idea so often invoked in the context of the debates around global justice. In order not to give in to the ultimate biopolitical dream of a ‘meta-state’ (danger that Borradori rightly acknowledges in her dialogue with Derrida), maybe we should limit ourselves to the kind of civic attitude pointed out by Foucault in a declaration written in Geneva, in 1981:

“There exists an international citizenship that has its rights and its duties, and that obliges one to speak out against every abuse of power, whoever its author, whoever its victims. After all, we are all members of the community of the governed, and thereby obliged to show mutual solidarity.” (2000, 474)

iftode@ub-filosofie.ro

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A Singerian Reading of the Global Strategies to Eradicate Famine in Africa (2005-2010)

Roxana Marin
University of Bucharest

Abstract. The present paper is a theoretical attempt to examine the issue of distributive justice, through a Singerian reading of the most recent episodes of global famine crises in Niger (2005-2006 and the 2010 Sahel famine) and the 2011 Horn of Africa famine. The recurrence of the phenomenon of starvation in the underdeveloped regions of the globe asked for the creation of various instruments in managing grave discrepancies, real disparities, in mundane distributive justice; this theoretical endeavor discusses the efficiency of the UN organizations designed for assuring “redistribution of wealth” at the global level (*i.e.* the Emergency Relief Fund and the World Food Programme) and of the US Agency for International Development (USAID), as opposed to NGOs’ initiatives in the three aforementioned cases, through the prism of Peter Singer’s renowned theory of distributive justice concentrated in the study “Famine, Affluence, and Morality” and further developed in *The Life You Can Save*. Drawing extensively from utilitarianism and Rawlsian *Theory of Justice*, Singer develops his argument by addressing the moral dimension of distributive justice (including charity) and “humanitarianism” and its subsequent repercussions and implications at both philosophical (*i.e.* applied ethics on “the psychology of giving”) and practical, empirical levels (*i.e.* the actions of states, supranational structures, but, most importantly, of citizens of “affluent societies”). The main argument put forward by the present paper is that the representation and the construction of the various organizations, associations and aid actions involved in the recent famine crises are, in fact, the practical extension of the Singerian scheme of distributive justice, in theory a hermeneutical flexibility of the aforementioned conceptualization of the Australian thinker, of the model of distributive justice from individual level to a global, international dimension. Hence, the paper attempts a translation of the latest famine crises and their management by international organizations through the lance of Peter Singer’s “obligation” to global-oriented redistribution of resources (particularly, food, water and monetary resources). The present study is concerned with four major issues: (1) the brief presentation of the three most recent famine crises in Africa and the fashion in which this type of situation has been dealt with by both supranational organizations and NGOs; (2) the reiteration of Singer’s theory on distributive justice, as this theory is presented in the two pieces mentioned above; (3) the theoretical mechanisms of transferring individual obligation to “give” (*i.e.* to donate, to practice charity) into collective, global obligation to eradicate food and water crises and extreme poverty, and (4) the attempt to translate and interpret UN’s, US’ and NGOs’ strategies to redistribute ‘wealth’ through ‘Singerian’ lances. Four sections divide the content of this paper in order to tackle the four points.

Key words: distributive justice, Peter Singer, famine, redistribution, World Food Programme, USAID, affluent society, Africa.

In the spring of 1972, in the first issue of *Philosophy and Public Affairs*, Peter Singer ventured on a new, quite challenging topic in the broad area of global justice studies: the very pertinent and present *problématique* of global distributive justice at the individual level. “Famine, Affluence, and Morality,”¹ his inaugural article, is an application of a

1] The account on the Singerian perspective on the moral necessity of individual “giving” is detailed from the famous essay “Famine, Affluence, and Morality” (1972).

moral paradigm on the ethics of “giving” and it is central in the teleological implications of the act of ‘donating.’ Singer would further develop its piece inspired by the 1971’ food crisis in East Bengal in the famous book *The Life You Can Save*, a study which, far from being deprived of any militancy and normative biasness, is of paramount importance for subsequent inquiries into the philosophical logic of *giving*.

Singer starts from a harsh critique of what one would label as “international politics” and its general conduct, by arguing that episodes of extreme food crises in underdeveloped countries or in countries affected by war or even natural calamities are neither “inevitable,” nor “unavoidable in any fatalistic sense.” The logic he proposes is, moreover, quite simple, accessible, as he sees it, to any citizen of an “affluent nation,” *i.e.* economically developed and democratically consolidated country. But, the first stage in the logic of *giving* is necessarily and inextricably indifference, ignorance to the sufferings of foreign peoples, of unknown nations; generally, suffering of any nature of people so foreign to individuals in affluent societies, that the only shared traits is the very fact they are both human beings, cannot generate in the decisions of the latter a shift from indifference, from apathy and would not, in any case, trigger some form of either empathy or sympathy with the condition of the former. Singer enumerates the ways and means in which the exercise of *giving* can be performed at the individual level: giving “large sums to relief funds,” writing “to their parliamentary representatives demanding increased government assistance,” demonstrating and manifesting virulently in the streets against the apathy of their governments in respect to famine in far away countries, holding “symbolic fasts.” A second stage in triggering the moral act of *giving* is the extension of publicity given to a food crisis; publicity assures the task of making one aware of the gravity of a certain situation, taking place in another part of the world. Exclusively and terribly concerned with the singular act of individual donation, Singer completely misses the impact of media in connecting “affluent” societies with underdeveloped regions, channeling S.O.S. messages, facilitating donations, establishing comprehensive and durable links that make distributive justice easier than ever. What the Australian theoretician points out compellingly is the fact that publicity appears only in the conditions in which the magnitude of the crisis, the size of the calamity poses significant difficulties for national governments directly involved in managing the situation: only unprecedented. In whatever circumstance, be it publicized or not, food crises should be dealt with globally and morally. Apathy, indifference, especially at the individual level, cannot be, according to Singer, ethically justified.

As expected, starting from the simple, commonsensical premise that “suffering and death from lack of food, shelter, and medical care” (Singer 1972, 229) are morally bad, Peter Singer calls for an entire transfiguration, a virtual revolution of individual moral conceptual schemes for the citizens of affluent societies in respect to the act of *giving*, oriented particularly to the human sufferings of the underdeveloped societies. As a rule, the bulk of utilitarianists, teleologists and consequentialists – after all, Singer is one of them – perceives distributive justice as a matter concerning the human rights *compendium*, not exclusively a political-economic issue. It has been argued, particularly in these philosophical

spheres, that assuring the dynamics of just allocation of goods should be an imperative for the national governments and for the international community alike; hence, one can observe an inclination towards what Isaiah Berlin has loosely labeled “positive freedom” (1969, 118-72) in the treatment of distributive justice and reducing global starvation. Even more vocal, Singer succeeds in refining the argument of the moral necessity of distributive justice: “[I]f it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it.” (1972, 235) Opposing to an economist’s perspective *tout court* – who will generally see a loss in one’s amount of goods and benefits when engaged in a process of donation and giving to another –, the Australian professor assimilates the phrasing “without sacrificing anything of comparable moral importance” with the explanation “without causing anything else comparably bad to happen, or doing something that is wrong in itself, or failing to promote some moral good, comparable in significance to the bad thing that we can prevent” (or, otherwise, “if it is in our power to prevent something very bad from happening, without thereby sacrificing anything morally significant, we ought, morally, to do it”). Therefore, the decision on sharing goods, services, benefits should be a ‘0-sum’ game, in which every player involved acts without losing anything, while morally each of the two sides, “giver” and “receiver,” enriches himself through the said act. His hypothesis is applied to the act of *giving* for the citizens of affluent societies, starting from the assumption that this kind of citizens is not to lose anything significant, in terms of money, food, water, comfort, if they decide to donate apparently insignificant parts of these goods to citizens in “underdeveloped societies” in desperate need of basic goods.

As already mentioned, what Singer aims is a reconfiguration of individual moral constructs for the citizens in affluent, highly developed, Western societies, in the sense that the very meaning of the word *duty* should be reconsidered, in the same manner in which the concept of *charity* and its connotation are redefined. As the scholar explains, the very essence of charity is the fact that there is nothing wrong with others not giving; the “generosity” displayed in the act of donating for relief funds is conceived as rarity, as an exceptional case, by no means as a norm of common sense or moral duty: “The charitable man may be praised, but the man who is not charitable is not condemned.” (1972, 237) It is in this mentality and fashion of seeing the act of *giving* that Singer calls for an ethical “reevaluation.” “Generosity,” “kindness,” “goodness” should naturally be the “duty” of a moral entity and not giving money to the victims of starvation and water shortages must be perceived as fundamentally morally wrong; an individual not giving for the relief funds, while spending in a “conspicuous consumption” fashion, affluently, on his own unnecessary and extravagant delights, should feel ashamed, guilty and should be morally blamed by his community. Hence, the individual act of *giving* is not charitable and generous, is not an instance of “supererogatory” (*i.e.* “an act which it would be good to do, but not wrong not to do” – 1972, 237). It is a matter of choice and morality. The conclusion leads to the fact that, from Singerian perspective, no act can be qualified as “charity.” This is not so, Singer refutes; but, one cannot speak of “charity” when the “giver” is a citizen of

an affluent society, perfectly satisfied with his own socio-economic condition, exposing often marks of consumerist impulse and luxurious, extravagant taste. This type of citizen cannot morally divert himself from “giving” to the victims of famine. This conjuncture is ethically and humanly unbearable, unsupported, unjustified. It is interesting how the scheme Singer finds the most morally sound at the individual level is translated at the global level: the relief funds for the three cases of food crises selected here were originally constituted by the most developed nations, which are generally the most providing, helpful elements in supranational structures concerned with the matter.

For the sake of refining his ‘principle,’ stated rather as a Kantian categorical imperative, Peter Singer develops two readjustments: (1) the “proximity” (or distance) rejoinder, and (2) the “number” (or, more properly, the magnitude) one. Firstly, Singer explains, the ‘principle’ should not make a moral difference between helping persons closer to the giver’s home or place of his activities (neighbors, colleagues, friends, etc.) and helping persons in a foreign country, whose identities the giver might never know, between providing relief to those with whom contact is established on a daily basis and those with whom any contact might never be established. Secondly, the Singerian ‘principle’ acts irrespective of any numerical consideration of the givers, of the number of donors helping a given cause; a particular food or water crisis can enjoy the active participation and support in relief actions dedicated to its eradication of a handful of or of several countries, of a few dedicated individuals or of the citizens of entire countries. The Australian theoretician would point out, these circumstances, *i.e.* those regarding the number of givers, should not constitute in either favorizing or inhibiting factors for the individual’s moral act of *giving* for the sufferings of others. Therefore, the “proximity” and the “number” rejoinders are thoroughly refuted by Singer, who envisages the moral act presupposed by a donation to be completely independent of such ‘special’ situations.

As a result, the act of *giving* for the first category of individual citizens should be “uncontroversial,” its axiological fundament – uncontested, its morality – irrefutable. It should become a custom, a routine in their daily existence, a commonality in act, an unproblematic instance, up to the moment of a virtual involuntary reflex.

One should not be fooled by Singer’s profoundly subjective and militant stance: he admits to some extent that especially proximity can facilitate sympathy and empathy to those willing to donate for the victims of starvation, for instance. In addition, it is virtually natural and immanent to the human beings that they are likely to assist relatives, close friends, coworkers, neighbors, co-inhabitants, co-citizens, hence discriminating between these and other categories of foreign individuals or groups in need. What is more, proximity can, in a significant degree, facilitate the helping and relief: being physically close to one in need might give to the giver a hint regarding the type of help he can provide that could best fit the one suffering, the necessary, the most suitable, appropriate assistance for a given condition. Singer does not refute these irrefutable realities, what he argues is the absence of an ethical character in these discriminations. He virtually adds to the indiscriminate character of the act of *giving* its impartiality, its universalizability, its

equitable nature. The unprecedented development of instant communication and very fast means of transportation eases and strengthens Singer's argument: the increasing globalization and interconnectedness neutralize geographical discriminations in relief and assistance of famine victims, they widen the moral responsibilities of citizens in affluent societies towards those in underdeveloped ones.

Regarding the second rejoinder, the "number" adjustment of the Singerian 'principle,' a 'psychological,' subjectively-triggered difference might work here: "one feels less guilty about doing nothing if one can point to others, similarly placed, who have also done nothing." (1972, 232) This is particularly true if a potential giver motivates his apathy by referring to other would-be donors, but enjoying greater resources, who have done nothing. The difference in resources between potential givers would psychologically exonerate those who are less fortunate in terms of wealth. In addition, the amount of help – a matter of number, as well – each of the participants in the relief funds and actions is willing to let go is a matter of profound hypothetical judgement, of mere wishful thinking; one can only premise that all those involved in donation would dedicate an equal amount of resources and, therefore, take into account considerations of number of givers (otherwise, the calculation makes no sense and the entire syllogism concerning numbers of givers and their equal share of donated resources becomes a fallacy). Once again, Singer rejects such an assertion as being morally unfounded and he adopts an even harsher stance in accusing such a vicious judgement, *i.e.* "the absurdity of the view that numbers lessen obligation:" "It is a view that is an ideal excuse for inactivity; unfortunately most of the major evils – poverty, overpopulation, pollution – are problems in which everyone is almost equally involved." (1972, 233)

Singer's inspirational impulse towards discussing distributive justice as individual moral act is given, as expected, by the remarkable and impressive Rawlsian legacy. Dilemmas on the socially just allocated goods have tormented many thinkers before the *emeritus* British philosopher John Rawls, but a robust form was given only with the *A Theory of Justice* (1971). Schemes on the equitable distribution on goods have borrowed extensively from concepts of *retributive justice* and *restorative justice*, arguing the Rawls' 'imperative' of fair allocation of goods. Apart from being a more or less simple economical *calculus*, the debate on distributive and – since recently – redistributive justice represents a case in point for contemporaneity.

In practice, though, it became conspicuously apparent that individual acts of *giving* are far less efficient than global, state- or supra-state-sponsored actions in dealing with food and water shortages in particular. One such useful, effective extension of the concept of *giving* in the sphere of distributive justice is the amount, the consistency of the help provided: atomized endeavors of donations are rarely significant at the global level. Singer's argument itself has some substantial feeble points and misinterpretations, being extremely unclear and ambiguous regarding: the point of "marginal utility," the effective amount of donated resources that would make the act of *giving* a moral instance and would, at the same time, not cause any suffering to the giver himself, the actual desirability of

“marginal utility,” etc. Moreover, his pretence to a sort of a universalized act of individual *giving* seems idealistic and unrealistic, absurd to many. His argument preaches, in an utopian fashion, for the predictability of “sending money to the relief funds:” this type of actions should, according to the Australian professor, not be envisaged as simultaneous or spontaneous, for they should happen orderly, comprehensively, meaningfully, as to actually be helpful. It is this author’s conjecture that the comprehensiveness and meaningfulness Singer speaks about and imagines can only be provided by international, state-sponsored or non-governmental, entities; help through relief funds can become comprehensive only with the extension of Singerian scheme of individual *giving* to a global level. Individual initiatives of helping famine victims are extremely contingent in effect and unorganized group activities aiming at constructing relief funds are doomed to end in failure. It is true, gathering goods for neutralizing the effects and repercussions of the food and water crises are meant to start from the individual, citizen level. Nevertheless, it was proven by previous experiences that exclusively through an international or supra-national effort, one can effectively channel his undertakings in assisting in famine situations. What Singer emphasizes in connection to the lack of simultaneousness of acts of *giving* becomes a pertinent observation for the extension of help at the global level: “if everyone is not acting [...] simultaneously, then those giving later will know how more is needed, and will have no obligation to give more than is necessary to reach this amount,” (1972, 239) knowing that others, after them, will fill the holes in the relief fund. But such a schedule in gradually providing relief is, once again, a matter of international organization and planning, requiring the involvement and implication of organizations working globally, not of individuals alone. Doing “what [one] *reasonably* believes he ought to do” – this is a phrasing that can hardly be operationalized and put effectively into practice. Here comes the role of international organisms, state-coordinated or not, to regulate towards the beneficiaries of the funds what and how much each of the givers finds “reasonably” to donate. The examples selected in the present paper illustrate the ability of global organizations to mobilize support for the assistance of famine victims.

Peter Singer himself would envisage and predict the main refutations, counter-arguments, “objections,” rejoinders, etc., that his call to moral “revisionism” concerning the individual act of *giving* might trigger. One of the most conspicuous – and still virulent – refers to the very fact that such a revisionism is an extreme one, it is too drastic, too demanding and, even, to some extent, hypocrite request. This task seems, at first glance, virtually impossible and, at a second glance, extremely problematic, difficult. One premise in this *problématique* is that it requires a change happening overnight in the rationale and moral construct and traditions among the majority of the citizens in affluent societies, Christian countries. But, commonsensically and understandably, one individual – not to mention an entire community of individuals – cannot transform, transfigure his/ her moral fundamentals and perspective. In addition, condemning those who do not care about relief funds presupposes an active stance from the part of the condemner: he should be a devoted donor, irrespective of his and other’s socio-economic situation. Actually, for condemning

an apathetic, the majority of the community, of the country should be inclined towards *giving* to the victims of starvation, that is, really care about the fates of other strangers. Of course, humanitarian and humanist tendencies exist immanently in every human being, but, unfortunately, people seldom exert such noble sentiments and, consequently, they are reluctant in pointing out to those who, are after all, equally indifferent towards food and water crises wherever. They are prone to condemn, as expected, universally-sanctioned violations of the universally-accepted and seen as necessary moral norms and rules (lie, theft, murder, etc.). Therefore, one should not expect or pretend such an important transformation in the ethical perspectives of individuals. Singer himself bluntly states that his conclusion would appear to the majority of his readers “strange” at best (1972, 240). However, what is especially significant in his seemingly awkward conclusion is his attempt to find why the largest proportion of citizens in affluent societies customarily diverges from it, considering this “deviation” simply an “amoral” issue. Drawing from J.O. Urmson (1958, 198-216) and Sidgwick (1907), Singer investigates the moral “mechanisms” at the basis of the individual act of *giving*, by arguing that *giving*, donating fails currently to represent one of those “imperatives of duty,” it does not constitute a prerequisite, a postulate for what humanity must do; it is again, a matter of “what it would be good to do but not wrong not to do,” (1972, 238) not advisable, not compatible with the idealistic vision of the kind, epistemic human nature, though, eventually, tolerable and permissible, since, it is considered, it does not produces any direct harm to another human being. Therefore, what exceeds the demands posed by the “imperatives of duty,” (239) what is not within the immediate reach of amendable morals, is not to be considered moral or immoral, it is conceived as “inessential” for the wellbeing of the community, since that community is a foreign one; *giving* for relief funds is exemplary for this kind of rationale. A reevaluation of the classical distinction between “acts of duty” and “acts of charity” is imperatively necessary, according to Singer. Interconnectedness increases and donating becomes essential particularly because one’s small, closed community transforms gradually into a global one, into the renowned “global village,” (McLuhan, 1962) subsequently helping people living far away is the equivalent of assisting people near us; “foreign” and “distant” lose their significance completely in the act of *giving*.

An even pertinent objection is similar to the one advanced again by the theory of utilitarianism as a whole and, particularly, to the claim to maximizing happiness over misery presupposed by this philosophical theory. Though Singer stresses on several departures between his theoretical perspective on the individual *act of giving* and utilitarianism *per se* (e.g. the very fact that the *act of giving* is not necessarily a matter of utility, of maximizing pleasure), the same reluctance towards utilitarian-oriented actions prevails: clearly, those preoccupied with the composition of rejoinders to the Singerian ‘theory of *giving*’ are the same as those who find the morally compulsory act of *giving* unrealistically, unbearable and incompatible with the contemporaneous moral construct of the citizen in highly developed democracies of the “civilized” West. This type of criticism should be, in Singer’s perspective, reoriented from his own “theory of

giving” towards the entire moral standards characterizing the civilized world presently, to its moral stance and behavior. Singer expends his focus on the individual act of *giving* only when referring to the influence to the others surrounding the individual and their capacities and willingness to donate; the impact of other people is of paramount importance on the discrepancy between “what it is possible for a man to do” and “what he is likely to do” (1972, 231, 239). In addition, close people’s expectations in respect to a person play an even greater role in the resolution to donate, in inscribing the act of *giving* into one’s moral equation. Eventually, clearly opposing Urmson and Sidgwick, Singer refutes that hypothesis that the present – and the most appropriate – basic moral code is an extremely indulgent reconciliation between what one ordinary man is capable to do and what he is not: Singer will proclaim: *giving* is by no means an act beyond the capabilities of an ordinary individual, it is surely within his moral reach. Clearly and conspicuously, Singer’s ‘principle’ appears as a negation of the widespread 20th century’ rational choice (or rational action) consensus. Singer and his ‘categorical imperative’ of individual *giving* reject the general assumption that individuals are immanently rational maximizers of self-interest, acting continuously, effectively and efficiently, to obtain what they want. Are human beings “self-regarding” entities *par excellence* rather than ideally “other-regarding” (Lichbach 1989, 169)? This rational choice perspective would assume that individuals are inherently egoistic species, incapable of helping each other and, even more, willing to kill each other for scarce resources and for self-interested purposes. While contemporary events and episodes of recent history have painfully shown the validity of such a conjecture, the present reading of Singerian philosophical standpoint considers it not as a refutation *tout court* of rational action theory, but a refinement of the said theory, under the form of what Michael Laver coined as “social goals” (1981, 29). In order to reassess the implacable consequences of rational choice research school, Laver conveniently – though properly – distinguished between “intrinsic” (*i.e.* goals valued in and of themselves) and “instrumental” goals (*i.e.* those goals that are useful for reaching the intrinsic goals, which are rather means for definitive ends). Additionally, the scholar differentiated between “personal” (*i.e.* goals that the individual obtains for himself) and “social” goals (*i.e.* goals that pertain to other and, thus, can be obtained only with the help of others). In his scheme, intrinsic goals are personal, “asocial,” while instrumental goals are social by definition. Therefore, one individual can be rational maximizer of social interests, such as providing money for relief funds and helping distant victims of famine, even if these actions constitute instrumental goals for higher interests (*e.g.* obtaining prestige, reputation, popularity, respect and appreciation from the part of the others). As a result, the Singerian ‘principle’ is by no means exhaustively opposed to the rational choice theory, but it is a fortunate reinterpretation of the latter, by arguing in favor of the intermediate social interests of human individuals. Despite the fact that donating for the eradication of starvation comes, in the rational theoretical *compendium*, only as secondary means in achieving social esteem and glorification (*i.e.* that letter of recognition, of which Singer briefly writes about, sent by the charity funds to the donor, in which he is thanked

for his “generosity” [1972, 232]), the gesture of *giving* happens eventually and is not less significant if accompanied by the public appreciation of the donor. Moreover, on this basis – probably perceived as “amoral” by Singer, nevertheless a proper, natural starting point in reshaping personal attitudes on donating –, the act of *giving*, practiced on a current basis, becomes customary, routinary, the desire for esteem and social appreciation considerably decreases, reduced to a subsidiary feeling, while the *giving* is perpetuated in this routine: *giving* for the victims of starvation and water shortages becomes gradually imbedded in the morale and moral system of an individual. This is one, though morally debatable, fashion in which *giving* comes naturally and regularly.

Another extremely compelling aspect in the Singerian argument takes into account the tradition of *giving*, at the individual level, that Europe has experienced and has been familiar with, from immemorial times. Singer brings forth the writings of medieval Thomas Aquinas, who would sustain that: “[T]he division and appropriation of property, which proceeds from human law, must not hinder the satisfaction of man’s necessity from [material] goods. Equally, whatever a man has in superabundance is owed, of natural right, to the poor for their sustenance.” (Aquinas *apud* d’Entreves and Dawson 1948, 171) Ambrosius’s teachings from the *Decretum Gratiani* add to this: “The bread which you withhold belongs to the hungry; the clothing you shut away, to the naked; and the money you bury in the earth is the redemption and freedom of the penniless.” (Ambrosius *apud* Singer 1972, 236) His quotes, nevertheless, point to a certain type of morality, the Christian one, which ceased too long ago to be the dominant *dictum* on which human beings construct and conduct their lives.

Therefore, from Singer’s standpoint, the issue is clear: only by giving away, individually, great sums of money, one can prevent starvation. Sometimes, his argument even rejects the internationally-conducted, government-sponsored, means and mechanisms of providing aid to the victims of famine, for they would favor the bulk of the citizens in developed countries to evade their individual responsibilities of giving to relief funds. This might be so; nevertheless, the most efficient methods in dealing with the problem of food and water shortages until the present moment remain the international ones. Moreover, the reverse of this argument may be plausible, as well: individual expressions of *giving*, cumulatively, are to reduce the national governments’ interventions, globally, in famine crises. In practice, however, this conjecture seems faulty: generally, when there is a lack of interest in donating, at the individual level, for relief funds, the same lack of interest and indifference will extend to the national government of apathetic citizens. This mechanism assumes *par excellence* a democratic setting and some democratic procedures, some, even minimal, form of representation consistency. One significant observation can be drawn from this: the extension of the Singerian ‘principle’ at the global level is contingent to the democratic nature of the countries involved in joint actions to eradicate famine and water shortages. As it will be seen, this observation verifies as plausible particularly because democracy, through its mechanisms of popular sovereignty and coherent representation, is capable of conducting the individual wills of the citizens into government-led or supranational relief

actions. Practically, individual citizens can expand their separate actions into calls and petitions addressed to their governments and their representatives, into active pressure upon their representatives to press for global activities in reducing the effects of famine, through interest/ pressure groups, *ad-hoc* constituted associations and NGOs, through protests and other manifestations, through media channels (radio and television), more recently through Internet, etc. Commonsensically, when the majority of these various means of communication between citizen and his representatives are inaccessible or shut down by the government itself, the individual act of 'giving' cannot be expended at a global, meaningful level, remaining just an individual act, whose efficiency is to remain expectedly irrelevant, though moral.

Another aspect that points to the effectiveness and efficiency of supranational, international strategies of reducing the repercussions of food and water crises is the importance of globally-designed, sometimes of a holistic facet of, measures to produce population control, on a Malthusian basis². In the absence (or delay) of these strategies of containing the population growth in some specifically problematic areas, it has been argued, any individual or international action in relieving famine is but a desperate and never-ending measure of postponing continuous starvation in different *foci* of world's map. The task of population control can only be a global task, warning therefore to the contingencies of individual action in this sphere. International organizations, especially the UN, are obliged to envisage and attempt to implement measures for the reduction of population growth.

I. 2005-2010: THREE INSTANCES OF FAMINE IN AFRICA

The last two years alone have showed that extirpating famine is by no means a task that the international community has thoroughly checked on the long list of issues on the global agenda. Moreover, it seems like starvation and water shortages in Africa are there to stay for a painfully prolonged period of time. Only in the second half of the 20th century, practical measures were taken up in Africa, firstly through the strong advocacy of Frances Moore Lappé, who founded the Institute for Food and Development Policy (an NGO later to be known as "Food First") and who initiated probably one of the most unrealistic plan for eliminating global starvation, the "*Diet for a Small Planet*" Plan of 1971 (Jenkins, Scanlan and Peterson 2007, 823-47). Far from obsolete Malthusian *calculi*, indigenous political scientists have stressed even the role played by the strengthening of liberal institutions and democratic procedures in reducing the frequency of famine episodes: Indian political theorist Amartya Sen argues that, since the independence of 1948, the construction of a liberal framework and the practice of the democratic exercise, through free, competitive elections, free press and the promotion and protection of (a still reduced range of) individual freedoms constituted in inhibiting factors for the outburst of famine in India (1981, 433-64). In the same vein, Alex de Waal (1997) discusses the

2] See, for the treatment of famine as a Malthusian crisis, Vaughan 1987, 50-76.

various situations in Africa, stressing similarly on the importance of “political contract” signed between ruled and rulers, in a Rousseauian fashion, that would constitute in an efficient mechanism of preventing food and water crises; moreover, what is of paramount significance for de Waal is the fact that, in the absence of social-political contracts in the African countries, there is no wonder that the danger and the toll of starvation is still so present, so stringent on the continent. One should also take into consideration, de Waal warns, that, by providing help through international instruments, the responsibility and accountability for not being able to provide for the basic needs of the population is transmuted from the national governments to international organizations and NGOs; this type of attitude is favorable in perpetuating food crises and the total disregard towards the logic of distributive justice in Africa. In practice, nevertheless, two categories of actions are being perfected at the international level (as already observed by de Waal, insignificant and often proved futile measures are being made by the African national governments): (1) prevention activities, and (2) relief actions. While the success of the former is desirable, it is increasingly conspicuous that the latter are generally preferred and employed. It is de Waal again to describe the role of humanitarian and its charitable acts: “Humanitarianism – or rather, the actions of Western relief agencies – has become a major determinant of Euro-American policy towards Africa. The humanitarians have become hugely powerful: their information, even their presence, influences the perceptions and concerns of Western diplomats. Their intermittent ability to dominate the headlines and embarrass their home governments into action gives them leverage. Some have tried to use this leverage to tackle what they see as the root causes of humanitarian crises. For others it is a chance for undreamed-of institutional expansion. The combination of the two has proved particularly potent. [...] Charitable action needs only vague principles: it is driven by an emotive concern for the poor. It is notable that Western charities avoid specific commitments to human rights principles, preferring vaguer slogans such as ‘H stands for Hunger, Oxfam stands for justice’. To fight famine, especially in war zones, it has become apparent that more specific guidelines are needed. Rather than engage directly with the laws of war, relief agencies have produced a profusion of statements of ‘humanitarian principles’ – remarkable effort of applied moral philosophy.” (de Waal 1997, 134) De Waal’s last observation remembers so adequately about the Singerian ‘principle.’ For the African case, Mark Duffield warns about the complexity and the subtleties of the phenomenon:

The growth of food insecurity in Africa is a complex phenomenon. [...] In general terms, Africa has continued to sustain a high level of population growth at the same time as *per capita* food production has declined. This has resulted in a growing number of countries consuming more than they produce. [...] In the case of Africa, however, the situation is different. In the absence of industrialization, Africa has continued to rely on the export of traditional primary products to furnish the hard currency to purchase commercial imports. [...] Due to reasons of climate or instability, such situations have often been compounded by the highly erratic nature of African food production. (1991, 5-6)

As Chris Barrett and Dan Maxwell have perceptively showed, food aid, as a primary part in humanitarian aid, constitutes “a real resource which can be used to further development and humanitarian goals [but], [a]lternatively, it can be misused to serve other purposes.” (2005, xi) Though interestingly stressing on the apparently negative indirect effects of relief funding (e.g., pressuring domestic food prices, influencing production incentives for local farmers, affecting trade and the labour market, etc.), the two scholars postulate that food aid “can be effective in alleviating acute hunger and malnutrition, in building human capital, and in protecting or building assets.” (Barrett and Maxwell 2005, xi) For the study of distributive justice, their book emphasizes an extremely important distinction: (1) food aid as “an integral part of a food security policy,” as opposed to (2) food aid as “a disposal mechanism for rich countries’ surpluses.” At this point, Singerian perspective finds one of its remarkable limitations, in the fact that it tends to favor morally the second understanding of the act of *giving*: as it is suggested by Singer, people in affluent societies seem to be willing to give for relief funds rather as a manner of relocating their surplus, not according to a moral “must.” As Michelle Maiese shows in his short recapitulation of the achievements history of though recorded during the 20th century in the specific field of distributive justice, three are the elements that stand as central in any discussion on the topic: (1) the total amount of goods to be distributed (or else, the “quantitative” dimension); (2) the distributing procedure, and (3) the pattern of distribution that results (2003).

Another point is being made in this sense, that of global distributive justice: the fact that affluent nations willing to involve in international aid would enterprise such relief actions on the basis of hidden agenda and economically-attached interests, vested interests. The “great powers”³ are allegedly willing to help only insofar as they can extract other resources from the regions affected by famine. In this mercantile-like rationale, one can imagine that “privileged” nations would have no stake in dealing with famine crises in Africa, for instance. The scope of this paper is not to detect and analyze the economic and political motivations behind the decision of international actors to react against famine, but the translation of individual acts of *giving* at the global level. Nevertheless, since the topic of so-called “attached” benefits was addressed when discussing about individual *giving* from a rational choice perspective, a brief consideration on the actual motivations of donor-countries should be taken into account. One aspect in this inquiry on motivations is, as in the case of individuals, that of employing donation activities as intermediate means to achieve greater, more significant ends: prominence on the international arena, acquiring a say in other international matters and within certain decision-making

3] Though a totally obsolete phrasing, the collocation “great power” is fashionable and telling, at the same time, when discussing the role of highly developed, consolidated democracies of Western tradition on the international arena, in instances of war prevention and resolution and humanitarian aid. The recurrence of the same, exclusive group of “privileged” nations in such circumstances is instrumental in treating not only its impact, but also the forms of domination it exercises even today – with the colonialist era well gone – on underdeveloped and developing regions.

forums and organizations and even facilitating the exploitation of resources, from natural and human ones, out of the assisted countries. One donor-country can compellingly exercise influence on the governments of assisted countries in exchange of its relief fund. Therefore, the possibility of a state to get involved into relief actions in the expectance of other, perceived as more important benefits is by no means excluded completely. Even so, when the moral dimension of *giving* is complicated by the interests and games on the international arena, the global actions are both similar to the individual ones, in terms of procedure and motivation, and are incommensurably more efficient.

In discussing the issue of famine crisis and humanitarian aid, even morally and philosophically, one initial priority is to adequately define the notions involved. Hence, “famine” constitutes, in international vocabulary, a level of alert that surpasses two other extremely problematic ones: the “Stressed” and the “Emergency” levels. Three conditions have to be met in one country for the international community to employ the “Famine” level of alert (and, fortunately, to take effective and efficient action): (a) more than 30% of children to be suffering from acute malnutrition; (b) more than two adults or four children out of 10,000 people to be dying of hunger on a daily basis, and (c) the population of one country to access to less than 2,100 kilocalories of food and four liters of water per day. Internationally-amended documents employ further differentiations, in which distinctions are made between: (1) “near scarcity,” (2) “scarcity,” and (3) “famine;”⁴ (1) “famine alarm,” (2) “famine alert,” and (3) “famine emergency;”⁵ (1) “non-alert” (near normal level), (2) “alert” (requiring close attention and analysis), (3) “livelihood crisis” (with the basic social structures, *i.e.* family, tribe, group, community, under increasing treat), and (4) “humanitarian emergency” (extended threat of widespread mortality, with the request of immediate, direct humanitarian aid)⁶. Most recently, Paul Howe and Stephen Devereux imagined an intensity and a magnitude scale of famine, in which “intensity scale” was fivefold, measuring the impact of livelihood (“food secure,” “food insecure,” “food crisis,” “famine,” “severe famine,” “extreme famine”) and the “magnitude scale” measured mortality rate (“minor famine,” “moderate famine,” “major famine,” “great famine,” “catastrophic famine”) (2004, 353-72). Probably the one coding that is commonly employed by the United Nations is the “Integrated Food Security Phase Classification” (IPC), with a fivefold classification: (1) “generally food secure” (green code); (2) “borderline food insecure” (yellow code); (3) “acute food and livelihood crisis”

4] *The Indian Famine Codes* (1880). If “scarcity” meant a period of three successive years of disastrous crop production (*i.e.* a decrease of at least one-third in cereals production), “famine” was defined by a rise in food prices of at least 140%, widespread mortality and even nomad inquiries in search of food and water.

5] *Turkana District Early Warning System* (Kenya). The benefit of the “early warning systems” is the fact that they come with a set of measures in order to ease each of the three levels of famine, particularly in the short run.

6] *The Food Security Assessment Unit’ levels for Somalia. The Pre-famine Indicators for Ethiopia*, designed in 2002, by the World Food Programme was one of the first such codes that used as a measurement unit the level of nutrition of the population.

(orange code); (4) “humanitarian emergency” (red code); (5) “famine/ humanitarian catastrophe” (brown code)⁷. One would wonder what the utility of such, rather infamous, scaling is. This coding is customarily employed for assuring food security and for further decision-making at the global level. Famine coding and scaling is an efficient instrument in imagining the “distribution of wealth.”

In five years, three major famine crises succeeded in Africa. These three food and water crises are central to the present paper, for they represent telling applications of the moral principle of *giving* at the international level, while being instrumental in the discussion concerning the mechanisms and the management that facilitate global distributive justice in circumstances of profound need. This paper argues that the fashion in which these contemporaneous instances of famine are resolved bears the Singerian logic of *giving* as moral act, extended from individual level to global one, but they are problematic, posing diverse and more significant difficulties, from the protection of national sovereignty of the states confronting famine to the forms and management of help that the global community can provide to the said states. Hence, the first *momentum* of food/ water crisis discussed here, as the second one also, affected Niger⁸, a country which deepened into one of the most prolonged and serious food shortage in the contemporary era. The initial crisis was triggered in 2005, when broad territories of the country became agriculturally useless; the food shortages affected particularly the Northern region of the country (Maradi, Tahoua, Tillabéri, Zinder). As expected, starvation in these provinces was due to a 2004 lacking rains (reduced rainfall, prolonged dryness), coupled with the increased damage posed by the destruction of pasture lands by the desert locusts; on the top of these, high prices to food could only be pondered by even tougher poverty among the population. Essentially, up to 66% of the total population of Niger was affected by food shortages (approximately 2.4 million people), with a quarter of the population suffering from outright starvation and with 2.5% being children (*i.e.* age under five) confronting acute malnutrition. Although the food crisis was predicted by both the national government and the UN, the point of famine should not have been reached. The incipient attempts of helping the population of Niger were thusly insufficient, exceptionally contingent and scarce. The situation was worsened even further due to locally isolated conflicts between groups of people – particularly nomadic small communities – in their fight for very limited resources. Only after the so-called ‘lean season’ (*i.e.* the climax in respect to the exceptionally poor harvests and grain stores), the relief programmes were actually implemented. Acute malnutrition especially among children registered exceeding levels in some regions of Niger. While 81 million dollars were requested by humanitarian agencies to improve the situation in Niger, approximately half of the financial amount was eventually gathered. During mid-January, more comprehensive humanitarian assistance was sponsored by the United Nations. In

7] <http://www.ipcinfo.org/attachments/ReferenceTableEN.pdf> (accessed March 3rd 2012).

8] The evolution of the Food Crisis in Niger in 2005-2006 is detailed in Hall 2007.

spite of the controversy regarding the actual occurrence of famine in Niger in 2005-2006, the subsequent events in 2010 proved the true magnitude of the problem.

The second famine crisis referred to in this study is the 2010 Sahel famine, the second famine crisis in only five years to affect Niger, as well as other neighboring countries of West Africa⁹. The situation leading to acute starvation debuted following the same pattern of 2005-2006 and 2011: chaotic, erratic rainfall and disturbing climatic conditions severely affected the cereal production, generating an absurd increase in food prices and major food deficit for the African households of the region. Niger, Chad, Cameroon, Senegal, Burkina Faso, Eritrea, Sudan, Mali and Mauritania, and even northern Nigeria confronted with important deficits in food-stock. Though perceived as less stringent than the ones before and after it, the 2010 Sahel famine bears its significance due especially to the fact that it hit Niger for the second time in five years. In 2009, rains affected the regions, but were soon followed by a more or less unexpected extremely dry period; following this climatic change, the agricultural production decreased in a warring degree. Irrespective of the possible factors causing such natural climatic hazardous succession (either environmental problems following overgrazing, deforestation, poor land usage and administration and global dimming, or the extensive cultivation of "cash crops", cotton, groundnuts, shea nuts, sesame, often put before food production, or, as it was suggested, overpopulation of the region of Sahel), the matter of increased starvation remains. The problem of refugees coming from Sudan in Chad primarily is another strenuous problem, favoring starvation and water shortages for the population. Another specific problem for the famine in Sahel in 2010 is the issue of the kidnappings customary among the humanitarian personnel working on a permanent basis in the region, particularly in the context of the war in Darfur; the kidnappings intensified during 2009, prompting the withdrawal of important international aid agencies and nongovernmental organization from the countries of Sahel. What is important to mention, nonetheless, is the fact that, in this particular case, the supranational agencies were effective in announcing the imminence of famine as early as the 1st of January 2010; the Famine Early Warning System, UN World Food Programme and the International Food Policy Research Institute were anticipatively warning about the probability of starvation in Sahel following unexpected climatic conditions. Already in January, while Ethiopian authorities were vehemently denying any prospects for national emergency situation, Sudan and Kenya received the first supplies from Hunger Organization. By the end of January, UN declared "famine alert" for Niger, Burkina Faso, Mali, Chad and northern Nigeria; nevertheless, humanitarian aid was suspended for Niger due to political reasons. While Mauritania and Senegal registered a new negative record for the rainfall volume in February and March, Burkina Faso experienced the first signs of famine in March and Save the Children became one of the first organizations to send financial support in Nigeria. In April and June, Islamic Relief became involved as well, together with Medair, for the relief in various provinces of Sudan. The first UN

9] The 2010 Sahel famine is described comprehensively in Raleigh 2010, 69-86.

operations were initiated in April, through its World Food Programme. The WFP efforts were counterbalanced by the outbreak of a terrible situation in Chad, a country confronted simultaneously with famine, internal conflict and with a massive wave of refugees coming through the border with Sudan from Darfur: 2 million people were severely affected by starvation and water shortage. Casualties were registered in Mauritania in May 2010. Awful conditions were met with continuous warnings and alerts from the international agencies, with humanitarian aid being rather sporadic than consistent and effective. Lacking any serious, committed help, nomadic inquiries soon succeeded, particularly in Niger and Chad, the two most affected countries. Only in June, the UN cared to initiate an appeal towards the developed nations, traditional donors to ease the sufferings in the countries of Sahel. Soon after, France responded by providing food aid and by triggering the financial support of the European Union for Niger, Chad, Burkina Faso and northern Nigeria. The UN dispatched teams of hydrologists and geologists to survey the large areas in search for water and new technological improvements in agriculture for the countries affected by drought. International Fund for Agricultural Development offered humanitarian assistance for regions in Somalia. On the 22nd of June, Chad faced a new record of temperature: 47.6 °C, Sudan matched the same day its own record, 49.7 °C, and Niger recorded 48.2 °C, on the 23rd of June. An estimate of 190.7 million dollars was requested by humanitarian agencies, but little of this amount was initially met, with the significant help of Oxfam. Governments in Niger and Chad appealed to the international community for support in dealing with increased famine. In July, various NGOs (Muslim Hands, the Methodist Relief and Development Fund, responded to this appeal and extended to the neighbouring affected countries. By mid-July, USAID intervened effective in eradicating famine, through its Famine Early Warning Systems Network and through additional funding for the Food and Agriculture Organization. British Red Cross added to this humanitarian undertaking by providing personnel, together with French food support. This support proved insufficient for the numerous problems Niger confronted with: famine and associated diseases (diarrhea, gastroenteritis, respiratory illnesses, etc.), political instability (government replaced by a military *junta*), food riots, etc.; food prices in August registered an increase of 300%. Nevertheless, by mid-August, floods affected the countries of Sahel that were already facing severe starvation and water shortages: Nigeria, Mauritania, Niger, Chad. Cafod, Action Against Hunger and the Prem Rawat Foundation contributed to the financial relief fund, in a context in which many international humanitarian agencies were reluctant in sending personnel due to a new wave of kidnappings. Moreover, the floods in September annulled the effects of severe starvation, but produced new victims, up to 2 million persons, displaced from their homes, particularly in Niger and northern Nigeria, but also in Benin and Ghana.

The most recent unfortunate instance of famine crisis in Africa affected, since mid-July 2011, primarily Somalia, Djibouti, Ethiopia, Kenya, Uganda, but also neighbouring countries, being, for that matter, generally referred to as “the 2011 East Africa drought”

or “the 2011 Horn of Africa famine”.¹⁰ Climatic conditions during the beginning of the summer season favored the interruption of rains, to the point in which Somalia, the most severely affected country, has not experienced rain for two successive years. As expected, the weather generated poor agricultural production, decreasing considerably the livestock. On the other hand, Al-Shabaab group intensified its activity in the South of Somalia, causing yet other food shortages. Despite the fact that the climatic conditions the region experienced during the summer of 2011 appeared gradually and marked no surprise for the international community¹¹, the supranational structures with specific competences in the area of humanitarian aid and relief funding did not intervene in an initial phase, not even by issuing an “early warning” for the governments of the countries affected by drought and subsequent famine.¹² Only in late June, the United Nations intervene, together with other NGOs, most notably, Oxfam and Save the Children. The famine state was decreed by the United Nations on the 20th of July, initially in two regions of Somalia. After further expertise analysis, the famine warning was extended as to include the entire territory of Southern Somalia by August 2011. In September, on-the-ground assistance was completed by sporadic airlifts of supplies, conducted effectively by the UN. Nevertheless, the crisis further spread due partly to the incapacity of the humanitarian aid to contain the exceptionality of the situation in Somalia. As for September, the amount of assistance was decided for 2.5 billion dollars, but signs of expended famine were observed in Kenya as well. Malnutrition affected South Sudan also, and the constant activity of the Red Cross proved insufficient in sustaining the relief actions. Therefore, during the first stages of international intervention in Somalia, Kenya and Sudan, the results were largely unsatisfactory, favoring the uncontrollable spread of famine in the eastern part of the continent. Famine was accompanied by the closing of local schools and hospitals and by massive relocations of population towards regions that could hopefully provide food and water for the victims of malnutrition and famine. During the autumn of 2011, it was reported, following UN analyses, that another 1.2 million people were at the verge of famine and water shortages in Uganda. In addition, starting September 2011, a massive wave of refugees coming from the affected areas entered neighbouring countries, especially Kenya and Ethiopia; the refugees were, in their large majority, women and children and were hosted in *ad-hoc* constructed

10] The 2011 Horn of Africa Famine is properly depicted in Dando 2012.

11] Rajiv Shah, Head of the US Agency for International Development, even stated anticipatively: “There’s no question that hotter and drier growing conditions in sub-Saharan Africa have reduced the resiliency of these communities.” (Shah 2011.)

12] An exception in this sense is the “Famine Early Warning Systems Network” of the USAID, which signaled the imminence of a famine crisis since August 2010. USAID, in fact, was the first organism to actively intervene in relief operations during the 2011 famine crisis of East Africa. The press statement released by USAID in early June 2011, warned that the famine crisis in Eastern Africa is “the most severe food security emergency in the world today, and the current humanitarian response is inadequate to prevent further deterioration.” (cited in “*The New York Times*”, on the 7th of June 2011, <http://pulitzercenter.org/reporting/famine-africa-solutions-aid-foreign>, accessed March 20th 2012).

camps and sites under the UN supervision. Even so, the capabilities of the UN High Commission for Refugees were extremely contingent, since the number of people coming on the daily basis from the drought-affected countries exceeded expectation. Medical care was scarce as well, leading to an overall increase of 300% of the infant mortality rate. Conspicuously overwhelmed, the UNHCR and the national governments in Kenya and Ethiopia faced local difficulties as well, with levels of famine being in continuous increase in the two adopting countries. Camps are by no means safe in such situations: sexual violence and numerous diseases associated with malnutrition and starvation (including measles, malaria, cholera, but also HIV/AIDS) raised even further the proportion of deaths. The intervention of *Médecins Sans Frontières* somehow improved the healthcare situation, though their actions were extremely limited in the given circumstances. Only in November, the international community, with the massive support of the United Nations and USAID, managed to direct, in a truly efficient manner, the funds, hence remarkably downgrading the officially established humanitarian situation in Somalia from 'famine' to 'emergency' alerts. Entering within the rebel-controlled areas was another challenge posed to the humanitarian personnel, but some minimum consensus was achieved and help was possible through the intervention of the Red Cross. Improving climatic conditions (rainfalls and increasing humidity levels) also rebalanced the situation. By January 2012, it was reported that, allegedly, the famine crisis was over in East Africa, although continuous assistance was being offered and actions directed against starvation are coordinated by the UN and transnational NGOs presently. The famine alert was nevertheless maintained since March this year and, for some gravely affected regions, the assistance will be secured until September 2012. Favored by abundant rainfall, the overall conditions of the agropastoral households has significantly improved and their herd sizes have been slowly recuperated following the drought that killed large numbers of agriculturally-relevant animals. For South Sudan, the problem of starvation remains a principal issue, particularly due to the never-ending conflict in North Darfur; as a result, in the first half of the 2012, Stressed, Crisis and Emergency levels of humanitarian alert were maintained for the protection of approximately four million persons. The Horn of Africa famine crisis marked the first time since the famine in Ethiopia of 1984-1985 when the UN issued a declaration of famine. Unfortunately, following this type of declaration, no mandated response or action is necessary under the present international law; it is only supposed that the declaration of famine would produce awareness among individuals, but most essentially among states and their capacity to assist the victims of starvation. This feeble mechanism closes the humanitarian aid at the international level to the Singerian 'principle' at the individual level, because it presupposes a moral act from the part of the affluent countries in helping countries in need. It results that, after all, it is an ethical dimension that stays at the core of each country's decision to eradicate famine, exactly like it is in each of those individuals of developed nations to decide in *giving* for a relief fund. In this sense, even the youngest organization regarding humanitarian assistance, the African Union and the African Development Bank contributed significantly, despite some

important delays. Private multinational companies (most famously, IKEA) donated for the cause. However, probably the most efficient in this respect remained the USAID, not only through its financial, material and personnel support in East Africa, but also thanks to its successive campaigns targeted for raising awareness: FWD (“Famine, War and Drought”, September 2011), ONE Campaign (October), etc. Using the so-called ‘*hawala*’ system and mobile phone donations, individuals sent small sums of money for the cause, following these campaigns.

It is important to stress that international development agencies have imagined, following the crisis, strategies of reducing the probability of occurrence of such unfortunate – though, in Africa, so recurrent – *phenomena*. This rationale is by no means a novelty: plans for digging irrigation canals and for meaningful and systematic distribution of plant seeds come as no surprise for the entire historical evolution of famine crises in Africa. The same plans are to be encountered in 2010, when the United Kingdom donated extensively for the Sahel famine, especially for the development of an efficient irrigation and water purification systems that would assure food and water for the people in Niger and Chad, the most affect countries of 2010’ famine crisis. Very little was done so far. In 2010, an additional plan of agricultural development, aimed at expanding the cultivated land and commonly referred to as the “Community Area-Based Development Approach” (“CABDA”), was envisaged¹³. Non-governmentally supported, “CABDA” was already implemented in Ethiopia, Malawi, Uganda, Eritrea and Kenya; despite the fact that the plan included special mechanisms and procedures of cultivating even drought-resistant cereals, at least Eritrea and Kenya confronted starvation during the last two years, demonstrating once more the contingencies of this development programme. Yet another programme, “The Food Crises Prevention and Management Charter”, was implemented in Gambia and was supported by the Permanent Interstate Committee for drought control in the Sahel (CILSS), an organism formed as early as 1973.

II. FINAL REMARKS AND CONCLUSIONS

Reconciling Singer’s ‘principle’ regarding the moral necessity of individual *giving* with the supranational, internationally-led operations of humanitarian aid and relief funding is, as this inquiry has shown, a matter of hermeneutical extension of the conceptual *spectrum* of notion of *giving*. Nevertheless, the theoretical *apparatus* Singer employs in his preaching on the benefits of individual *giving*, though incontestably meritorious, demonstrates its most dangerous contingencies, in the most painful fashion, in the everyday practice of the international or supranational, governmental or nongovernmental, organizations engaged in relief funding and humanitarian aid. It would be wonderful if states acted in the same way in which individuals act in the Singerian scheme, if the actions in the period 2005-2011 in Africa followed the fortunate path indicated so morally correctly

13] See, in this sense, Morgan and Solarz 1994, 57-73.

by the Australian thinker. It is not exclusively a dilemma of applied ethics, since politics intervenes in the case of famine crises in an often brutal way. In all three situations presented above, starvation and water shortage were worsened and sometimes favored by political conflicts between authorities and different rebel groups; this is a current fact for some African countries, whose resolution is yet to be imagined. Rebel and militant groups fighting against the government are constantly blocking the ability of humanitarian teams to provide relief for the people living on the territories under their control. In addition, incapable national governments prove too frequently unwilling and unable to provide minimal security for their citizens. This proves once more the symbiosis between national security and food security, a symbiosis virtually inexistent in East Africa, primarily, and in other developing countries of the globe, generally. But it is not exclusively the incapacity of East African national governments, it is rather the incapacity and unwillingness of the international community to effectively act in these developing regions. Though, as seen above, international and transnational nongovernmental organizations (Oxfam, Save the Children, Red Cross, *Médecins Sans Frontières*, etc.) and the USAID were the most effective organisms in dealing with humanitarian aid in the three cases mentioned, joint actions of affluent countries were limited both in scope and in effect. For one, the United Nations was reluctant and slow in declaring the “famine” level of alert in the countries affected by acute malnutrition and massive hunger, a delay which put a supplementary burden on the national governments of these countries and determine humanitarian aid and relief funding to be late in action. Secondly, the UN supervised organisms (World Health Organization, the UN High Commission for Refugees, Food and Agriculture Organization and UN World Food Programme, Mercy Corps, etc.) lacked the immediacy of action, despite the fact that each of these forums’ reports generated awareness of the situation Africa confronted to in the period 2005-2011. However, the efficiency of all these international structures is less relevant to the present study, although it is extremely important for the overall mundane peace and wellbeing of the ‘citizens’ living in an allegedly ‘global village’. It is rather the mechanisms that lie behind what would generally be referred to as the ‘distribution of wealth’ at the global level that become central in an account about the hermeneutic extension of the Singerian moral ‘principle’ of individual *giving*. From this perspective, the efficiency of humanitarian aid and relief funding is telling, exactly because they demonstrate how poorly this (re) distribution of resources is done from “affluent” societies to “developing” countries. One initial observation would be that affluent nations are truly unwilling to distribute part of their ‘wealth’ and that, in practice, distributive justice remains a *desideratum*, a virtual *utopia*. Nevertheless, a second, rather commonsensical, observation would argue that, as opposed to the situation in the 20th century – when the terrible events during the two world conflagrations met with almost no humanitarian assistance, despite the enormous human toll –, efforts are being constantly made to increase aid in humanitarian situations, particularly in the context of a growing interconnectedness and a significant tendency of

falling national sovereignty. International organizations have now much more effective capacity to penetrate the barriers posed by national sovereignty in their mission to help people that are badly treated by their own governments. So, nowadays the international community, led by affluent, highly developed and consolidated democracies, has at its disposal the mechanisms to initiate and sustain the 'distribution of wealth' towards poor countries. Empirically, it was been shown that, generally, humanitarian agencies receive less than half the amount of help they request for conducting relief operations. Therefore, it might be concluded, the affluent nations are unwilling to allocate funds for helping developing nations. Statistically, the UN Office for the Coordination of Humanitarian Affairs (OCHA) showed that, out of the total amount of assistance requested for overcoming the East Africa drought of 2011 (*i.e.* approximately 2,402 million dollars), 71% was met with an affirmative response, mainly from the European Union, the United Kingdom (through the "Disasters Emergency Committee"), Canada, China, Saudi Arabia, Iran, Lebanon, Bahrain¹⁴, Turkey. Material and personnel assistance came from Russia, Venezuela, Indonesia and Malaysia, as well. Even if not the entire request was met – which should, in whatever way, constitute a veritable shame for the rich countries of the globe –, the administration of this incipient 'distribution of wealth' is another issue to be considered. Once again, rebel organizations and terrorist cells flourishing in Somalia and in neighbouring parts are constantly hampering international aid; this is the reason why, United States, for instance, restricted its humanitarian contribution in order to avoid the allegation that it sponsors indirectly terrorism. Airlifts of emergency in mid-July in East Africa proved insufficient up to November, and more completed by land operations. In the 2010 Sahel famine, the European Union suspended the humanitarian help for Niger for political reasons: President Mamadou Tandja, on the pretext of exceptional humanitarian situation in his country, extended his term in power, a decision which run counter with the principle of liberal democracy embraced by the European Union. Therefore, as one can easily grasp, political motivations can more often than not hamper humanitarian assistance and the general 'distribution of wealth'. The circumstances in the three cases mentioned above demonstrate, after all, that the hermeneutical extension of Singer's 'principle' of individual *giving* as a moral act is possible: international, supranational, transnational organizations, agencies, groups, governmental or non-governmental, act for the eradication of famine in a similar fashion to that in which every individual of an affluent society engaged in donating would act. Nevertheless, empirically, Singer's moral scheme of *giving* preserves its contingencies at the global level.

ana_rocks_m5@yahoo.com

¹⁴ The Arab community was particularly eager in contributing to the relief funds, with Jordan, the United Arab Emirates, Kuwait, Egypt, Algeria, Qatar, even Sudan sending financial and material support for the victims of famine.

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Moral Cosmopolitanism and the Right to Immigration¹

Yusuf Yuksekdag
Central European University

Abstract. This study is devoted to the ways and means to justify a ‘more’ cosmopolitan realization of certain policy implications, in the case of immigration. The *raison d’être* of this study is the idea that the contemporary debate over open borders suffers from indeterminate discussions on whether liberal states are entitled to restrict immigration. On the other hand, most of the liberal cosmopolitan accounts neglect the detrimental consequences of their open borders argument – which take it as a means to compensate people in need –, such as brain drain and the effects of brain drain on the opportunity sets of members of sending countries. Therefore I offer a moral cosmopolitan account of immigration which takes the interests of would-be immigrants, the residents in receiving, along with the residents in sending countries in respect to their opportunity sets because of the way arbitrary border control represents the inequality of opportunity. I do not provide a well-formed immigration policy here, yet I believe the account provided here is more feasible in considering phenomena such as brain drain.

Key words: cosmopolitanism, immigration, open borders, brain drain.

World-wide suffering from deprivation, famine, wars and human right violations constitute some major features of current global politics. These features are also recognized as the one of the main root causes of the mass movement of people across globe (Cole 2000, 3). Out of a *humanitarian* concern, global or local humanitarian institutions address issues such as deprivation and famine through calling, collecting and distributing aid. Nevertheless, it has become clear that conventional modes of governance (nation-state and international regulations) are somewhat not able to compensate for the global challenges including worldwide pollution, humanitarian crises and global security threats (Risse and Lehmkuhl 2006).

The issue of migration is not only one of the global challenges; but also it presents itself as an outcome of the challenges as such. Most emigrants undertake such an international movement in order to improve their lives whether or not they have good prospects for a decent life in their home country (Brock 2010, 192). In the meantime, most politicians in the Western world, independently of their political affiliations, demand a certain form of restriction on migration; and the admission policies show a great deal of convergence which points out to the increasing resemblance among labour-importing states in terms of border control (Cornelius and Tsuda 2004, 4). Especially in the last decade, migration has become a highly charged political issue in most societies in the Western world (Miller 2005, 193). Immigration can doubtlessly be considered as “a driving force behind the rapidly growing ethnic, racial, and religious diversity of Western welfare states” as Gary

1] This is the framework of the thesis I wrote for my M.A. in Political Science at Central European University. Many thanks for constructive comments on earlier drafts to Zoltan Miklosi, Andres Moles, Silvia Neamtu, Kamuran Osman, and the participants of “Global Justice: Norms and Limits” (2012) conference at University of Bucharest.

P. Freeman claims (2009, 1). The continual diversity and the increasing demand for immigration have gradually created a fear that such a flow is detrimental to social solidarity and economic welfare of the host countries. Strictly speaking, however, the admission policies evolved in such an arbitrary and exclusive manner have required more and more resources in order to have effective control over immigrants. Following Levi, Sacks and Tyler, I suspect that the lack of legitimacy and compliance has led to increasing spending on enforcement and monitoring in the case of immigration control (2009). Regardless of such empirical considerations, it is clear that the international system of nation-states and the local political bodies are struggling to delineate policies towards migration, and the ethical part of the question gains more and more significance correspondingly. As Veit Bader claims, "migration policies involve highly contested normative judgments" (2005, 331), and one of them is the absolute right of a state to exclude immigrants upon her discretion. Therefore, in last decade, scholars have questioned the morality of migration policies under the framework of 'open versus closed borders' debate in which exclusive right of the states to exclude immigrants has been discussed. Scholars have mainly diverged on their understanding of the best way to discharge our duties of justice, and the significance of different liberties which should outweigh the other. Thus the debate has accumulated two focal points in which instrumentality and right-based arguments have been developed. However, I believe that this debate has no determinate conclusions on the subject since it suffers from indeterminate discussions over which liberal principle outweighs the other.

I primarily argue that immigration, as one of the global challenges, clearly creates a more robust case for global justice; and the principles addressing to the issue should be the governing criterion behind the global and local just institutions. My general view is that moral cosmopolitanism is an important alternative as a moral theoretical standpoint while reasoning about just immigration policies. Although different interpretations exist, I argue that the features of moral cosmopolitanism will best reflect on morally significant reasons in the development and justification of just immigration policies to the all addressees of justification. This is because, the international voluntary² immigration signifies an inequality of opportunity between individuals; and inequality of opportunity combined with arbitrary border control does vindicate a perspective of cosmopolitan justice towards the issue. In this paper, I shall not argue for substantive policies, yet some implications of my argument will be presented. In this paper, firstly I will argue that current open versus closed borders debate fail to take all addressees of justification of immigration policies, such as the citizens of the sending countries, into its account. Secondly, I will encapsulate the significance of inequality of opportunity signalled by both the current immigration flows and arbitrary border control into the defence of my moral cosmopolitan perspective and the political implications I presuppose from such an account.

2] In many recent cosmopolitan approaches to the issue of immigration, scholars such as Jonathan Seglow and Lea Ypi adopt this 'economic voluntary migration' approach (Seglow 2005; Ypi 2008).

I. OPEN VERSUS CLOSED BORDERS

Overall, the issue of restriction on migration has aroused interest in recent years, and scholars like Phillip Cole, Christopher I. Wellman, Joseph H. Carens, Jonathan Seglow, Michael Blake, Veit Bader, Thomas Cristiano, and Mathias Risse, either by being cosmopolitan or not in their outlook, have turned their attention to the morality of migration in last decade. The question; to what extent states' exclusive right to exclude immigrants can be justified, has inevitably created the debate over the 'open borders vs. closed borders'. In brief, the main debate is about whether the states should have open borders or not. To the extent that the scope of our duties of justice is either territorial or global, scholars have relied on the significance of two different moral rights, which are freedom of movement and freedom of association (Wellman and Cole 2011). Thus the debate has mostly revolved around the tension between freedom of movement and freedom of association/sovereignty. Beyond doubt, the entitlement to control borders and the distribution of membership is perceived as one of the main tenets of state sovereignty (Altman and Wellman 2009, 158). Since the argument for open borders poses a threat to the states' exclusive right to decide over their border control/admission policies, the discussion has created and also aimed to mitigate the tension between open borders and protecting state sovereignty.

Closed Borders

Freedom of association has been recently used by Christopher H. Wellman in order to justify the states' sovereign right to exclude some immigrants entering into to their country. Freedom of association is the right to join with other individuals to collectively express ideas, or to share, defend and pursue a common interest (Wellman and Cole 2011). Andrew Altman and Christopher H. Wellman appeal to this freedom and build their defence of a state's right to control its borders and its membership upon the moral value of freedom of association, without denying the global duties of justice of the members of the affluent countries (2009, 158-58). Their argument firstly assumes that freedom of association is an important value, and it also presupposes the right not to associate and disassociate in some cases. It stands to reason that every individual ought to have right to associate in any form respecting other individuals' basic liberties. I should have right to marry, choose my educational institution, create a Kubrick lovers club, associate with the members of my religion, or even promote a religion and call for an association for it. In many cases this also includes right not to associate. If I have the right to associate myself with another individual by marriage, I also have the right to not to associate with any person in the form of a marriage. Yet in the context of immigration, freedom of association does not directly presuppose the right not to associate unlike Altman and Wellman claim (2009, 159). First of all the freedom of association is not an absolute freedom. Its relationship to other important values that are essential to liberal [state] ... - including freedom of expression, religion, and conscience, [and especially] economic opportunity,

non-discrimination, and civic equality” (Guttman 1998, 5) should be addressed. Secondly the membership within the framework of contemporary liberal states is not voluntary per se. In other words, the states are not voluntary associations. Being a member of a state is not analogous with being a member of a marriage or a religious association. Although, every individual has a right to exit, this does not imply a right to entry, since statelessness is considered as an anomaly in our contemporary world.

Open Borders

On the other hand, freedom of movement has been accommodated to defend a form of open borders regarding immigration. I will conceptualize this right as freedom of international movement. Liberal political philosophers like Joseph Carens and Jean Hampton have wielded this freedom on the premise that individuals should have the right to choose any place in the world to live their lives unless such a large scale right that allowing unlimited immigration would be detrimental to the democratic processes, or even to the internal justice of the society (Carens 1987; Hampton 1995). The value philosophers appeal to is the freedom itself (Miller 2005, 194), yet they also try to avoid neglecting the consequentialist objections by pointing out the importance of the democratic processes and the internal justice of the society. To that end, Joseph Carens brings off an account in which freedom of movement, from a libertarian perspective, puts into use to argue for open borders. He gives the following example to illustrate his point:

Suppose a farmer from the United States wanted to hire workers from Mexico. The government would have no right to prohibit him from doing this. To prevent the Mexicans from coming would violate the rights of both the American farmer and the Mexican workers to engage in voluntary transactions ... So long as they were peaceful and did not steal, trespass on private property, or otherwise violate the rights of other individuals, their entry and their actions would be none of the [Nozickian] state’s business. (Carens 1987, 253)

Altman and Wellman argue that from Carens’s reading of Robert Nozick the libertarian case against restriction on immigration take two forms in accordance with whether it focuses on the property rights or freedom of movement (2009, 175). By doing so, they try to show how a legitimate state’s sovereignty over its territory outweighs one’s property rights or right to free movement. First of all, Carens’s account does not result in constituting two distinct focal points. Carens basically shows how such a limitation may end up in a conflict with basic liberties, such as property rights, not to mention the fact that “even if the Mexicans did not have job offers from an American, a Nozickian government would have no grounds for preventing them from entering the country” (1987, 253). Additionally, he does a great job in showing the linkage between freedom of movement and freedom of association in this very international context. However most importantly, Carens’s argument suffers from his libertarian focus. This is because, since he grounds the freedom of movement to a libertarian argument, this basically implies no social security, no appeal to equality or any shelter whatsoever for the individual. I believe that freedom

of movement should be appealed as an instrumental value to increase opportunity sets in life, considering that most of the people demand immigration in order to pursue their life with better economic means. To sum up, the political morality of immigration has rested upon a debate over which principles outweigh over another.

On the other hand, freedom of movement has been defended on the consequentialist cosmopolitan grounds; as a right to address human misery. Teresa Hayter claims that freedom of movement should be recognized as a basic human right; as its violation is detrimental to human welfare (2003, 16). This idea is mostly related with the misery of the asylum seekers due to the political or cultural oppression in their home country. As I confine my analysis on voluntary economic-migration, and I believe the issue refugees represent a distinct phenomenon, and it should be addressed from a different perspective. On the other hand, both Kymlicka and Carens argue for open borders as a resort to address global inequalities. They both appeal to open borders on a consequentialist cosmopolitan ground, and argue that affluent countries should eliminate all restrictions on their borders to provide a form of equal opportunity, if they refuse to redistribute their wealth in consistency with moral equality of individuals (Higgins 2008, 528). However, clearly such an appeal disregards the current situation of the citizens of the sending countries. Gillian Brock successfully points out that:

Removing restrictions on immigration without taking any (or enough) further steps to improve the prospects for decent lives in countries that people want to leave could yield mixed results, and may even constitute a considerable step backward, for global justice. (Brock 2010, 191)

From the point of view of the immigrants, open borders might be justified, yet such a policy might significantly worsen the situation of the people who remain in the country. Even if this might be required for an ideal justice, since open borders have been offered as a means to global justice, this tells us really “little about what our non-ideal world current policy on immigration should be” (Brock 2010, 191).

The Complications

The problem, first, presents itself in the endless debates over which principles and values outweigh each other. Secondly, by giving such a big importance to freedom of association, some scholars neglect the moral arbitrariness of one's birth place in the current system of nation-states. According to freedom of association, one inevitably has a right to exit from the association she got into, yet in contemporary world, statelessness is considered as an anomaly, and if one has a right to exit from an association of nation-state, she should also right to enter new one.

Secondly, I argue that freedom of movement can be defined as an instrumental right for the sake of equal opportunity. However, opening all the borders might leave some countries worse-off than they are now. As Veit Bader also calls our attention, the current framework has neglected the fact that immigration from the poor countries might leave the

poor countries worse off (2005). That is why one should take immigrants and people in the sending countries into their account along with the members of the receiving countries. Brain drain might be a significant problem in the case of open borders and in relation with that, Eszter Kollar presents a significant case of this phenomenon by discussing to what extent medical migration may be limited in order to not leave the sending countries worse-off (Kollar 2012). Any cosmopolitan account of justice in migration should be justified to all individuals respecting their life-choices and opportunities, and the principles derived on this basis would serve to regulate global or local institutional arrangements on migration.

II. MORAL COSMOPOLITANISM AND IMMIGRATION

The ultimate aim of this study is to explore the possible ways in which a cosmopolitan theory of justice in migration can be developed. Therefore, firstly I am interested in the conditions and the reasons that enable us to be uneasy about justice in migration; and the addresses of duties of justice. In this section, I will start my inquiry with a very short conceptual/empirical review of the issue of migration and I will put an emphasis on the way arbitrary border control represents inequality of opportunity. Secondly, I will argue that along with immigrants and members of receiving countries, members of sending countries deserve equal concern for the sake of justice in migration.

Immigration and Inequality of Opportunity

The report of International Organization for Migration (IOM) estimated that in 2010 there were 214 million international migrants in the world (2012). The movement of people have various motivations behind, and there are different categories of migrants, yet migrants, in brief, tend to pursue better life opportunities. Nevertheless, most of the international migrants have direct economic or economic-related motivations behind their movement. Only the %15 of international immigrants is refugees (IOM, 2012). On the other hand, from the perspective of states, although the beginnings of 1990s had experienced a transnational public debates on immigration politics, Richard Black noted that “the right to immigrate appears everywhere on retreat” mostly because of the negative public attitude towards immigrants especially in Europe (1996, 64). In the meantime, the figures, in terms of both the number of migrants and the sending countries, are also rising (Seglow 2005, 318). For instance, in the case of labour migration, the estimates show that, although it is in a decrease, the huge gap between positive immigration pressure (if more people want to immigrate into the country than to emigrate from) Western Europe has and negative immigration pressure (if more people want to emigrate from the country than to immigrate into) North Africa has will be preserved (see Table 1).

Area/Years	2006-2010	2011-2015	2016-2020
Western Europe	256.1	235.1	226.0
North Africa	- 113.3	- 101.8	- 97.3
CIS Middle East Countries	- 65.3	- 45.8	- 51.8
South Asia	- 64.7	- 50.8	- 50.3
Eastern Europe	- 49.9	- 45.4	- 45.4
Slavic World	37.0	8.7	23.3

Table 1. Positive/Negative Immigration Pressure Estimates until 2020 (in thousands)³

There might be different socio-economic explanations of this phenomenon, yet Richard Black takes the issue as a “symbol of global inequality” as immigration is perceived as a means to have an access to opportunities one does not have in her country (Black, Natali and Skinner 2005). Cavallero also asserts that “the normative significance of immigration pressure is that it indicates inequality of opportunity” (2006, 98). The crux of the matter is that borders serve as a means to distribute economic opportunities that limit resources and advantages into its territorial borders and its members whereas it restricts other individuals in certain ways to have access to those opportunities and advantages on arbitrary basis (Blake and Risse 2006, 14).

Another feature which might deepen the inequality of opportunities is the brain drain and its effects on the sending countries. For example, a recent study on the medical brain drain shows that around %25 percent of medical doctors in countries like Ethiopia, Ghana, Malawi, Somalia and Zimbabwe emigrate from these countries (Chojnicki and Oden-Defoort 2010). Additionally, Gillian Brock shows that although Europe and North America have %21 of world’s population, they have %45 of world’s doctors and %61 of its nurses (Brock 2010, 200).

Without a doubt, the opportunity sets of people residing in developing countries might be diminished through emigration of highly skilled labour from the county. In the case of medical brain drain, this might even lead to more severe complications, such as absence of access to basic health care in the country. Some might argue that remittances sent by the immigrants might work as a sort of compensation for the effects of their absence, yet I object to this argument on two grounds. Firstly, the remittances work in a voluntary basis. However, the aim of justice in migration is to derive principles for institutions, and leaving the scope only to interpersonal ethical considerations would not be a plausible response. As Lea Ypi suggests, such a voluntary act should not refrain us from the need of a more principled and institutionalized approach to the issue (2008, 414). Secondly, not only would remittances not always compensate for the needs of poor households, but they would also create a remittance-based inequality of opportunities in the local level.

3] Source: (Borgy and Chojnicki 2009).

A case study in Mexico shows that although remittances do decrease the poverty rates of households, in terms of remittances they get, the share of non-poor households is much bigger than the share of poor households (Esquivel and Huerta-Pineda 2007, 49). This might also imply that labourers from non-poor households are more likely to immigrate into affluent countries. Overall, I believe that moral cosmopolitanism is an important alternative which will include abovementioned concerns into its formulation.

Moral Cosmopolitanism

The cosmopolitan idea of equal and inclusive concern for every human being will bear on our moral analysis in a way that “each person [will] [...] be treated as having equal standing as an addressee of justification” (Beitz 2005, 17). That is to say, any action, regulation or policy having an effect upon the interests, benefits or opportunities of individuals is supposed to be justifiable to them (Cabrera 2010, 15). Additionally, direct egalitarian approach in general holds that people should not face inequality of opportunities for morally arbitrary reasons such as their nationality, class, ethnicity and status (Caney 2009, 394). In this sense, border control is morally contested since immigration barriers restrict opportunities of individuals based on their country of birth. On the other hand immigration of highly skilled labour, such as medical workers, from a country with a high emigration pressure might leave the citizens of sending countries worse-off. As I mentioned in the previous section, most of the voluntary immigrants are the relatively better-off members of the countries they emigrate from. The inequality of opportunity signalled by the gap between positive immigration pressure and negative immigration pressure might be increased for individuals who are not able to emigrate or not willing to emigrate for plausible reasons. Current immigration policies of affluent countries that are partly based on attracting skilled labour from poor countries strike me as morally controversial in this sense. Gillian Brock also shares this view and questions the unequal distribution of health workers around the world.⁴ The initial response of many cosmopolitans to the issue of immigration is to have open borders on the grounds that individuals are entitled to free movement and equal opportunities (Christiano 2008, 933). In contrast, some scholars argue against open borders by an appeal to prudential considerations on the effects of massive immigration flow. Thomas Christiano lays stress on the claims that the proper functioning of liberal democratic states is necessary for approximating justice in global scope, and massive unrestricted immigration flows might be detrimental to the territorial justice (2008, 961). This is a compelling objection to open borders. However, such an argument still does not vindicate an absolute and arbitrary control over borders.

However, my concern is about the possible consequences of open borders on the members of poor countries (see brain discussion above) which might be detrimental for

4] Gillian Brock shows that although Europe and North America have %21 of world’s population, they have %45 of world’s doctors and %61 of its nurses (2010).

the countries as such to approximate territorial justice. Thus, I oppose to the open borders argument from a moral individualistic perspective through which I formulate a different cosmopolitan approach concerning both the demands of citizens of liberal affluent countries as such, and the opportunities of the members of sending countries along with the would be immigrants.

Cosmopolitan Justice in Migration

As it is shown, non-ideal circumstances of the world might create a conflict between the two entitlements, which are free movement and equal opportunity. I believe that is the reason why the open versus closed borders debate suffers from the indeterminate discussions on whether liberal states are entitled to restrict immigration. I do not deny the moral significance of entitlements, yet that perspective alone does not deal with the duty-bearer aspect of justice in migration questioning the duties derived by the principles of justice, and the responsibilities of individuals towards aliens, if there is any.

In my view, this perspective requires an immediate attention. In the case of immigration, I, *prima facie*, assume the existence of borders, since abolishing states is not a practically feasible option for now; and states will have a crucial role in approximating justice both in territorial and global scope, and to do that they need some level of autonomy. Therefore, the subject matter of my cosmopolitan approach is the states and their regulations and practices on migration, and duties of justice should be assigned to them. As Chris Armstrong suggests, "it is not necessarily inconsistent for global egalitarians to accord some value to the ideal of self-determination; since there are ways to reconcile two values" (2010, 313). I believe the moral individualism directly implies a concern for the interests of the members of receiving countries.

Overall, the crux of the issue is that any policy goal should also take the interests of the members of sending countries into its formulation. Therefore, my cosmopolitan approach to justice in migration requires that: (i) immigrants who want to pursue their interests elsewhere, (ii) the people who reside in the receiving countries, and (iii) the people who stay in the sending country are simply the addressees of justification, and the units of our moral reasoning. In what follows, I shall get into the details of why moral individualism requires equal concern for the opportunities of (i), (ii) and (iii), and also how this equal concern for opportunities creates duties of justice for all.

III. CONCLUSION

Hitherto, some form of cosmopolitan approaches have been offered scholars like Jonathon Seglow, Raffaele Marchetti and Arash Abizadeh; either in the form of a quota application, in which the both freedom of movement and freedom of association have been respected; or in the form of a global citizenship, in which citizens of the world may enjoy minimum rights in a global level; or in the form of a global democratic participation and decision-making right on the policy proposals regarding the immigration (Seglow

2006; Marchetti 2009; Abizadeh 2008). I will not argue for a substantive immigration policy here. As a liberal cosmopolitan, I still believe that our duties of justice should be discharged in a global scope, yet the question still remains about: How? What kinds of immigration policies are just? I cannot give a substantial answer to this question here, yet one possible implication of my framework would be some form of compensation for the individuals in the sending countries, required either by the receiving state or the immigrant herself. Such a policy application becomes more meaningful when one considers the countries such as Hungary or Colombia from which high skilled health care workers increasingly immigrate to more affluent countries. The countries as such clearly benefit from the flow of high skilled workers, who benefited from the education and all other benefits of cooperation in their home countries, into their own countries. Putting restrictions on emigration would be some form of enslavement, yet compensating for such flows would be justifiable. I should remind that this is not only the problem of less affluent countries considering that most of the affluent countries in the EU have started to suffer from brain drain due to the global financial crisis. Therefore, brain drain, or brain circulation as some may put it, appears a significant problem of our contemporary world and clearly the open versus closed borders debate can say a little about this phenomenon.

yusufyuksekdag@gmail.com

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Book Reviews

Axel Gosseries & Yannick Vanderborght (eds.), Arguing about Justice. Essays for Philippe Van Parijs, Presses Universitaires de Louvain, 2011, Pp. 422, ISBN 2874632759

Arguing about Justice is a tribute to Philippe Van Parijs, on the occasion of the 2011 triple anniversary: Van Parijs's 60th birthday, the 20th year of existence of the *Hoover Chair in Economic and Social Ethics* (at the Catholic University of Louvain) and the 25th anniversary of the *Basic Income Earth Network* (BIEN) – both of which strongly connected with Philippe Van Parijs, as a founder, headperson or animator.

The essays included in the volume offer the reader a rich (and sometimes challenging) intellectual journey into a variety of topics related to the core question of what is a just society. It is an amazingly diverse volume, in which the editors have managed to attract contributions from almost fifty authors, among whom several major figures in the fields of analytic philosophy and political theory, like Robert Goodin, Jon Elster, Hillel Steiner or John Roemer.

The collection of articles is meant to illustrate the numerous areas in which Van Parijs has worked and the multiple intellectual challenges by which he has enriched both the academic and the public debate. Thus, most of the topics can be grouped in six or seven areas of debate: basic income, social justice and public policies, linguistic justice, real freedom and democracy. Nevertheless, an attentive reader can find also other topics or interpretations, from some feminist ones to some that are focusing on the present financial crisis. The diversity of the topics, ranging from the fate of journalism in the Internet era, linguistic protectionism, self-determination for cities, to genetics and ethics or taxes on marriage partners should not puzzle though the readers familiar with Van Parijs's work.

The reviewer is almost fatally at a loss when faced with the requirement to provide an adequate picture of such a comprehensive book, since its intellectual diversity and wealth make it impossible for him/her, not only to do justice to all the authors, problems and ideas to be found inside, but even to simply represent them in an adequate manner. The review runs the risk of saying more about the theoretical interests of the reviewer, than about the book itself, and to simplify the message so much as to distort the complex landscape that the volume illustrates. Nevertheless, no commentator can let it pass without notice: it is a remarkable publication, and one feels obliged to say something about it. Our own choice will be to signal some articles that we find particularly interesting and challenging.

Perhaps the best known contribution of Philippe Van Parijs to social ethics is his theory on basic income. An unconditional basic income, that should be given to all citizens, irrespective of their work performance or alternative sources of income, would, according to Van Parijs, have a number of positive effects on the labour market, as well as combine social justice and individual freedom without increasing inequalities.

Arguably the most interesting theoretical model, and the most challenging contribution on this topic, to be found in this book is the one proposed by Paul-Marie Boulanger in his article *Real Freedom for All Turtles in Sugarscape?* The author starts from the approach of Epstein and Axtell, which tried in their 1996 book (*Growing Artificial Societies*) to provide a computer-simulated model for the development of social relationships and some complex types of conduct (the agents in the model are called "turtles"

and their simple activity consists in looking for vital resources like sugar). One of the premises of the Sugarscape model was that the agents are purely selfish (i.e., they act individually), and the result of their acts and interactions was that the total population decreased (after a period of time, almost half of the agents died after failing to find the vital resources they needed) while the remaining ones crowded together in colonies around the most promising (rich in sugar) areas. Not surprisingly, the universe of a selfish population proved to be cruel and gregarious.

Boulanger's idea was to enrich the model by adding some 'solidarity' ingredients to it. In his second version, the agents are compelled to reserve a fraction of the resources they acquire individually for a "collective granary", while being promised to be granted a small "allowance" taken from the granary in case they faced a difficult period of scarcity. The author put to work several versions (with different parameters for the contribution rate and the allowance levels), and the model generated data which showed that, while in such a case the solidarity mechanism does not offer much better prospects to the average agent, it still gives better chances of survival to the 'unlucky' one. This, obviously, corresponds to the familiar experience that solidarity arrangements (like social assistance) based on taxes do bring relief to the most disadvantaged persons inside the population. Boulanger's third model "is close to the second one except that every agent is granted at each time step an unconditional amount of sugar," irrespective of his particular situation or contribution, inside a public scheme that "is financed by a flat tax levied on all wealth above the basic income level" (99) – which, of course, symbolizes the general idea of an unconditional basic income. Obviously, the scheme cannot be sustainable for any possible value of the flat tax and of the unconditional allowance, but where it works (for some possible pairs of values), it provides, according to the computer modeling, "better life chances for the whole population and also for every subgroup" (102). It is, Boulanger finds, the most wealth egalitarian and the most rational solution - if we equated rationality with impartial reasoning behind the veil of ignorance. The author's conclusion is that the model confirms Philippe Van Parijs' thesis that basic income schemes can grant us "a marriage of justice and efficiency" (103).

Someone could have let oneself carried away by what could have been perceived to be a 'logical proof' of a general idea in political philosophy – the idea of an unconditional basic income and of its benefits. Not so Boulanger, who has no illusions. After developing his model, he somehow steps back overcautiously, by ostentatiously reminding the reader that multi-agent models are just metaphors, not representations, mere improvised scenarios, not serious things. By comparing models like his own with *Commedia dell'arte* improvisations, and by suggesting that the acceptance of his own conclusion depends upon subjective inclinations (to empathize with the agents in the model and put oneself in their shoes), the author seems to have been inclined to play down his own approach, which is rather unusual and somewhat surprising. While, of course, a model like this cannot be taken as a proper 'logical proof' of a theoretical idea, it can still be taken more seriously than we take metaphors and improvised scenarios. Why would the "Sugarscape" model be less relevant than other famous models, like, for instance, the "prisoner's dilemma" one or the "tragedy of the commons" one? Why couldn't it be developed to a fully-fledged model of social arrangement, by adding more variables and elements to the scheme of interaction? Contrary to what Boulanger seems to have suggested, the seriousness and relevance of a model does not depend primarily upon one's inclination to empathize with the agents involved in it, or upon one's feel-

ing that the model is “evocative” (104), but rather on the degree of sophistication of its internal structure and on its capacity to avoid omissions of relevant interconnections, which have a reasonable degree of similarity with real relationships. Possible critics of the Sugarscape model should thus strive to detect oversimplifications and lacunae, not to express their lack of empathy and of evocative feelings. At the same time, admirers of the model should strive to complete and develop it, not to express sympathy with its ‘improvisations.’ It seems to us that both strategies are perfectly feasible, and it is perhaps to be expected that both attitudes be manifested in the future. Thus, the model developed by Boulanger will hopefully prove challenging and fertile for the discussion on social solidarity.

To stay in the same thematic area, one can notice that skepticism about the credibility of basic income comes not only from the meta-theoretical caveats, expressed in a nice although self-sacrificing manner by Boulanger, but also from practical considerations. A proof for that is offered by Denis Clerc’s article, entitled *Why Big Ideas Never Change Society* (an overstatement, of course). Clerc focuses on practical difficulties of a basic income scheme, namely on financial, social and political obstacles. Basic income would imply the existence of a huge amount of financial resources constituted through taxes and contributions, the raising of which implies various dilemmas and difficulties. Socially and politically, basic income is problematic because “it is also a technical and social challenge that only a small number of political actors will be ready to take up” (171). Denis Clerc concludes that Basic Income is too grand an aim to be realistic and accessible for present societies. Instead of a scheme based on an unconditional universal benefit for all citizens, no matter how *just* it may seem, he proposes a much more modest aim: taking gradual steps towards a *less unjust* society, via modest instruments like supplements to low incomes, such as the *revenue de solidarité active* which exists in France. This kind of less demanding measures appear to Clerc as much more appropriate, given the fact that “our societies are very complex, and reforms can only be incremental” (171).

The kind of practical wisdom that prompts such cautious conclusions might seem to be related with some old conservative (e.g. Burkean) views and principles, usually recommended as very reasonable; it might also be evocative of the warnings against global social engineering made by Karl Popper. But is a basic income scheme really a piece of global social engineering? That, we think, is very doubtful. In fact, modern societies are used to the idea of universal unconditional benefits granted publicly. Elementary education (for all children, including immigrants) and emergency medical assistance (for everybody, including foreigners) are two examples of such benefits, which do not appear at all as ‘wild’ examples of global social engineering. Is there a difference *in nature* between free of charge elementary education and basic income? If not, why should one reject the latter, while accepting the former? Clerc’s arguments seem to be a bit too general and much less convincing than other arguments advanced in the debate on basic income.

John E. Roemer’s paper, *The Ideological Roots of Inequality and What is to Be Done*, is one of the most interesting contributions to the volume. While we are used to take economic inequality as an undeniable and unavoidable *fact*, Roemer insists that one should see it more as an ideological construct. In the first part of the paper, he reconstructs the main arguments behind our nonchalant acceptance of inequality: the moral argument - “one is entitled to benefit from one’s natural or social advantages” - and the instru-

mental one: “inequality is in the end good for everybody” (291). Roemer concentrates on questioning the second argument, by showing that the existence of inequalities is not a necessary condition for the efficient functioning of markets. Starting from the premise that “the market is primarily a device for coordination” (297), not for generating incentives, the American economist argues that an egalitarian-oriented redistribution does not necessarily generate “massive efficiency costs”. It is only when we see the market as being “primarily a device for harnessing incentives”, that the efficiency costs of redistribution become a big burden. But we should not take the latter path for a major reason: competitiveness should not be confused with efficiency – high incentives might be competitive, but in the end they are not efficient. The argument runs as follows: incentives are very important for workers, but not so important for CEOs, who are more interested in the power and the exceptional opportunities that their positions bring, than in material rewards. Thus, Roemer claims, even if the salaries paid to CEOs were taxed at very high rates, “we would not see a significant change in productive behavior” (299). Thus, it cannot be said that paying huge salaries (and leaving them untouched by taxation) to the “high fliers at the top” is a must for an efficient economic activity. Moreover, there is another major argument against big CEO salaries: they generate immense social costs. The first component of that argument is that CEO with such salaries will accumulate a big wealth, which can be and shall be used in order to influence politics: “Members of this class, if private campaign financing is legal, will make large contributions to political parties to maintain their privileges” (299). This warning might remind one about Michael Walzer’s point in *The Spheres of Justice*: people who control big amounts of the dominant good (money) can hardly be prevented from converting it into other goods, like, for instance, political influence. The second component of Roemer’s argument is that paying huge salaries to CEOs “can induce behavior that is far too risky from the social point of view” (299). The tendency towards risky behavior is labeled as a negative externality abundantly exemplified during the current financial crisis: irresponsibly risky choices made by bank CEOs led to the spectacular bankruptcies which compelled the US government to bail out big banks. Roemer concludes that the familiar idea of huge incentives for CEOs that were necessary for efficiency “is a big lie” (300). In fact, people at the top have other incentives than those which create such absurd inequalities in contemporary society: “Once basic needs are met, I believe that people put substantial weight on the nature of their work” (300), claims the author. Roemer’s argument has been recently (and independently) entrenched by empirical research.¹

Roemer’s paper looks more like a piece of work in progress, than like an accomplished approach of the problem. It can hardly be said that ‘the myth of beneficial inequality’ has been thereby demolished. A lot more argumentation work must be done in order to dispel the religious respect accumulated around economic inequality. Especially the idea that the market is primarily a coordination mechanism, not an incentive-creating one, needs much more elaboration. How can one decide what “primarily” actually means here? It can be claimed that coordination and incentive creation are so closely interwoven in contemporary market economies, that a separation and hierarchy

1] See Gretchen Morgenson, *C.E.O.’s and the Pay-‘Em-or-Lose-‘Em Myth*, in *The New York Times*, September 22, 2012; the electronic version is to be found at the address: <http://www.nytimes.com/2012/09/23/business/ceos-and-the-pay-em-or-lose-em-myth-fair-game.html?pagewanted=all>.

between them is hardly feasible. Much stronger arguments seem to be needed here, in order that this separation be accepted. On the other hand, it is important that the myth of indispensable inequality has been put into question, and it is particularly important that the role of huge salaries for CEOs be examined. Are indeed such salaries largely redundant? Or are they “club goods”, i.e. goods that are very significant, although not through what they in themselves provide, but through the fact that most other people cannot have them? Isn't there a contradiction between Roemer's idea that smaller wages for CEOs would not affect their managerial achievements, and his own acknowledgement that CEOs aspire to more political influence? If CEOs are power hungry, then they probably are wealth hungry too, as long as only via wealth can they acquire power. Would they invest as much energy and effort in their work, once their chances to get more power were limited by a significantly smaller wealth? These are difficult (and somewhat vague) questions, but it is essential to ask and, if possible, to answer them.

Another discussion on the topic of equality, this time more practical, is Cantillon and Van Lancker's text about Flemish regulations on school allowances and truancy. It offers an illustration of a selective social policy with far-reaching implications and, at the same time, allows the reader to identify the main debate on the formal and substantive meaning of equal opportunities.

In recent years, confronted with high rates of truancy, the Flemish government implemented regulations designed to recuperate the school allowance given to truants' families (mostly socially and economically disadvantaged families).

As Cantillon and Van Lancker argue, this use of financial disincentives for disciplinary purposes, within a system committed to guaranteeing equal opportunities for education, is both practically inefficient and morally wrong. Perhaps the most obvious example of its inefficiency concerns the increase of inequalities that were supposed to be addressed by educational policies as a whole. Moreover, if it is only families who benefitted from the allowance that are sanctioned for the unauthorized absenteeism of a student, similar mechanisms for truants who have not benefitted from it seem to lack.

The ethical issue is more serious, since it is deeply connected to the discourse on individual responsibility and points to a major shift from one type of welfare system to another (the new “social investment” or “active welfare” state). In order to prove their point, the authors draw on the key distinction between capabilities and functionings. Following Sen and, later, Nussbaum, they separate the ability to achieve a certain outcome from the practical outcome itself and suggest that an educational policy true to the ideal of equal opportunities should be targeted at not only providing free elementary and secondary education, but also at enforcing the successful participation of students. Acknowledging such a duty of the welfare state would create a more fairly shared responsibility between the state and the individual.

However, in the framework of the new “social investment state,” individual responsibility and merit are overemphasized. In the authors' opinion, this is tantamount to a “fundamental attribution error”, which underestimates contextual explanations and places the burden almost exclusively on the individual.

With a research benefitting by non-equivocal factual material, Cantillon and Van Lancker provide a fresh re-evaluation of equality of opportunity. However, their contribution should be also read as raising the alarm that the often uncontested rhetoric of individual responsibility can usher in a new wave of cumulative injustice to the most vulnerable members of society. If the dominant paradigm is that of the active welfare state,

there is little chance for an idea such as basic income to be accepted and implemented.

Legitimate Partiality, Parents and Patriots, Brighouse and Swift's contribution to the volume, develops an interesting argument on the kinds of partiality that could be justified by the special goods people obtain within national relationships. In what may be taken as a reply to cosmopolitans, these authors argue for giving (limited) priority to one's compatriots in matters of justice. They provide a three-place model of partiality, as a relation between agents, goods and the goal that these goods help achieve, i.e. well-being. At the same time, they part company with theorists like David Miller over the value of the analogy between families and nations, and highlight its limits.

To this end, Brighouse and Swift argue that there are two major differences which must be taken into account when working with this analogy. The first is that, unlike nations, families are based on fiduciary relationships between children and adults, which revolve around meeting basic needs through care. The second is that, by definition, families are built on love and a complex psychological motivation for advancing the well being of their members.

With this caveat added, the authors discuss the specificity of relationship goods which obtain among compatriots. Provided that there are distinctive goods created through social interaction within national relationships and that these relationships are equally valuable for all, national relationship goods could be valuable for two main reasons: first, they are part and parcel of the feasibility of a common political project, designed as mutually beneficial and, second, they capture and advance a sense of shared identity. If goods of political association are perceived as valuable by members of a certain nation, they could provide a justification to the allocation of resources for major national projects, such as cultural or military ones. This would be further consolidated by the fact that production of these goods itself requires forms of partiality.

Although the article is intended as an exploratory approach of partiality towards one's compatriots, the nuances and limits of which the authors are concerned to indicate, one should be aware that it is caught in between two powerful background perspectives. Some of the difficulties stemming from the Hobbesian and the cosmopolitan approach are anticipated by the authors. In defense of the Hobbesian approach, one should perhaps prove that human beings would be definitely worse off in the absence of national relationships, in a similar way in which people would be so much worse off in the absence of families. Equally, it could be argued that the value of national relationship goods approach would be first and foremost a matter of rationality and autonomy in the context of competing actors on the global scene. On the other hand, unless a convincing case is made that the value of nationality significantly extends beyond just providing "the kind of shared identity needed to underpin what are fundamentally civic goods of solidarity, social justice and democracy" (116), the relevance of the national relationship goods approach may diminish. A last point to be made in relation with the cosmopolitan approach is how far the special treatment to one's fellow nationals is justified. How strict a priority should members of rich nations give to increasing their compatriots' welfare by industrial activities which imply production of carbon emissions? Or how should the rich nations act with regard to those nations for which survival is the main problem, considering that there are either historical retributive duties, or mutual interests linking the two?

In his article *Using the Internet to Save Journalism from the Internet*, American constitutional law scholar Bruce Ackerman discusses the need and feasibility of a scheme

of Internet vouchers for newspapers. Ackerman's core claim is that rescuing professional journalism from the unequal competition with alternative sources of information flourishing on the Internet is important for both participatory democracy and linguistic justice.

Relying on recent data from US surveys, Ackerman identifies an alarming downward trend for professional journalism, which threatens the very existence of the industry in the near future. In his view, the traditional attributes of newspaper journalism (well-documented, authoritative, impartial, credible and responsible) could soon be replaced by the verbiage of the blogosphere, and quality of the information would be hopelessly compromised.

Moreover, though a general phenomenon, this trend affects various language zones differently. Outside the English-speaking world, which also benefits by some well-established newspapers, the public is more vulnerable to the assail of amateur reporting. Yet, the author argues, the democratization of public access to information should not make us overlook its quality.

To this end, the solution he suggests is public funding for journalism, in the form of Internet vouchers. This means that Internet users should vote for the newspaper articles they think have helped them gain a better political understanding and, as a result, a National Endowment for Journalism would subsidize those news organizations in proportion with the readers' votes. Maybe less efficient in the short run than private funding for professional journalism, this solution would better save content-neutrality of reporting and would only impose few limits, to ensure compatibility with fundamental values of democracy and free speech. For instance, pornography and libel would be excluded from this incentive scheme.

For anyone concerned about the fate of professional journalism, Ackerman's solution is innovative and seemingly uncomplicated. In the author's words, it could be "a third way between *laissez-faire* and heavy-handed bureaucracy in the service of fundamental values" (44). Indeed, one should agree that the downside of *laissez-faire* policies in the media, which treat information like any other commodity on the market is more and more visible. Ackerman's proposal also has the merit of tackling the issue at its core, i.e. at the business model level of the media industry. However, one could perhaps raise an issue in reply to his argument. Unlike political journalism, for which there is supposedly enough readership, other kinds of journalism, (say, environmental or cultural) would not be much helped to survive by this scheme. Though less developed, they are instructive and useful, and it may be that in their case a mixed solution would work better (public funding via readers' appraisals plus additional state or private funding). This might also be the case for small linguistic communities, some of them with a fragile cultural identity.

The perspectives of care ethics and of gender studies are not absent from this comprehensive volume. In her essay, philosopher and economist Ingrid Robeyns combines both in order to argue for the implementation of a universal citizen's duty to care.

Robeyns starts from the observation that, though indispensable for the development of human society, care work is currently undervalued (financially and in terms of status) and unevenly distributed between men and women. The move from the factual realm to the normative one requires Robeyns to prove that care work is actually an issue of distributive justice. To do so, she builds a four-step argument: a) care work is a special kind of work, which needs time, effort and dedication, all of which entail costs;

b) as a service provided to the vulnerable, mostly within the framework of gendered social institutions, it is very poorly rewarded and lacks an organizational structure which would protect the interests of care givers; c) it generates a series of non-financial burdens (isolation, stress, limited autonomy to develop one's potential or to choose one's working conditions, etc); d) through various social mechanisms, especially part-time job opportunities and parental leave regulations, the burdens it implies are unevenly distributed across society.

Under these circumstances, the solution envisaged by Robeyns requires that every able citizen should, at some point of his or her adult life, spend some time caring for other vulnerable fellow citizens. Apart from solving practical issues and providing a standard for the redistribution of care, this proposal would have two major advantages: "it would give all a lived-through experience of caring, which would weaken the problem of misrecognition of care work" (288) and would allow prospective parents to make an informed decision on how to share work and care responsibilities.

Reading this essay, one could be inclined to believe that the main problem with the implementation of a citizen's duty to care is how to adjust it to practicalities of everyday life, e.g. some people are unable or unsuitable to be care givers, others have already paid their duty to society, etc. However, there may be at least two valid objections to the idea of a universal duty to care.

One refers to the argument that failure to provide adequate care could amount to a violation of human dignity. Indeed, if this is the assumption on which Robeyns is working, one could legitimately ask the same questions about care as about human dignity, for instance: are specific human rights derived from the ideas of care and dignity? Can an embryo be a subject of care and dignity? Can care and dignity provide a foundation for justice in cultures other than the Western ones, and even: would care and dignity apply only to human beings?

The second problem has to do with a failure to distinguish clearly between care due to newborn babies or children and care due to elderly persons or disabled ones. Unlike the latter, which could be seen as a matter of reciprocity, the former case can be discussed within the context of reproductive rights, where choice is central, and, at the same time, within the context of equal opportunities. It could be argued that, rather than creating equal opportunities so that people would learn how to care for others, it would be more important from the viewpoint of justice to ensure equal opportunities so that people could exercise their reproductive rights, which include respect for bodily integrity, medical assistance or even compensation in case of infertility. Moreover, there is also the issue of overpopulation which would add to that of equal opportunities to exercising reproductive rights. These are not mutually exclusive, but if implementing a universal citizen's duty to care is a policy issue, resources would have to be dedicated to it, which could perhaps be better used to address the issues of reproductive rights and overpopulation. Therefore, it seems that the case for reevaluation of care put forward by Robeyns is more compelling than that for the redistribution of care.

Ileana Dascălu & Adrian-Paul Iliescu
University of Bucharest

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