

**Efficiency, Entitlements and Deservingness:  
Perspectives on International Distributive Justice\***

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**Abstract:**

The paper offers a threefold typology for comparing and assessing arguments about the political economy of international distributive justice. Economists use aggregative criteria, specifying economic fairness as a subset of efficient allocations. The political philosopher suggests moral side constraints to place on distributions, a category that encompasses much recent scholarship, including the Rawls--Nozick debate. The third approach addresses the deservingness of different claimants to resources and issues of fair compensation, often in the context of specifying legal rules. Though these traditions are not uniquely international in focus, it is that aspect that is addressed here, both with respect to theoretical relevance to international affairs and practical applications to international redistribution, including specific arguments such as aid to poor countries and reparations for damages. The attractiveness of each group of arguments depends on the issue at hand and the goals of the proponent. Each offers independent but not mutually exclusive principles that might provide the basis for an integrated approach to international distributive justice.

The temporal conjunction in 2005 of the UN Millennium Project's call for a doubling of aid with the G8's meeting in Scotland focusing on third world development and offering \$50 billion annually to Africa by 2010 (shortly after giving \$40 billion of debt relief to 18 countries) once again drew attention to the subject of international distributive justice. There is little dispute about the existence of international poverty, but considerable debate about the desirability of redistribution. Some predict that the welfare and economic efficiency of the world might be enhanced by redistribution. An article in the UN's 1948 Universal Declaration of Rights, stating that a minimum standard of living should be a constraint on any distribution of global resources, is for many a truth so morally obvious that only the selfish or obtuse could ignore it. Others argue that the world's poor were relegated to that status by exploitation and are deserving of reparations. These assertions are illustrative of three varieties of prescriptive arguments in this debate.

Questions of distributive justice, equity or fairness arise from the scarcity of things we would like to consume, a desire to avoid things we do not wish to consume, and asymmetries in the exchange of goods and services. This paper offers a threefold typology of normative arguments for redistribution. Economists favor aggregation theories that prescribe adding up, weighting and maximizing net benefits. The first goal in allocating resources is efficiency, maximizing the amount of society's resources. Once that is attained, redistributive preferences might be indulged, as long as efficiency is not compromised. Distributive principles are arbitrary, not in the sense that they offer no standards of reasoning to make them morally persuasive, but that they are not logically deducible from principles of efficient allocation. Economists are not unconcerned about poverty, but make two assertions about statics (fair distributions may be found within the set of efficient distributions) and dynamics (efficient distributions will bring long term aggregate gains). Philosophers offer inviolable moral constraints that must be satisfied by any principle of distributive justice, prior to any considerations of efficiency. The legal tradition weighs the deservingness of competing claims, specifying how they may be traded off against each other. Though there have been surveys of theories of distributive justice (a few devoted solely to its international aspects), they have focused on the subset of approaches that stem from political philosophy (Beitz 1999), occasionally on the efficiency perspectives of

economists (Roemer 1966) and more rarely on the legalistic concerns of deservingness (Torpey 2003). The discussion below begins with the issue of why we observe both the demand and supply of international redistribution, and then returns to the typology above in order to compare and contrast the normative arguments for why we might prescribe such redistributions.

### **The Demand for Redistribution**

Claims for international distributive justice often involve compensation for past damages, such as war reparations. Developing countries base much of their demand for global redistribution on the assertion that they have been exploited by past imperialism and in the present by globalization and the core-periphery structure of the world economy. A second source of demands stem from the salience of resource and environmental issues, and includes the distributive consequences of asymmetric contributions to public goods (such as global pollution control) and the appropriate distribution or governance of international common property (such as the seabed or Antarctica). Disagreements occur over the distribution of private goods that may be held in common, such as agricultural subsidies in EU or aid from international organizations, and the sharing of the results of group efforts (e.g., allocating OPEC's oil output across members). Conflict between rich and poor countries emerge in almost all of them. Should, for example, poor countries be exempt from the 1997 Kyoto Treaty's limitations on greenhouse gas emissions?

A third source of claims is global poverty and relative inequality, a concern because of moral reasons or undesirable consequences (e.g., political instability). The proportion of the world's population living below \$1 per day has declined, as have global measures of inequality across individuals.<sup>1</sup> However, there has been a striking geographic shift in the concentration of poverty. Between 1970 and 1998, Africa's share of the world's poor rose from 11% to 66%, and Asia's share fell from 76% to 15%. Furthermore, inter-country inequality has increased: the ratio of the per capita incomes of the countries that have the richest 20% of the world's population to the per capita incomes of the countries that have the poorest 20% of the world's population has increased from 30 in 1974 to 74 in 1997 (Svenborg 2003).

Demands for poverty alleviation raise issues of deservingness and responsibility. Many assume that poverty is exogenous; a result of past exploitation and current biases in the world economy (such as adverse terms of trade), or is at least a fact that rich countries have a moral obligation to correct. Yet if a country's poverty is a result of endogenous cultural factors, such as Banfield's (1958) 'amoral familism,' Veliz's (1994) 'hedgehog' culture, or lack of Putnam's (1994) 'civic community,' aid might not be conducive to long term development. If poverty stems from predatory political structures, such as Africa's confiscatory state marketing monopolies (Bates 1984), Equatorial Guinea's 'tropical gangsters' (Klitgaard 1991), or Vietnam's venal officialdom (Popkin 1979), the international community may feel justified in making internal change a prerequisite for aid. Disorganized corruption is particularly inimical to growth (Shleifer and Vishny 1993). The prevalence in the Third World of market failures (such as monopolies and rent-seeking interest groups) and 'failed states' incapable of basic governance, and the manifest lack of results from decades of aid to tropical Africa, clearly informs the emphasis on regime attributes in current US aid policy. Domestic reforms (such as market incentives in China, India and Vietnam in the 1970s and 1980s) have yielded sustained gains in growth.

Yet few would suggest that that global poverty is only unjust if brought about by external intervention. Most arguments for redistribution do not require that obligation be based on causal responsibility, only that redistribution be shown make the poor better off. This is particularly the case when the causes of poverty, though internal, are less due to venal institutions that waste aid than to attributes that the county is incapable of correcting without external help. If a country is, for example, in a poverty trap perpetuated by low savings (a favorite argument of Millennium aid advocate Jeffrey Sachs), the argument for institutional prerequisites for aid is less powerful. The imperative is most persuasive when redistributions satisfy basic needs necessary for survival and are independent of political circumstances (e.g., famine relief).

### **The Supply of Redistribution**

Franck (2002, pp. 9--13) characterizes the world's resource endowment as 'moderate' scarcity. Severe scarcity is too conflictual for anyone to willingly consider offering redistribution and mild scarcity too benign for distribution to be important. He also believes that world has developed a sufficient sense of a global society that there is motivation to consider the welfare of

aggregations of individuals larger than the nation state. He cites ‘striation of identity,’ such as Europeans having ‘multiple identifications’ (viz., they are citizens of countries, but also of the EU, the UN, etc.), leading to a global spirit that others call the ‘cosmopolitan’ view: principles of international distributive justice should apply to all individuals, irrespective of their domicile (Caney 2005, Jones 2001). Cosmopolitans are opposed by ‘communitarians,’ for whom the primary subjects of international distributive justice are nations, not individuals (Rawls 1971, Rawls 1999, Walzer 1983).

There are good reasons to expect that human beings will be less willing to engage in redistribution when the beneficiaries are beyond their borders. We accept obligations of domestic welfare that we do not accept internationally (e.g., provision of a minimum standard of living). We condemn domestic distributive policies that we do not condemn internationally (e.g., the distributive goal of US immigration policy is the same as South Africa’s defunct apartheid – to prevent large scale redistribution). Compensation claims by foreigners are less likely to get a sympathetic hearing, absent accepted criteria for what situations merit such claims, and what is a legitimate act of state when damage is caused. States may invoke sovereign immunity. There is no agreement on how far back in time a state is obliged to entertain a compensation claim.

States may be less willing to contribute to a common enterprise than are individuals within nations or smaller groups. This may be due to heterogeneity of goals, opportunities for shirking or other opportunistic behaviors, and lack of secure norms of reciprocity or enforcement mechanisms that guarantee a participant will receive an expected share of the common payoff. Though the EU has effected major redistributions between its member states, the difficulty it has had in securing agreement on a new constitution suggests that it may be reaching the limits of the willingness of states (or their electors) to contribute to a common enterprise with major distributive implications.

Charitable sentiments weaken as we cross national boundaries, perhaps because part of the motivation is insurance. We help our neighbors in the expectation of reciprocity. Citizens are willing to contribute to a country’s welfare system because they may benefit from it. Buying off poor people may reduce crime. Payments to foreigners have none of these benefits, though in

Rawls (1999) more recent work he claims that international redistribution may contribute to global stability. Desire to help the poor atrophies when we cannot see them lying in our streets: 'Proximity provides opportunities for action, it lowers the costs of action, and it increases our confidence about the effects of those actions' (Fishkin 1982, p. 73). We also may believe that we cannot help the poor of the world without an unacceptable cost to ourselves, an argument that Jones (2001, p. 9) refers to as the 'incapacity' objection. Finally, aid goes often to governments who may use it for their own venal or repressive purposes.

The observations above describe and may help to explain why we empirically observe variations in both the demand and the supply of international redistribution. However, from a prescriptive or policy perspective we may be more interested in why such demands should be entertained or why supply should be encouraged. It is this normative question that is addressed by the threefold typology introduced earlier.

### **Aggregation, Maximization and Social Welfare**

The prevailing teleological theories of distributive justice seek an optimal outcome by adding up the effects of applying one or more criteria, such as marginal benefits to individuals, and maximizing an objective function that specifies the relative weighting of the criteria. In some variations, such as those that select subsets of efficient outcomes, there may be many outcomes of acceptable fairness. Rousseau's General Will (the distribution we would wish for to achieve the good of society as a whole) articulated an aggregative notion of justice. Utilitarians argued that measuring and aggregating 'happiness' is self evident as a criterion for evaluating the moral worth of an outcome, because all other principles were equally valid and any choice would be arbitrary. Utilitarianism is consequentialist (directed toward outcomes), cosmopolitan (focusing on individuals, without regard for national boundaries) and universalistic (treating all individuals as equal in some respect, though not necessarily endorsing income equality as a goal).

Conjectural variations (maximizing aggregate global utility, equalizing the total utility of each individual in the world, or redistributing the world's resources until everyone has the same marginal utility for income) maintain the same logic.

Utilitarian distributions may be faulted for not yielding a determinate set of policy recommendations. They may ignore the past by focusing on current and future utility, neglecting grievances that ought to be satisfied. Fishkin (1982, p. 72) suggests that utilitarianism neglects the need for a 'zone of indifference' to suffering, demanding sacrifices that no reasonable person would tolerate: 'If every small contribution to famine relief will save a human life ... I am obligated by the principle of minimal altruism to give ... until the marginal sacrifice involved in any individual act of giving is more than minor ... [and] we would be led, step by step, to sacrifices of heroic proportions.' Posner (1983, p. 83) accuses utilitarianism of 'moral monstrosity' because it could result in perverse distributions, reduce society's total wealth, and ascribes equal value to worthy and unworthy motives (such as cruelty). Posner suggests wealth maximization, a variable comparable across individuals, more compatible with individual liberty (he claims), and roughly correlated with utility (assuming a linear mapping of wealth to utility). Redistribution to maximize the wealth of the world would be much less drastic than equalizing marginal utilities for income, because the mere fact that the poor might get more utility from a dollar than the rich would not be sufficient to justify a transfer. It would have to be shown that the poor would use the dollar more productively and add more to world wealth.

Paradoxically, utility maximization may not be sensitive to inequality. The utilitarian who focuses on total utility would be indifferent between a distribution yielding one unit of utility to country A and 99 units to country B, and a distribution that gave 50 units of utility to each. If marginal utilities are equated, it could generate a perverse distribution, if an extra dollar is worth more to a rich country than to a poor country. Yet there may be circumstances where international inequality should be ignored. Roemer (1996, p. 162) cites the example of spending \$X to reduce infant mortality in the countries with the highest death rates, compared to spending the same amount to reduce total global infant deaths. A utilitarian would prefer the latter; an egalitarian the former.

Utilitarianism (unlike Posner's wealth maximization) requires interpersonal comparisons of utility. If income were to be redistributed around the world until every individual has the same marginal utility for income (the most severely redistributive form of utilitarianism, advocated by Singer 1979), we must be able to measure utility cardinally. Von Neuman-Morgenstern utility

experiments can measure utility by offering people different lotteries (would you prefer \$10 with certainty or a 10% chance of winning \$100?), but these utilities are not comparable across individuals because they are arbitrarily defined for each person. Economists prefer ordinal utility, which requires only that individuals rank different outcomes (person A prefers X to Y, B prefers Y to X). Ordinal utility can show only how individuals rank outcomes, not how much cardinal utility each gets from the outcomes, and therefore cannot compare the utility that A gets from X and B gets from X. This implies defaulting to notions of efficiency (maximizing aggregate social utility), defining a fair distribution as a subset of efficient allocations. Ordinal utility is more compatible with a Kantian ethic of treating individuals as ends rather than means to aggregate welfare. Knowing only ordinal utilities, we may prescribe a Pareto improvement in the distribution of resources: one that makes everyone better off (by their own ordinal preferences) or at least does not make anyone worse off. Pareto suggested the criterion as a solution to the practical problems of utilitarianism: if you cannot measure utility, ask everyone if he is better off.

There may exist a 'superfair' subset of Pareto distributions, where no one envies anyone else's allocation (Baumol 1986). All superfair allocations must be Pareto optimal, since if anyone were made worse off, they would prefer the allocation of another, but Pareto improvements are not necessarily superfair, since some may still envy others. Though superfairness requires no information other than ordinal preferences, it is vulnerable to common sense objections. The US may have higher productivity than France because the latter has chosen other goods over growth (Krugman 2005), and the superfair principal would reallocate US income to France, since the French would envy the greater material consumption of Americans even though they prefer other benefits to work. Superfair distributions might appear to legitimate 'laziness' (Silver 1989, pp. 151--154).<sup>2</sup>

A related aspect of preferences is risk attitude. Dworkin (1981) suggests that transfers should only compensate individuals for unforeseen circumstances against which they would be willing to buy insurance if they were able to do so. The poor are risk averse and so would have higher demand for insurance. Hence the resistance of developing country farmers to the Green Revolution in the 1970s (Elkan 1973, pp. 110--117). This suggests an idea from syndicate

theory: when a group works toward a common goal of uncertain value, to be shared out amongst the group, the optimal sharing rule is for the more risk averse members to accept a lower share with less variation. Hence poor countries might be guaranteed a smaller but fixed level of income to match their higher degree of risk aversion (Conybeare 1997). This is what some aid schemes do. The EU's STABEX subsidizes the export earnings of former colonies, but only when those earnings fall below a specified level, and the IMF's Compensatory Financing facility performs a similar function for commodity prices.

Fairness may also be affected by the transaction costs of international bargaining. Coase (1960) deduced that if transaction costs are zero, one may indulge any redistributive preferences because all assignments of rights are efficient. If transaction costs are not zero, efficiency requires rights to be given to those with the highest transaction costs. If the transaction costs for a rich country emitting acid rain to bargain with poor country receivers of the acid rain were to be greater than if the rights were reversed, then efficiency would dictate that the poor countries should have responsibility for paying the rich country to control the acid rain (Conybeare 1980). Fairness and efficiency may conflict. The conflict may become especially acute in the realm of rights, such as sovereignty, that may not be involuntarily transferred even if it would be efficient. When US law tried to place the responsibility on other countries to pay for dolphin friendly tuna fishing nets in the 1990s, the WTO ruled it would 'not allow one country to take trade action for the purpose of attempting to enforce its own domestic laws in another country' (WTO 2006). Yet extra-territoriality might be globally efficient, due to higher transaction costs for the US bargaining with many tuna exporting countries.

Even the most venal motives may be compatible with efficiency based definitions of fairness. Blackmail, for example, is the transfer of resources from one person to another by threatening to do something that would be of no benefit to the threatener. Yet if threats have beneficial effects, the transfer may enhance global welfare (e.g., the EU threatening to block Russia's entry into the WTO if it did not join the Kyoto Treaty). Some of the basic concepts of legal fairness have an efficiency rationale. Criminal law avoids the costs of having to decide which criminal acts may be efficiency enhancing (Calabressi and Melamed 1972). A war might transfer income from rich to poor (e.g. Romans to Vandals), but the difficulty of determining which wars would do this

makes it efficient for the UN Charter (article 2) to ban aggressive war as a legitimate act of foreign policy.

Overall, aggregation approaches typically endorse market mechanisms because the marginalist principles of the technique work best under free exchange. Distributive justice is addressed by appealing to the beneficial effects on poverty of increasing the size of the pie, by effecting redistributions that are efficiency neutral (Pareto optimal or superfair), or by making redistributions that correct market failures (such monopoly). However, the aggregation approach ultimately confronts the problem of compromises. It would be purely fortuitous that an efficient allocation of world resources would meet any general criteria of fairness, which makes it so tempting to define fairness as a subset of efficiency. Hence aggregative approaches avoid a large range of distributive issues. Reasonable fairness criteria may well preclude efficiency. Arrow's Impossibility Theorem on how groups cannot make efficient decisions, for example, specifies that the preferences of a group may not be set by a dictator, presumably because that dictator may determine allocations that the rest of society considers to be unfair, even though they might be efficiency enhancing. This is where we enter the second category of theories: a side constraint is specified as a condition of a just allocation. Allocative efficiency is no longer the primary consideration and we depart from the focus of economics based theories of justice.

### **Rights, Entitlements and Other Side Constraints**

Side constraint theories in their purest form specify moral principles that must not be weighed against each other, and all must be satisfied (Broome 1999, p. 114). In a weaker form they specify constraints that might be traded off against each other but only according to an ordinal hierarchy, such as Rawls' (1971) 'lexicographic priority' (e.g., liberty trumps equality). Aggregation and side constraints are not incompatible. Though aggregation may include constraints, they are a means to attain the primary goal, or are added in as a secondary consideration (e.g., first find the efficient allocations and then worry about which of them are fair). Side constraints reverse this reasoning: fairness is the primary consideration, and whether the resulting allocation meets some aggregative principle, such as efficiency, is secondary. The constraints may apply to the process (e.g., requiring all transfers to be voluntary) or to the outcomes (e.g., improving the allocation of those with the least resources). Process constraints

reject consequentialist or teleological criteria for justice. Sandel (1984, pp. 2--3) recommends 'deontological liberalism': society is best arranged according to rules that define not a desirable outcome but principles that conform to a conception of justice that is independent of any particular idea of what the ultimate allocation of resources ought to be.

Constraint theories are typically stated as self evident, being general virtues (such as egalitarianism) or rights that are asserted against society, in the tradition of Isaiah Berlin's 'negative liberty' – who is entitled to what, on what basis and for what purpose. Over-riding such rights in the quest for aggregative concepts of fairness is believed to be damaging to the moral fabric of society. Sen (1970), alluding to Arrow's Impossibility Theorem, complains that welfare economics ignores rights, and asserts that there is no special order capable of satisfying both Pareto principles and minimal liberal rights (i.e., we should not expect efficient and fair outcomes to be intersecting sets). Fishkin (1982) identifies a contradiction between 'positive general obligations' and the 'basic structure of individual morality,' inferring that there are levels of sacrifice (for the aggregate good) that cannot be required of any individual. There is no guarantee that aggregation principles of justice can be specified so as to never violate individual rights; hence the tendency to specify side constraints as inviolable.

Constraint theories often claim to be building on Kantian precepts. In contrast to Hume's suggestion that justice is a product of human convention, Kant assumes that justice cannot presuppose any conception of what is good, or be inferred from the conditions of society that make it necessary, because this would result in treating individuals as means rather than ends. The former would lead to tyranny, as some impose their own principles of justice on others. Hence Kant focused on autonomy and self respect as criteria for distributive justice. This leads to his famous distinction between hypothetical and categorical imperatives. The former are precepts of prudence (such as the Golden Rule). The latter are rules about what ought to be done, not in pursuit of some purpose, but irrespective of whether an action suits us: act only on the maxim through which you can at the same time will that it should become universal law. The satisfaction of basic human needs is a categorical imperative because without it humans cannot act at all. Denial of basic human needs for some of the world's population cannot pass the universalizability test, and hence is unjust.<sup>3</sup>

Rawls (1971) interprets Kant as suggesting that justice is the primary virtue of institutions and principles of justice must be deduced by rational choice rather than induced from observation of social practices. Rejecting aggregative concepts like utility, he specifies fundamental needs or 'social primary goods.' Justice consists of allocating these social primary goods (liberty, opportunity, income, wealth, status,) equally unless an unequal distribution is to the advantage of the least favored, ensuring that all receive the minimum allocation of these goods that fulfills basic needs (the 'maximin principle'). Resting on this general conception are several 'special conceptions,' including the neo-Kantian 'priority of liberty' (each person is to have an equal right to the most extensive system of basic liberty compatible with a similar system for all), and the 'difference principle' that social and economic allocations should favor those worst off. Progression to the core of Rawls' theory of distributive justice is through a series of side constraints.

Rawls believes we would all reach these same conclusions if we were to make rules from 'behind the veil of ignorance,' without knowing where we would end up in the distribution. The emphasis on equality and improving the lot of the worst off indicates that Rawls thinks we are or ought to be risk averse ('prudent') and willing to embody these rules into a social contract. Without risk aversion, the prudential reason to favor the least well off disappears, and variance in risk attitudes is likely to be greater internationally than within nations. Basing legitimacy on decisions made without knowledge of outcomes appears in other discussions of distributive justice. Some are simple: the 'I divide, you choose' rule.<sup>4</sup> Rogowski's (1974) 'rational legitimacy' gets at the same underlying logic: government (and the distributions that it effects) will be considered legitimate if all citizens have an equal probability of influencing ('uniquely determining' in Rogowski's terminology) the outcomes. This is analogous to asking everyone to choose an outcome subject to uncertainty about their own allocation and assuming risk aversion: they would want a system in which everyone has the same influence and endorse an egalitarian distribution.

A Theory of Justice (1971) states that distributive justice applies only to members of a 'cooperative venture for mutual advantage.' Domestic societies may qualify but the international

system does not, since the latter is a state of anarchy in which self help is the primary norm. This view puts Rawls firmly in the ‘communitarian’ school of thought, what Jones (2001, p. 113) refers to as ‘compatriot favoritism’ and Pogge (1994, 1998) calls the ‘institutionalist’ position (distinguished from the ‘interactional’ approach that does not make participation in a scheme of mutual interdependence necessary to generate distributive obligations). Walzer (1983) agrees that justice depends on ‘shared understandings’ that are found only within societies, and each social community will have its own ideas about what constitutes a just distribution of resources. Hence the twin strands of the communitarian view: conceptions of justice are unique to each community, and there are no distributive principles that bind together the nations of the world. Communitarians do not always deny that we have any distributive obligations to foreigners, only that such obligations are secondary to our obligations to fellow citizens. Cosmopolitans like Caney (2005, pp. 110--116) argue that the moral principles underlying redistributive obligations cannot logically be premised on mutual participation in any institution, and entitlements cannot be determined by nationality.

Beitz (1979) challenged Rawls on the grounds that the international community is a cooperative enterprise, because of economic interdependence and because no nation has a right to the exclusive disposition of resources upon which it just happens to be sitting.<sup>5</sup> Rawls responded in The Law of Peoples (1999, p. 117), asserting that ‘because ... the crucial element in how a country fares is its political culture – its members’ political and civic virtues – and not the level of its resources, the arbitrariness of the distribution of natural resources causes no difficulties.’ Yet Rawls abandons his previous (Theory of Justice 1971) rejection of any principles of international redistribution and suggests in Law of Peoples a moderate ‘duty of assistance.’ After bringing countries up to a level of resources necessary for ‘a working liberal or decent government, there is no reason to narrow the gap between the average wealth of different peoples’ (Rawls 1999, p. 110).<sup>6</sup> Inequality is not by itself unjust, because once a country has the necessary resources for development, the reasons why it may or may not grow are endogenous, and therefore the country’s own responsibility. Rawls adds that one could not realistically expect any country to accept obligations of international distribution that are similar to the obligations it may accept domestically, though as Caney (2001, p. 987) notes, ‘factual claims

about what people do are quite compatible with the moral claims affirmed by cosmopolitans about what people should do.’

The minimal obligations of international redistribution that Rawls presents in Law of Peoples are still very much communitarian, rejecting the cosmopolitan belief that such principles should apply directly to individuals. International redistributions can be only between nations, because collective national culture is the primary determinant of national wealth, and because different societies may, while still being ‘decent,’ have very different notions of appropriate distributive justice within their boundaries, and these differences must be respected, implicitly invoking an analogy with sovereign immunity. Cosmopolitans believe that there are universal principles of distribution that can be applied globally without regard for national differences (Caney 2005, p. 125--127). Rawls’ world resembles what Miller calls a hierarchical system: redistributions are based on obligations to help the needy, but within the limits of respecting established rights and the limits of an individual’s social position (Miller 1976, p.286). It is similar to the medieval notion of chivalry: norms of good behavior applied to a certain groups of people and the absence of duties to anyone outside that circle. Medieval international law was based on the obligations that Christian nations have to each other.

Side constraints prescribing minimal standards have an emotive appeal; they are easy to specify in terms of implementation and appeal to common sense. They have been popular since the 1970s: exhorting developed countries to pledge 1% of their national incomes to aid, giving the UN ownership of the seabed (to fund poor country aid through license fees), debt forgiveness for the poorest third world nations, developing country exemptions from contributing to global public goods and easier terms for entry into the WTO. Rawls (1999, p. 119) himself proposed a global tax (‘General Resource Dividend’) to aid poor countries. Yet the \$53.74 billion in official development aid disbursed in 2000 by the 28 countries that comprise the Development Assistance Committee of the OECD does not seem particularly Rawlsian in nature. Aid was 0.22% of donor GNPs and less than one quarter of it went to the least developed countries. None of the countries that received the largest amounts (China, Indonesia, Vietnam, Russia and India) are among the ‘least developed’ nations.<sup>7</sup> If critics are correct that aid generally does not help

economic development (Drazen 2000, pp. 601 – 613, surveying the empirical studies), perhaps the observation is irrelevant. Rawls' 'duty of assistance' assumes that aid can help.

Another major side constraint theory is that of Nozick (1974). Aggregative principles are rejected because they deny individual rights, violating the Kantian injunction to treat individuals as ends and not as means. Both Rawls and Nozick reject the existence of a social good over and above the individuals who comprise the society, and both use the device of a social contract to deduce principles for distributive justice. Rawls' focus on communities or 'peoples' as the objects of distributive justice does not mean that he is suggesting that there is a social good that stands over the good of individuals, but only that we should deal with communities as the units of international distributive justice because this is how people have grouped themselves with others who share their preferences and economic future.

Yet Nozick believes that he has caught Rawls in an inconsistency, because the latter predicts a voluntary contract in which the distributive goals take priority over voluntary exchange, a contract that violates the principles on which the contract is based: 'no contract arguments should be structured so as to preclude process principles being the fundamental principles of distributive justice by which to judge the institutions of a society' (1974, p. 112). Only voluntary redistributions are just, leading Nozick to elaborate a minimalist state that does little more than provide protection services to citizens. Critics point out that he presumes individuals are entitled to whatever resources they possess, as long as they are not acquired by an involuntary method, such as violence. Nozick's answer is Lockean: before the existence of property rights, no one owns anything, and appropriation of unused resources under the conditions of free markets is sufficient to establish the legitimacy of ownership. Rawls' argument is that the original distribution of resources is arbitrary (e.g., a country finds itself sitting on top of oil fields), no one deserves to own them, and we may redistribute them according to the dictates of the social contract, though only within and not between nations.<sup>8</sup> Nozick counters that just because you may not deserve the resources lying at your feet does not mean that society is by default entitled to appropriate them. Entitlement need not be premised upon lack of arbitrariness in the initial distribution. Both agree that large scale international redistributions are inappropriate, Rawls

because they might exceed our minimal obligations and Nozick because they might not be voluntary.

Nozick concedes that coercive redistributions ('rectification') may be used to redress past involuntary redistributions. Franck (2002, p. 50) notes that customary international laws requiring compensation for taking property may not apply if it was acquired by past exploitation or 'unjust enrichment.' President Mugabe's seizure of white owned farms in Zimbabwe invoked the principle, as do other claims for reparations for imperialism. Rawls (1999) excludes much rectification on the practical grounds of complexity, though while historical boundaries between nations may be arbitrary, we must accept their validity as delimiters of 'peoples' for distributive purposes. This leaves us with a paradox: Nozick as the radical proponent of historically based restitutions and Rawls as the conservative advocate of the status quo.

### **Legitimacy and Just Deserts**

Historical rectification entails more than just involuntarily transferred assets and brings this discussion to broader categories of deservingness. Desert based theories explore the legitimacy of competing claims to resources, claims that must be compared, weighed and adjudicated. Constraint theories often sidestep the question of deservingness by assumption: since no country deserves the resources it happens to possess, either it is entitled to them or the international community is collectively entitled to them as a 'common heritage of mankind.' Entitlements are a result of institutional rules. Deservingness is independent of and prior to institutions. The notion that everyone in the world deserves a decent standard of living, for example, is assumed by many who also believe that the 'absence of specific legal documents establishing a right to development ... is merely indicative of failure to adapt international law to new conditions' (Levi 1991, p. 255).<sup>9</sup> Development as a desert is enshrined in the UN's 1948 Universal Declaration of Human Rights, yet the same document also invokes claims that might compromise economic development, such as freedom of international movement of people and 'protection against unemployment.'<sup>10</sup>

Unlike side constraints, not all desert claims need be satisfied, and demands may be traded off against each other. Hence the distinction noted above between entitlements (such as Rawls' and

Nozick's side constraints) and deservingness. Desert principles are not necessarily inconsistent with aggregation as a device for reaching distributive prescriptions; but unlike say, Utilitarianism, the focus is not on the result of the aggregation but on the process of weighing claims for their relative deservingness. Desert theories are also backward looking, side constraints forward looking, because the former address specific grievances that are historically antecedent to the claim, whereas side constraints offer more general principles of allocation to be applied in the future (even though the constraints might be induced from observation of the past). Desert theories mostly rely on 'weak' morality based principles, such as adjudicating claims so as to 'do the least harm,' or making sure 'everyone gets something.' Side constraints are 'strong' in the sense that they specify rigid criteria that should not be compromised. Finally, unlike aggregation or side constraint principles, desert theories do not necessarily yield precise rules, since the comparison of claims may be a matter of judgment, common sense and intuition about what 'reasonable' people would consider just.

Two ways in which deservingness may enter the discourse on international distribution are reward for effort and compensation for damage. In Aristotle's Nichomachean Ethics he asserted that a just distribution is one in which each person's allocation is proportional to effort (cited in Deutsch 1985, p. 9). Individuals are responsible for their place in the distribution. Internationally, one would ask to what extent poor countries are responsible for their own poverty, through dysfunctional cultures, bad management and venal leadership. Rawls himself appears to endorse desert theory when he argues that the international community has only minimal obligations to poor countries because they are responsible for their own wealth once they have reached a minimal endowment of resources. Miller argues that market based societies, which emphasize individualism and free contractual relationships, embody a conception of distributive justice based of deservingness, or personal responsibility for one's own success or failure (Miller 1976, p. 254). The WTO requires a functioning market economy, implicitly endorsing a desert theory of distribution, without denying that additional non-market redistributions may be beneficial as long as they are adding value (e.g., improving literacy or the environment) rather than serving rent-seeking motives in zero sum redistribution.

Compensation for damages originated in the ancient Greek idea of ‘pollution,’ deterring wrong by creating a large group of people vulnerable to retaliation (or debt collection), since it was hard to punish individuals (Posner 1983, p. 220). This may create public good problems in which the person making the unjust redistribution is not the one who receives the compensatory retaliation; for example, the ‘letter of marque’ used to retaliate for international piracy prior to the nineteenth century. The practice was widespread because of a lack of criminal law. What today are considered crimes (offenses against society as a whole) were treated as torts (breaches of duty involving damages between private individuals). In Anglo Saxon society murder required payment of ‘wergild’ (man price) appropriate to the murdered person's position in society. In modern society, wrongful deaths may still be requited by reference to a person’s value (measured by, for example, earning capacity), but retaliation evolved into compensation and torts became narrowed to acts not considered crimes against society – internationally, the difference between, for example, ‘crimes against humanity’ and matters of reparation.

Torpey (2003, p. 10) distinguishes between claims that are commemorative and those that are systemic. Commemorative claims refer to specific abuses against individuals, such as Kosovars who had property seized by Serb militias in 1999. They are based in the past, do not require the claimant to be in a current state of distress, and compensation may be little more than symbolic. In 2004 the German government agreed to pay about \$3000 to each of 130,681 Jewish survivors. Systemic claims derive from a belief that a group is in a current state of suffering, or at least counterfactually worse off than it would have been in the absence of the offending actions. The Organization of African Unity examined the question of compensation for slavery and imperialism, but gave up when it could not agree on whether slavery or colonialism was the primary cause of contemporary African underdevelopment.

Compensation in distributive justice is fraught with ambiguities. Should we judge intentions, default to a principle of strict liability, or look for intermediate principles such as ‘reckless disregard’ for others? Compensation in the international sphere may entail complex counterfactual speculation about what would have happened in the absence of an act (Would Zimbabwe be richer in the absence of British imperialism?). Should one settle for weak criteria

of causation such as temporal proximity, or require compensation to be based on an action that was a necessary condition for the damage? (Cooter and Ulen 1988, chapter 8).

Who should pay compensation? If rich countries have damaged poor countries but we cannot decide which nations did the most damage, should compensation be spread across the entire industrialized world? Should we allow an international principle of responsibility for 'failure to rescue'? The OAU asserted that the members of the Security Council owe reparations to Rwandan Tutsis for failing to prevent the genocide of 1994. Should Daimler have to pay compensation to concentration camp slave laborers from World War Two, even though the present day shareholders and employees did not take part in these actions? Can corporations plead the Deuteronomy defense of not punishing the sons for the sins of the father? Perhaps corporations be held liable on the grounds that a corporation (like a state) has a life that goes beyond those of the individuals who comprise the corporation at any point in time - the same reason why present day American taxpayers compensate Japanese Americans interned during World War Two, even though few of them could have participated in the actions.

Who should receive compensation? Only the slave laborers used by Daimler and the Japanese actually interned in the US during the Second World War can receive compensation. Yet in the case of American slavery, proponents of compensation argue that all African Americans should be compensated because they suffer from the 'legacy' of slavery. Present day developing countries make the same legacy argument about compensation for European colonialism. Should governments in such cases receive restitution as agents of their people? Most of the money paid to the Indian government by Union Carbide, for the Bhopal disaster in 1984, has yet to be disbursed to the victims.

How far back may we go in search of compensation? Within countries such claims are generally limited by the fact that the protagonists die. Yet states do not usually die, so the England of 2004 is for practical purposes the same England that might be liable for damages from ravaging western France during the Hundred Years War. Serbia's claim to own Kosovo is based on possession and loss to the Turks in the 13<sup>th</sup> century. Argentina went to war with Britain over the

Falkland Islands in 1981 because of a rectification claim from the 1840s. David Ben-Gurion has said:

If I were an Arab leader I would never make terms with Israel. That is natural: we have taken their country ... We come from Israel, but two thousand years ago, and what is that to them? There has been anti-Semitism, the Nazis, Hitler, Auschwitz, but was that their fault? They only see one thing: we have come here and stolen their country. Why should they accept that? (Quoted in Walt and Mearsheimer 2005)

Compensation is one of the oldest areas of international law. States are responsible for wrongful acts (sovereign immunity notwithstanding) of both commission and omission, direct and indirect causation, and responsibility exists irrespective of fault. Reparations are to restore the status quo ante, and may be material or nonmaterial (Levi 1991, pp. 216–226). Restitution involves giving back something taken away. Reprisal is an act that goes beyond the scope of equivalence or prior agreement, is rooted in the ‘pollution’ principle cited above, and is an act of self help by an injured party in response to an allegedly illegal act by another. Retorsion is an unfriendly but lawful act, not directly connected to the act which prompted it, by the aggrieved party (e.g., the US canceling aid to a country for expropriating US investment). Retorsion should be proportionate, reprisals need not be. Reciprocity differs from retorsion in that it is an act of the same nature as the act to which it is a response, including acts within the terms of an agreement. Punishment is an action that goes beyond compensation and displays the superiority of the punisher over the target. The variety of legal rationales for redistribution (Zoller 1984, pp. 5--58) shows the extent to which desert principles are deeply embedded in international law.

The ties that bind the international community favor desert principles, notably relative contribution, because the latter follow easily from markets and reliance on material incentives. Solidary incentives are intangible benefits derived from the act of participation in a group, and such communities have redistributive norms that are egalitarian. Groups based on purposive incentives (the pursuit of a common goal) have redistributive norms based on perceptions of need. Deutsch (1985, p. 202) notes that ‘the preference for socioeconomic principles of distributive justice (such as egalitarianism and generosity) is associated with positive, social-

emotional, solidarity oriented social relations, whereas the preference for individual centered principles (such as proportionality) is associated with impersonal or task directed, economic oriented social relations.’ Miller (1976, p. 335) makes a similar point: historically, egalitarianism requires a community with close solidaristic relations between members, and as impersonal relations become more prominent, desert principles of distribution will become dominant. Since the international community is more materialist and exchange oriented than it is based on solidary or purposive incentives, the prevalence of desert arguments in determining patterns of international distributions is hardly surprising.

Desert theories based on reward proportionate to effort are consistent with some findings about how individuals actually think. Relative deprivation theory predicts that individuals perceive a distribution to be just when they receive an allocation similar to what they see others getting under the same circumstances (Deutsch 1985, p. 60).<sup>11</sup> Developing countries complain when some of them get favored treatment by developed countries (e.g., the EU giving tariff preferences on bananas from former colonies). Deservingness is such a powerful emotion that individuals in experiments are even willing to reduce their own payoff in order to reduce the payoff to another player who does not deserve his gains (Zizzo and Oswald 2001).

Other experimental evidence suggests that egalitarian imperatives are strong in distributive decision making (Roemer 1996, p. 115). Deutsch (1985, pp. 139--198) reports that while people say they prefer redistributions to be based on proportionate contributions or performance (i.e., just deserts), when given a choice they choose equality, and performance is the same under either reward system. Similarly, Mueller (1989, pp. 421--422) cites evidence that while people say they would be more productive if rewards are proportional only to effort, they prefer to maximize average allocations (subject to a floor) and apply a ‘just deserts’ rule. Some part of this ‘inequality aversion’ may be due to risk aversion, since the two covary (Carlsson et al, 2005), or to strategic considerations, such as future retaliation (Roth 1995, p. 270). The overall weight of experimental evidence finds that individuals will adopt a scheme of distribution that combines maximizing average allocations subject to a minimum allocation, and that they prefer a desert based system but will accept a more egalitarian one. This appears consistent with what global organizations try to do: maintain regimes (like the WTO) designed to maximize world income,

but deviate from market allocations to help the worst off, unless they are seen to be responsible for their poverty.

## **Conclusion**

The three groups of arguments, while not mutually exclusive, differ in appeal with respect to internal consistency, range of application and practicality. Aggregation theories, especially the efficiency variations, offer logical coherence and wide applicability, yet are of the least practical relevance, except as vague policy maxims. The rules of the WTO and the World Bank, as noted above, implicitly endorse markets as the basis for equitable distributions, subject to appropriate adjustment for market failures. The widely acceptable rule of maximizing average payoffs might be justifiable as a rough approximation of Pareto optimality, as might norms about distributing global goods that are part of the ‘common heritage of mankind’ (e.g., UNCLOS proposals about global ownership of the seabed). These arguments are not popular among those who believe in the UN’s Millennium Goals or similar agendas, because aggregation principles such as efficiency focus not on particular objectives or indices (such as ensuring ‘that all boys and girls complete a full course of primary education’) but on general principles of global resource allocation that must inevitably attend to global efficiency and the welfare of all countries, not just the poor. Aggregation theories of global justice avoid prescribing particular goals for specific countries or types of countries.

Perhaps for this reason and the salience of the rich vs. poor divide in the world economy, the philosopher’s side constraint theories have occupied center stage in most discussions of global distributive justice in recent decades. Yet these theories are also easily criticized for their assumptions (e.g., risk preference), their invocation of self evident values (e.g., helping the worst off) and their internal consistency (e.g., with respect to free choice within contract theory). Their range has been both broad (such as Nozick’s defense of property possession, crucial in the international arena where claims may go back thousands of years) and specific (such as Rawls’ concession that rich countries have a minimal obligation to provide poor nations with resources). In both aspects the theories resonate with real world debates about the justice of geographic ownership of resources, and the widely agreed exhortation that rich countries alleviate the condition of the poorest of the Third World. It is this category that would embrace Franck’s

(2002, pp. 14--24) prescription that international law specify principles of international distributive justice based on a shared core of values (especially about what is unfair), such as 'no trumping' (no group may pre-emptively establish its of priority in distribution, similar to Arrow's 'no dictator' provision), and maximin redistributions (inequality only if it benefits all).

Desert theories lay little claim to systematic coherence, because they are mostly unrelated rules of thumb, heuristic principles that have been adopted to deal with practical legal problems, such as whether it is reasonable for a country to claim reparations for a past wrong. What analytic issues arise are less about internal logic than about the practical viability of assumptions (such as how far back in time can a nation go to demand compensation, and who has the obligation to pay or the right to be paid). Deservingness is at the heart of many current international distributive debates, such as compensation for actions that are accepted as unjust damages (e.g., victims of the Holocaust). Advocacy of redistribution from rich to poor countries raises awkward questions and ambiguous responsibility (e.g., is Africa poor because of slavery and colonialism, or because of endogenous factors?), or requires empirical research that may not produce the conclusions proponents want to hear (e.g., Do poor countries suffer from a secular decline in the terms of trade as a result of rich country manipulation of markets? Does aid help development?). It is far easier to state that the 'wretched of the earth' have an absolute right to redistribution, and that this must simply be accepted as a constraint on the global allocation of resources.

Can the three approaches be integrated? Each offers a compatible core of propositions about distributive justice. Elster's 'common sense' propositions about redistribution (viz., maximize total gain subject to a floor, ignore the floor if people fall below it because of their own choices, unless those choices are the result of severe deprivation)<sup>12</sup> offers a basis for a few simple integrative propositions:

Rule 1 (aggregate efficiency): Maximize world income;

Rule 2 (deservingness, efficiency or side constraint): Involuntary intercountry transfers in the past require 'reasonable' restitution, subject to a practicable statute of limitations;

Rule 3 (side constraint): Deviate from Rule 1 if necessary to bring poor nations up to a 'decent' standard of living, above which they may be held responsible for their own fates;

Rule 4 (deservingness): Depart from Rule 3 if nations below the side constraint floor are poor for reasons that are endogenous, could be corrected by their own efforts, and must be corrected in order for external aid not to be wasted.

The first rule establishes a principle with which all should agree: any allocation should begin with the largest possible amount of resources. The second rule introduces a basic principle of criminal law: coercive redistributions are inherently undesirable, not because they could never be welfare enhancing, but because it would be too costly to determine which of such acts are socially beneficial.<sup>13</sup> The third rule recognizes the almost universal agreement that there exists a moral obligation to provide a minimal allocation to the least advantaged. This is accepted even by communitarians such as Rawls. The final rule introduces the issue of responsibility that appears to be so important in individual interactions and supported by experimental studies: redistributions must be conditional on the recipient being willing to make appropriate use of the resources. These integrative principles are implicitly present in most discussions of national and international redistributive policy initiatives. Theoretical discussions of distributive justice are much closer to the world of practical politics and diplomacy than might be apparent in the abstract intellectual concepts from which they are derived.

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## Footnotes

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<sup>1</sup> Sali-i-Martin (2002), using national accounts proxies for household income, estimates that the proportion of the world's population living on less than \$1 per day declined from 33% in 1981 to 7% in 1998, though he excluded the ex-Soviet Union. Sali-i-Martin's conclusions have been criticized as disguised estimates of mean income, with the assumption that everyone in the country has the same income (Milanovic 2006). The World Bank (2004), using household survey data on consumption, estimated that these proportions declined from 33% in 1981 to 18% in 2001. The Gini coefficient for inequality in individual incomes across the globe declined from 0.657 to 0.633 between 1970 and 1998, a reduction of 3.7% (Sali-i-Martin 2002). A Lorenz curve shows the proportion of income earned by a corresponding fraction of the population. The Gini coefficient is the ratio of the area between that line and a 45 degree line to the entire area between the 45 degree line and the axis measuring the population proportion. A perfectly equal distribution would be on the 45 degree line and the Gini coefficient would be zero.

<sup>2</sup> One solution (following Foley 1967) might be that the French should only receive the same consumption bundle if they are willing to work as many hours as Americans.

<sup>3</sup> Kant is introducing the idea that we have duties as well as rights, or that rights are social entitlements that also may define the range of persons who have a duty towards us as the right holders (Kratochwil 1989, p.185)

<sup>4</sup> During the UNCLOS negotiations it was agreed that seabed mining applicants would specify two sites, and the UN would choose which site to reserve for itself (Sebenius 1984, p. 15). The rule may be especially effective in attaining a fair distribution when there are asymmetries in information, a problem addressed by Akerlof (1984).

<sup>5</sup> Beitz presumes that interdependence is increasing. Yet most industrial countries are economically diversified and more self-sufficient than they were 200 years ago, suggesting that what Nye (2005, p. 201) calls 'vulnerability' interdependence may be decreasing. The US in the 1800, for example, produced agricultural goods, was dependent on imported capital and manufactured goods, and would have been severely damaged by being cut off from the international economic system. Today the US could be self sufficient in many of these items.

<sup>6</sup> Rawls would presumably approve the suspension of assistance to governments that did not use the aid to build 'decent' governments. US and EU aid to Uzbekistan, for example, was suspended in 2004 for lack of democratic practices. Rawls' rationale for aid is at odds with that part of US policy that makes the existence of a 'decent' government a precondition for aid rather than a reason to bestow it.

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<sup>7</sup> United Nations Development Program (2003, pp. 202 – 205). The data are no more egalitarian on a per capita basis. The five recipients of the largest amounts of per capita aid are the Seychelles, Dominica, Cape Verde, Sao Tome and Vanuatu, all in the UN's 'high human development' category.

<sup>8</sup> Hence Beitz's (1979) argument that if we believe nations to be interdependent, it follows that a global social contract could assert collective ownership of the world's resources.

<sup>9</sup> Jones (2001, p. 231) reports that 67% of the US population believes that the US has a moral responsibility to help the poor people of the world, presumably because they feel the poor deserve our charity. Of course, saying this to a pollster and handing over the money is not quite the same thing.

<sup>10</sup> The UN Declaration of Human Rights is an odd document. It includes negative rights that most would accept without question (e.g., the right not to be tortured), positive rights that may be desirable but are unattainable under current resource endowments (e.g., a welfare state for all people in the world), and rights that most would reject (e.g., the right of parents to control the education of their children).

<sup>11</sup> Monkeys will refuse a reward when they see other monkeys getting a better payoff for the same task (Brosnan and de Wal 2003).

<sup>12</sup> Cited by Jones (2005, p. 45), who counters with the assertion that personal responsibility is 'irrelevant' to global poverty.

<sup>13</sup> See Calabressi and Melamed's (1972) explanation for the existence of criminal law.