

Human Rights, Global Justice, or Historical Responsibility? Three Potential Appeals

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Reform-minded theorists of global justice sometimes invoke a pragmatic form of ethical pluralism on behalf of constructing normative convergence around practical proposals to identify and redress existing injustice. Thomas Pogge, for example, offers three different but plausible “grounds of injustice” to impugn the “radical inequality” of global poverty, claiming that all three “agree on the same feasible reform of the status quo as a major step toward justice.”¹ So long as three “distinct and competing political philosophies” can all classify some phenomenon as unjust and endorse the same reform proposal as promoting justice, he claims, we need not “decide among them” as offering either the most defensible diagnosis of the origin and nature of the injustice or the correspondingly appropriate remedial objectives. Even if the differences among those three approaches are of theoretical interest, appealing to distinct normative theories, such differences should not obstruct consensus around practical measures to lessen (if not fully rectify) the injustice in question.

In certain practical contexts, this effort at consensus-building could be commended for its laudatory objective of overcoming the tyranny of small differences that often characterizes academic scholarship on global justice issues. Scholars maintain a professional interest in distinguishing their own views from those of others, often pointing to small but significant prescriptive differences that follow from slightly different normative analyses of the issue that have also been

¹ Thomas Pogge, *World Poverty and Human Rights*, 2nd edition (Malden, MA: Polity Press, 2008), p. 205.

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examined by their scholarly rivals. As part and parcel of the kind of theoretical inquiry routinely undertaken by normative scholars, such a focus upon small differences can generate the appearance of wide dissensus, with no two scholars agreeing upon any singular diagnosis or remedy. Insofar as scholars of global justice also offer practical proposals that issue from their theoretical work, as many do, this apparently unsettled condition of scholarly judgment can inhibit the uptake of applied political theory within those institutions most capable of promoting its aims. In this context, convergence hypotheses like Pogge's can combat the elective irrelevance that plagues some scholarly analyses of global justice issues, by shifting focus from the theoretically significant but practically minor distinctions among various analytical diagnoses and prescriptions to the practically significant differences between these and the status quo. Where significant prescriptive convergence exists, the downplaying of "merely academic" distinctions can highlight areas of substantial agreement and in so doing strengthen the case for action by demonstrating consensus among experts around core normative judgments. As Cass Sunstein notes, "sometimes people can agree on individual judgements even if they disagree on general theory," but "incompletely theorized agreements" that build consensus around these judgements rather than their underlying theoretical justification allows for self-governance under conditions of heterogeneity.²

However, downplaying the differences in the theoretical bases and prescriptive implications of competing "grounds of injustice" can obscure some quite different diagnoses and undermine the precision and thus critical value of evaluative standards. Moreover, the pragmatic focus upon approximate prescriptive outcomes can dislodge such prescriptions from their bases in justice theories and their diagnoses in particular applied cases, again potentially undermining the critical value of justice theorizing around practical global problems. As Jennifer Rubenstein notes, the prescriptive vagueness that results from such pluralism "can make it easier for actors to evade their responsibilities," as different accounts of the injustice of global poverty point toward different remedies, potentially undermining the ability to hold anyone responsible for any particular remedy.³ While a pluralist foundation can be forged around the injustice of extant global poverty, along with the redistributive impact of an instrument like Pogge's proposed global resources dividend as promising a "major step toward justice," this should not be taken to imply that theoretical differences make no difference in evaluative standards or prescriptive implications, as various approaches that are held to agree upon the basic tenets of some practical proposal may well entail quite different visions for how to fully realize their normative demands.

Concerns for political feasibility notwithstanding, the practical desire of theorists to offer pluralist foundations for blunt diagnoses of injustice or construct broad theoretical support for "good enough" (or, worse, "better than nothing") remedies

² Cass R. Sunstein, "Incompletely Theorized Agreements in Constitutional Law," *Social Research* 74 (2007): 1–24, p. 4.

³ Jennifer C. Rubenstein, "Pluralism about Global Poverty," *British Journal of Political Science* 43 (2013): 775–97, p. 777.

must be balanced against the lost critical or prescriptive value of applied justice theories that yield less negotiable demands. The normative force of justice theorizing depends in part upon the nature of its indictment of existing conditions or practices, which can be obscured by an exclusive focus upon remedies, as well as upon the specific states of affairs identified as just, which can be obscured by a focus upon what constitutes and improvement upon the status quo. The endorsement of significant practical action on matters of great import for global justice need not require as a prerequisite the adjudication of competing scholarly theories of justice, but scholars should also take care not to reduce those theories to the approximate remedial outcomes that each could endorse. While the practice of public philosophy may require the construction of areas of rough prescriptive agreement among theoretically diverse justificatory frameworks, maintaining the links among those frameworks and the remedial prescriptions they issue provide requires simultaneous attention to areas of converge and divergence, lest those links and their normative force be obscured.

In debates among scholars over the demands of climate justice, a similar dynamic can be seen to the one that Pogge observes around global poverty. In justification of developed countries taking stronger action to reduce or rectify climate-related harm, scholars have invoked theories of historical entitlement and rectification, egalitarian distributive justice, and human rights, to identify only a few approaches. Utilizing various conceptions to diagnose the injustice of climate change itself as well as to inform and constrain remedies to it, one may be tempted follow Pogge in seeking to resolve the minor differences among competing normative approaches by seeking consensus around a diagnosis of the status quo as unjust and agreement upon a remedial proposal as constituting an improvement upon that status quo. Indeed, climate justice scholars have appealed to a similar form of pragmatic ethical pluralism, shifting among justice conceptions that yield non-identical but approximately similar prescriptions on grounds other than their philosophical soundness or critical purchase, appealing rather to political feasibility or conformity to existing state or global imperatives.

Simon Caney, for example, has endorsed approaches to climate justice based in both human rights and harm avoidance, despite having erstwhile developed competing (and more demanding) approaches based in what he terms “burden-sharing justice.”⁴ Moreover, he limits his discussion of human rights by bracketing “more controversial or ambitious conceptions of human rights” like those to a safe environment or adequate resources, despite noting their additional critical force, and noting that a more limited set of “rights can be adopted from within a wide variety of different conceptions of the good and ethical worldviews.”⁵ This, despite acknowledging that such an approach may not capture “all of the morally relevant impacts of climate change”⁶ and that a more robust analysis of such impacts would

⁴ Simon Caney, “Two Kinds of Climate Justice: Avoiding Harm and Sharing Burdens,” *Journal of Political Philosophy* 22:2 (2014): 125–49.

⁵ Simon Caney, “Climate Change, Human Rights, and Moral Thresholds,” in *Human Rights and Climate Change*, ed. by Stephen Humphreys (New York: Cambridge University Press, 2009), 69–90, pp. 166, 169.

⁶ *Ibid.*, p. 173.

be available if considering claims beyond those based in the minimalist interpretations of widely-accepted rights upon which Caney relies. Suggesting that “several distinct rationales for endorsing a strong program of mitigation and adaptation” (including one based in human rights) could form a Rawlsian “overlapping consensus” in support of practical action, Caney explicitly seeks a political rather than a philosophical foundations for the basic diagnosis and approximate remedy, eschewing the greater precision and more demanding standards of more controversial accounts of global justice.⁷

In seeking a pluralist foundation for condemning the injustice of climate change and identifying the general contours of a remedy to this injustice (that affluent states pay or do more than Poor ones, etc.), Caney obscures relevant differences among the remedies that issue from distinct justice approaches—differences that appear minor compared to the status quo or against any feasible international policy outcomes but which are neither identical nor marked by differences of merely academic interest. These differences imply distinct standards and prescribe different outcomes, identifying different facts and agents as relevant to their analyses. While the prescribed outcomes of each may seem “good enough” from the perspectives of either the status quo or politically feasible reforms, such practical consideration ought not to obscure their different standards or objectives, lest the normative bases for some remedy be hidden from view. For any remedy to be defensible or contestable, it must be clearly connected to its normative basis, which in turns not only sets the contours of that remedy but also provides it with its normative force. It is thus occasionally useful to resist the tendencies of practical pluralism and explore those small differences among competing plausible applied justice theories, as I shall attempt to do in sections to follow.

1 Resource-based Justice Appeals

Climate justice is primarily concerned with the fair allocation of limits in access to the planet’s sink capacity, which allows persons or peoples to emit finite quantities of greenhouse gases without causing global climate disturbances, and secondarily with the allocation of burdens involved in adaptation efforts designed to reduce the impact of climatic changes that are already underway or now inevitable as the result of ongoing polluting activities. Those calling for developed countries to shoulder more of the mitigation burden are addressing this resource-sharing problem indirectly, translating a resource (or more accurately, an ecosystem service that depends upon the maintenance of natural capacities of resource stocks) into a unit of cost in order to facilitate principle-agent relationships and market mechanisms like carbon offsetting and emissions trading. Anthropogenic climate change is regarded as an injustice partly because its harmful impacts are expected to be disproportionately borne by the least advantaged, but also because this harm results from disproportionate historical and current use of that resource or service by the world’s affluent. Remedies to this

⁷ Simon Caney, “Human Rights, Responsibilities, and Climate Change,” in *Global Basic Rights*, ed. by Robert E. Goodin (New York: Oxford University Press, 2009), 227–47, p. 234.

injustice thus entail the just allocation of access to this resource or service (typically in the form of more equitable per capita emissions entitlements) going forward, often combined with some backward-looking measure that seeks to rectify inequitable past resource appropriations through future resource entitlements or through some mechanism by which those claiming more than their just shares of the resource in the past are made to compensate those having claimed less of it.

In order to gain some critical distance from the climate justice literature, and in order to analyze the distinctions made by competing resource justice accounts more generally, I shall abstract away from the specific resource or service-based claims made within the context of climate change politics. Instead, I will refer generically to this resource conflict in the form of a designator that might also stand in for other environmental justice claims, such as those to food, water, or the planet's mineral resources. My aim in this exploration is not to identify the most defensible justice theory, or take issue with its normative basis, but rather to highlight the different facts and agents that each takes to be relevant to either diagnosis or remedy, and to compare remedies associated with each not only in terms of how they might be roughly approximated through concrete policy mechanisms but also in terms of how each articulates its complete demands, which even if unmet through politically feasible proposals retain their critical perspectives and normative force only when viewed in their fully articulated forms. While I'm unable to offer robust selection criteria for adjudicating among the three justice approaches considered below, I attempt to highlight the strengths and shortcomings of each, and to suggest some practical considerations for using each in an applied context. Since the remedies available in each case differ, along with the normative basis of the injustice itself, this exploration of competing justice claims has practical import for those appealing to different conceptions of justice, along with difference force upon those identified as responsible for either the injustice or its remedy.

To illustrate the different theoretical bases and normative prescriptions that follow from each of these three justice frameworks calling for redistribution of climate-related resources or services, and to identify areas of convergence and divergence between them, consider three alternative justice-based appeals available to people suffering from resource deficits. Suppose that a people suffers from a deficit in some basic natural resource or ecological service (hereafter referred to as X), which presently exists in sufficient supply to serve all human needs but not all human wants, and can be degraded by overuse of other bad resource management practices. As a basic good, all persons need some amount of X in order to survive, and enjoy further quantities beyond this level as associated with luxury or affluence. In the absence of effective substitutes for X, this resource or service is therefore universally valued as essential to human functioning, but subject to conditions of scarcity that give rise to conflict as well as circumstances of justice in its allocation.

Suppose further that, based upon *de facto* claims manifest in patterns of current resource appropriation and consumption, X is now inequitably allocated, with some receiving levels far above those needed for subsistence and others below this critical threshold. Here, disparities in consumption of X largely follow political, economic and geographic divisions of people into categories of Rich and Poor: while relatively high individual consumption of X can occasionally be found in Poor

countries and deprivation of X occurs in Rich ones, Rich and Poor nation-states are characterized by the vast majority of residents being either Rich or Poor in terms of X (along with many other goods). As a result, many residents of Poor countries suffer from inadequate X, with others barely able to access subsistence levels, heightening their vulnerability to future fluctuations in its supply. Within Rich countries, by contrast, the average resident consumes more X than is needed to function at relatively high levels of welfare. Hence, the international redistribution of X from Rich to Poor countries could dramatically improve the wellbeing of those residing in the latter without causing comparable harm to those living in the former. Yet, no such redistribution has taken place, with resource inequality increasing rather than decreasing in recent decades. Combined with population growth patterns that exacerbate scarcity of finite resources, the current gap between Rich and Poor in access to X is expected to widen without some kind of remedial action, threatening conflict along with increased deprivation-related suffering.

Having appraised the situation described above, those residents of Poor countries facing critical shortages of X have come to realize that they need to take some kind of action if they are to have any chance of avoiding future scarcity-related suffering. They plan to appeal for more X on grounds of some conception of justice, and face several alternatives by which this appeal could be framed, each with its own distinctive diagnosis and remedy.

First, they could appeal to historical injustice. At some point in the past, they might claim, Rich countries came to hold the vast majority of X as the result of force or fraud, rather than free exchange or legitimate initial appropriation. On the basis of this historical injustice, they could invoke a principle of rectification, demanding a one-time transfer of X from Rich to Poor countries in reparation of this past injustice.

Second, they could appeal to a human right to X. Noting that persons suffer physically if they cannot access some threshold of the resource or service, they might claim a universal right to a sufficient amount of X, correlated with imperfect duties by which the right claim could be satisfied through its transfer from Rich to Poor countries. This appeal could also be framed in humanitarian terms, making reference to the avoidable suffering that could result from the right being realized through members of R acting upon positive duties.

Third, they might appeal to the ideal of resource equality. Invoking a Lockean account of legitimate appropriations, they might argue that it was only permissible to appropriate jointly-owned X on the condition that “enough, and as good” remained for others to appropriate, and that past overappropriation of X by Rich countries now requires the transfer of some quantity of those resources to Poor countries in order to recognize the equal claims that all have upon the earth’s resources. In contrast with the appeal to historical injustice, the claims of unjust appropriation are here based in the idea of equitable shares, not in past force or fraud. Alternatively, they could posit an ideal of resource equality as capturing the equal respect and concern to

which all persons are entitled as moral equals, appealing to global distributive justice rather than Lockean provisos.

These appeals can be distinguished in terms of the normative theories upon which each is based, the empirical premises that each stipulates, and the remedies that each invokes. Examples of all three can readily be found in both the scholarly literature in international ethics as well as in popular movements on behalf of the global Poor, whether on behalf of the resources that go into agricultural produce, those involved in absorbing greenhouse emissions, or those providing clean air and water. Which of the three appeals should the Ps choose, as most effective in advancing their interests in securing adequate flows of X, and perhaps also of some interest to a few of their number, as most philosophically defensible? What turns on the decision to invoke one of these justice conceptions as opposed to another, not only in terms of the relevant facts to each case and strength and fitness of their analysis to their current predicament, but also in terms of the remedy each prescribes? To the extent that these alternatives involve more than pluralistic normative foundations for a common remedial outcomes, but indeed involve quite different remedies, what is gained and lost by choosing one rather than either of the other two justice-based complaints or campaigns?

2 Historical Injustice

Appeals to historical injustice are at once tempting and difficult: tempting because as stipulated the historical relationship between Rich and Poor countries is rife with exploitation, force and fraud, from which claims of wrongful past resource transfers are quintessentially made, but difficult, given the evidentiary requirements and complicated counterfactuals required for assessing the extent of harm caused to present persons of past injustices, and thus of remedial compensation needed to rectify those past transgressions. Here the bases for such claims and their implications for present and future distributions of X shall be explored.

Claims of historical injustice are backward-looking: the wrongful action or origin of the injustice is alleged to have occurred in the past, even the distant past, but its effects persist into the present. Rectification to the original victims of historical injustice is impossible in this case, as with many others, but recipients of current reparations may also be among the victims of past injustice, and those paying it may be among its beneficiaries. Descendants of those original victims make claims upon descendants of the perpetrators of that injustice not on behalf of their ancestors only, but also on their own behalf, as the impacts of past actions continue to wrongfully disadvantage them. The remedy that they demand is rectification for the past transgression or restoration of the state of affairs that would have existed for both sets of descendants if not for the disputed past transfer of resources. Determining the amount of present resources to be transferred in order to restore *ex ante* holdings between victims and beneficiaries of past injustice and involves a complicated counterfactual by which the extent of current advantages and disadvantages of each

resulting from the alleged past injustice is ascertained, then assessed of beneficiaries as remedial liability to be paid to victims.

This remedial liability could take the form of one-time monetary reparations, to be used at the discretion of recipients, or could involve the return of the X that was wrongfully appropriated. In order to rectify the imbalance between Rich and Poor caused by the past injustice, the two remedies should be of equivalent current value: insofar as the claim by the Poor is that some of their ancestors' X was unjustly taken by ancestors of the Rich, monetary reparations that fully compensated them for their loss would be those sufficient for acquiring the disputed X, provided it was subject to market trading. However, monetary reparations used for purposes other than procurement of x would defeat the purpose of this appeal, which holds as its core objective the avoidance of suffering related to X deprivation. Moreover, as Victor Tadros has argued, monetary compensation is often an insufficient for serious acts like the historical deprivation of critical resources, rendering this category of remedy inadequate for the Poor's grievance against the Rich.⁸

Others have noted the often intractable difficulties associated with determining the precise amount of remedial liability issuing from claims of historical injustice, particularly when the events in question occurred in the distant past. Many of these owe to the historical relations between Rich and Poor countries mentioned above, which complicate the counterfactuals necessary for ascertaining what current holdings of X would be for each if not for its alleged wrongful past appropriation or transfer. Disproportionate shares of the world's resources have been controlled by Rich states for generations, sometimes within the borders of Poor states. The facts surrounding the origin of current holdings are contested, as the writing of history is among the spoils of conquest, and those facts could never withstand the evidentiary scrutiny applied to property disputes. Given past relationships of imperialism and decolonization among several Rich and Poor states, the baseline of holdings to which rectification of historical injustice would refer is in question, making it far from obvious that there is some historically just baseline of holding to which to return. Those perpetrating the initial injustice, as well as those first victims of it, may no longer exist, and the lines following from each have since been exposed to numerous intervening events that further obscure the counterfactuals used to determine the harm suffered or wrongful benefit enjoyed.

The Poor might therefore invoke an historical entitlement theory, similar to that noted but undeveloped by Robert Nozick, requiring rectification for any current holdings that have been unjustly acquired or transferred at any point since their initial acquisition, but this approach suffers from many of the difficulties noted above. According to this view, holdings of X become tainted by unjust acquisition or transfer, with subsequent transfers (even if just) retaining that taint and continuing to undermine justice in holdings. Given difficulties associated with such disputed facts and counterfactual reasoning, however, even Nozick suggests that an egalitarian redistribution of resources may be needed in order to negate the effects of historical injustices and establish a new baseline of holdings to which future

⁸ Victor Tadros, "Obligations and Outcomes," in *Crime, Punishment, and Responsibility*, eds. R. Cruft, M.H. Kramer, and M.R. Reiff (New York: Oxford University Press, 2011), 173–92, p. 181.

rectification principles might refer.⁹ Historical injustice might, in other words, require egalitarian distributive justice as its remedy in the case of X, rather than invoking the rectification principle with which it is associated. This resource egalitarian proposal shall be considered separately, below.

Alternatively, the Poor might invoke the idea of *unjust enrichment*, through which those wrongfully benefitting by some past injustice are obligated to disgorge those benefits. As Daniel Butt describes the idea behind this version of rectificatory justice:

The individual's duty not to benefit from another's suffering when that suffering is a result of injustice stems from one's moral condemnation of the unjust act itself. In consequence, a duty to disgorge (in compensation) the benefits one gains as a result of injustice follows from one's duty not to so benefit.¹⁰

Like Nozick's historical entitlement view, unjust enrichment seeks to rectify past wrongs, but in contrast to it, focuses only upon benefits that injustice yields, for perpetrators or third parties, and not its costs. In a sense, remedial calculations become a less demanding task as a result, since they need only identify beneficiaries rather than sufferers of historical injustice. By focusing upon who benefits, rather than culpability for the original harm or complicity in its ongoing effects, such approaches may be attractive for some resource justice issues, as Christian Barry and Jonathan Pickering have shown in their application of the principle to burden allocation issues of climate change mitigation.¹¹ But this simplification may not be enough to salvage the historical injustice appeal. As Jeremy Waldron notes, the "contagion of injustice"¹² complicates the precise accounting of wrongful benefits as well as losses, undermining our present ability to assess the magnitude of rectification necessary under either Nozick's or Butt's principles.

⁹ Nozick writes: "Perhaps it is best to view some patterned principles of distributive justice as rough rules of thumb meant to approximate the general results of applying the principle of rectification of injustice. For example, lacking much historical information, and assuming (1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in the society have the highest probabilities of being the (descendants of) victims of the most serious injustice who are owed compensation by those who benefited from the injustice (assumed to be better off, though sometimes the perpetrators will be others in the worst-off group), then a rough rule of thumb for rectifying injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up being the least well off in that society." Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), p. 231.

¹⁰ Daniel Butt, "On Benefiting from Injustice," *Canadian Journal of Philosophy* 37 (2007): 129–52, p. 143.

¹¹ Jonathan Pickering and Christian Barry, "On the Concept of Climate Debt: Its Moral and Political Value," *Critical Review of International Social and Political Philosophy* 15 (2012): 667–85.

¹² Of this "contagion" Waldron writes: "If one person behaves unjustly, particularly in the context of a market, the injustice will have an effect not only on her immediate victim, but—via the price mechanism—on all those who trade in the market in question. Some will gain and some will lose as a result of the injustice, and any attempt at rectification—any attempt to implement the state of affairs that would have obtained but for the injustice—will involve interfering with those holdings, as well." Jeremy Waldron, "Superseding Historical Injustice," *Ethics* 103 (1992): 4–28, p. 12.

Hence, the problem for this approach lies in its ability to generate strong claims on behalf of any palpable remedy by which Rich might be made to return some X to the Poor. This remedial indeterminacy is unfortunately a product of the historical entitlement approach upon which it is built, and is exacerbated by the passing of time no matter how indisputable and reprehensible the past injustice may have been. As Waldron writes, “the fallacy lies in thinking that the directness of such perception and the outrage that attends it translate into simple and straightforward certainty about what is to be done once such injustices have occurred.”¹³ It is no wonder that advocates of such an approach typically aim for token forms of rectification like apologies or limited transfers of land deemed by controlling states as largely worthless to disaffected victims, rather than seeking (or claiming to be able to calculate) full rectification for historical injustice. As Waldron notes of such symbolic gestures, “identity is bound up with symbolism, [so] a symbolic gesture may be as important to people as any material compensation.”¹⁴ Given their acute need for X, which at present is more pressing than their communal desire for remembrance of things past, the Poor would be wise to heed these warnings about the remedial potential for such appeals in securing the X they need, let alone what they might claim as their entitlement.

A further difficulty with invoking historical injustice as a grounds for current resource redistribution concerns its assumptions about the types of resources that were unjustly taken in the past. The quintessential historical injustice involves dispossession of land, where the durable value of the resource entails effects that continue across generations for the ancestors of those originally aggrieved as well as those benefitting by the injustice. Appropriation of mineral resources under colonialism differs slightly, in that the value from such resources is less durable but can be used to generate other more durable sources of value, as through the use of colonies as sources of mineral wealth that financed economic development at home but not in the territories from which the resources were extracted. In both cases, later generations continue to benefit or suffer by this gain or loss of value, thus requiring the counterfactual by which current rectification claims are calculated, designed to secure conditions that would have existed if not for the past injustice. And in both cases, the wrongful transfer involved a zero sum relationship between perpetrator and victim: the latter’s resource deficits directly correspond with and are caused by the former’s resource surplus. One part has less of some resource than they were entitled to because another party wrongfully claimed it. Absent the effects from the passage of time, this injustice could be fully rectified by the disgorgement of ill-gotten gains combined with restitution for victims.

¹³ *Ibid.*, p. 28.

¹⁴ *Ibid.*, p. 7.

3 Human Rights to X

Faced with such difficulties, the Poor might prefer an approach that does not depend for its force and remedy upon disputed historical facts or complicated counterfactuals. They may thus instead opt to appeal to a human right to X, which can take one of several forms, and which is on display in rights-based claims to natural resources related to food production and energy use for development purposes. Insofar as some X is necessary for subsistence, as previously stipulated, rights to a sufficient quantity of the resource to allow for basic human functioning would involve subsistence rights, or claims to adequate amounts of those resources necessary for meeting basic human needs. As Henry Shue writes of such claims, a right to sufficient X would require “social guarantees” against “standard threats” to make “available for consumption what is needed for a decent chance at a reasonably healthy and active life of a more or less normal length, barring tragic interventions.”¹⁵ Such a right would be basic in that “other rights could not be enjoyed in the absence of security or subsistence,”¹⁶ giving it priority over non-basic right claims in Shue’s well-known schema. If all persons have a right to subsistence, as the Universal Declaration of Human Rights claims they do,¹⁷ then they have a right to the means of subsistence, including X, and they might argue to this effect in appealing for the X that they need.

Claims of a right to X might briefly be distinguished from several related appeals. In contrast to humanitarian appeals to relieve deprivation-related suffering, rights to X draw upon duties of justice rather than humanity, making reference to different sets of facts about legal recognition of claim-rights to the resource. Rather than merely identifying an avoidable bad outcome that would result absent the intervention of a would-be rescuer, as in duties of humanity, the duties of justice associated with the violation of someone’s right to X involve entitlements to the good in question, stronger forms of culpability, and claims on the part of victims to compensation if the disputed good is denied. As opposed to negative rights against serious harm or death like those defended by Onora O’Neill,¹⁸ wherein those withholding X would be culpable for transgressions other than refusing the victim’s specific entitlement to X, a claimed right to X would transfer entitlement from those now controlling it to the successful claimant, and could be violated without death resulting from its withholding.

If the appeal was indeed for a right to X, as opposed to some condition that X might serve to bring about, it might collapse into one of the other two appeals under consideration here. Since appeals to subsistence rights have a physical state rather than any specific goods to realize it as the object of the right, the Poor could

¹⁵ Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1980), p. 23.

¹⁶ *Ibid.*, p. 30.

¹⁷ Article 25 declares that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,” which is typically understood not to be an exhaustive list of the means of subsistence.

¹⁸ Onora Nell (O’Neill), “Lifeboat Earth,” *Philosophy and Public Affairs* 4 (1975): 273–92.

not properly speaking make entitlement claims upon X itself. If X is to be the object of the right, the appeal could be based upon historical entitlement claims through which the Poor were wrongfully dispossessed of the resource stocks which would now otherwise yield regular flows of X, and now require corrective transfers of those resources in rectification, or distributive justice claims that postulate an ongoing stake in the world's resources that is unaffected by past transfers of property in resources. Either way, those appeals are distinct from the one under consideration here, and may also be incompatible with them, as humanity-based subsistence rights claims to X may be taken to waive these stronger justice-based claims in that they concede the rightful ownership of the disputed resource stocks to the Rich while appealing for the X necessary for meeting basic needs only. Those Rich responding to a current appeals by the Poor to subsistence rights by transferring some X to them may properly be suspicious if later approached to do more of the same on the basis of either distributive or corrective justice, since appeals to humanity for a lesser remedy might be taken to imply that appeals to justice for a more satisfactory one were unavailable.

The Poor have further reasons to be wary of appeals to subsistence rights insofar as their objective is the securing of resource stocks from which X can be sustainably generated in perpetuity rather than temporary and insecure access to the resource. Subsistence rights are only secondarily and instrumentally claims upon those goods that are necessary for subsistence, much less the resource stocks from which such goods are generated, but are primarily claims to physical states that such goods enable. Such instrumentality is inherent in the relationship between any resource and the benefits for human welfare that it is capable of yielding. As Shue notes, subsistence rights do indeed generate powerful normative claims, but these are contingently related to the *means* of subsistence toward which they are sometimes directed. Stipulating that X provides necessary human goods or services that admit of no available substitutes implies that it serves one or more basic needs, but even then the right would be to the state that its fulfilment allows—to subsistence itself—and not properly speaking to X. Should a substitute for X be developed, or if some alternative means of meeting the need now served by X was discovered, X would no longer be the sole available remedy for subsistence rights claims. At best, the Poor could appeal to subsistence rights in a series of recurring emergencies by which they found themselves short of sufficient X to meet basic needs, hoping for what would likely be viewed as iterated one-time transfers of the resource, based not in any entitlement to either X but in the knowledge of human impacts of X deprivation.

A strategy of appealing to subsistence rights that could be fulfilled by transfers of X would therefore leave the Poor in a condition of persistent X insecurity, rendering them more vulnerable than if entitled to the X to which they might be historically entitled or their current share in a system of equitably allocated resources. One might also be sceptical that a human right to X could be derived from subsistence rights, given the contingent relationship between the X and the physical state that depends upon it. At most, persons may in this way make claims only upon the minimum quantity of X for subsistence, and then would lack the kind of meaningful control typical of ownership, as they could only use it for the purpose of satisfying their basic biological imperatives. Whether or not technological substitutes for X

were feasible, X would be merely instrumentally valuable for what it can bring about if used in a particular way, not valuable in the manner typical of the objects of rights. Human rights cannot be so contingently related to technology or scientific discovery that they come and go as substitutes for some goods once vital to human welfare are made or lost. The claimed right to X is here merely a kind of shorthand for or application of this more fundamental right, to which the Ps would be appealing in making their claim to adequate X.

Appeals to human rights therefore lodge weaker entitlement claims than what would be available through the other two alternatives. This kind of appeal would be weaker as a result, and some have accordingly dismissed them in favor of appeals that rest upon stronger claims to entitlement or thicker relationships between donors and recipients.¹⁹ A claimed human right to X also invokes a different remedy, requiring a different currency and with relatively modest remedial liability. Whereas both historical and distributive justice imply remedies in the currency of X or else monetary compensation that can secure it, the human rights-based claim is satisfied by the one-time delivery of X (if iterated single-time deliveries, as the needs which give rise to the right are only temporarily satisfied), which is the object of the right. While transfers of money might be instrumental in satisfying the right to X, it is only indirectly that such transfers might be called for under a rights appeal, and then remain at the discretion of donors. Moreover, the human rights-based appeal entails a claim only to adequate or sufficient X, not to equitable shares of it. Both other appeals involve some claim to equality, which entail claims to significantly larger amounts of X than is available under the rights-based justice appeal. To the extent that subsistence rights-based appeals to only enough X to avoid deprivation-related harm, preserving the Poor in a state of perpetual X deprivation and insecurity, they may prefer an appeal that calls for a more robust remedy, promising enough X to create surplus reserves rather than meet bare subsistence.

4 Resource Equality

In contrast with sufficientarian claims to adequate X as a human right and the kind of rectification of *ex post* but not *ex ante* inequality to which historical injustice appeals, a third category of appeals claims entitlement to equitable shares of common resources, including (and sometimes especially) natural resources. The Poor might claim some equitable share of the world's X on its own, or might claim entitlement to equal bundles of resources that include X alongside other social and natural resources. Differences between such claims shall be explored below.

Since the Poor are stipulated to reside in separate nation-states from the Rich, purely domestic accounts of egalitarian distributive justice cannot be invoked on behalf of transfers of X from Rich to Poor, if like the Rawlsian difference principle their application cannot extend beyond national borders. Several prominent accounts of global distributive justice call for international redistribution of resources, however, illustrating several possible bases for entitlement claims to X.

¹⁹ Andrew Dobson, "Thick Cosmopolitanism," *Political Studies* 54 (2006): 165–84.

Charles Beitz, for example, provisionally defends a “resource redistribution principle” that would apply across national borders, based on global resource egalitarian premises, and both Pogge and Hillel Steiner defend redistributive global taxes from similar premises. Beitz later abandons his resource principle in favor of a globalized difference principle, so all three view economic redistribution as the primary means by which egalitarian claims upon the world’s natural resources are to be realized, rather than calling for redistribution of natural resources themselves. In effect, then, all three endorse a form of *weak sustainability* that treats X as a fungible good to which the Poor have no specific entitlement,²⁰ so long as their bundles of natural and social resources satisfy egalitarian principles, again leaving the Poor without a specific claim to X. But one might modify their views such that they appeal for equitable entitlements to X itself, rejecting its bundling with other goods, adopting strong sustainability premises by which social resources *complement* but cannot *substitute* for natural resources, as presumed above.²¹

Such an amendment appears consistent with the justificatory claims made by all three, if not the prescriptive judgements that follow from them. For Beitz, global distributive justice is grounded in the “underlying principle” that “each person has an equal *prima facie* claim to a share of the total available resources” on the planet, which he defends in the paper’s first half.²² Similarly, Pogge claims that “the global poor own an inalienable stake in all limited natural resources,” which entitles them “to a share of the economic benefits from the use of the resource in question, if in fact the decision is to use it.”²³ Steiner claims a similar stake in the enjoyment of global resources, if not necessarily in full rights of possession and dispossession, such that “each person’s original right to an equal portion of initially unowned things amounts to a right to an equal share of their total *value*.”²⁴ In each case, the shift away from entitlement to equal shares of natural resources and toward the economic value of such resources depends upon weak sustainability assumptions regarding either their functional equivalence or the ability to exchange one for the other. Since we have stipulated that social goods cannot functionally substitute for the welfare-generating capacity of X, the compensation of the Poor for their inequitable access to the world’s X would only satisfy Beitz’s “underlying principle” for shares of X above the threshold of sufficiency, at which point they could freely exchange their claims to X for economic compensation, and then only insofar as they had the genuine opportunity to demand the X instead of that compensation.

Despite their promising claims about equal natural resource entitlements, then, none of the three offer the Poor the basis for entitlement claims upon shares of any specific resource itself, including X. Beitz initially argues for international resource

²⁰ Eric Neumayer, *Weak Versus Strong Sustainability: Exploring the Limits of Two Opposing Paradigms* (Northampton, MA: Edward Elgar, 2003).

²¹ Herman E. Daly, “On Wilfred Beckerman’s Critique of Sustainable Development.” *Environmental Values* 4 (1995): 49–55.

²² Beitz (1975), p. 371.

²³ Pogge, (2008), p. 209.

²⁴ Hillel Steiner, *Essay on Rights* (Cambridge, MA: Blackwell, 1994), pp. 271–72.

redistribution in order to “give each national society a fair chance to develop just political institutions and an economy capable of satisfying its members’ basic needs,”²⁵ viewing such resources as instrumentally useful but not essential, but as noted later replaces that resource-specific principle with one that applies to social goods rather than natural resources. Moreover, its sufficientarian threshold for claims upon X parallel those of the rights-based appeal surveyed above. Steiner argues for a tax on the value of land holdings, claiming from an extension of the Lockean “enough, and as good” proviso that “any person’s possession of a just title to any such thing encumbers him with a duty to pay every person an equal share of its value,”²⁶ again assuming that persons can be fully compensated for deprivations of any particular natural resources. Pogge grounds his Global Resources Dividend proposal in his resource egalitarianism, calling for a tax on the extraction of all global resources to fund poverty alleviation projects, likewise utilizing economic proxies as full substitutes for inequitable access to natural resources themselves.

Each has their own notion of natural resources in mind, however, with the attributes of such resources failing to match those stipulated for X. Beitz applies his principle to “raw resources” like “iron ore or oil,” noting that in granting equitable entitlement to the world’s resources “some provision for conservation as a matter of justice to future generations would be necessary” as these non-renewable resources would be depleted upon use, putting global justice in tension with intergenerational justice.²⁷ While he considers adding a renewable stock resource lock arable land, given that national agricultural capacity is as arbitrary and influential a factor in national prosperity as mineral resource wealth, he declines to call for redistribution of farmland from Rich to Poor, since it “cannot be physically redistributed to those nations with insufficient land.”²⁸ Likewise, he finds the flow resource of agricultural produce a problematic object for redistribution, since “social factors enter into the production of food in a way that they do not in the extraction of raw resources,” generating entitlement claims for abundant national food supplies resulting from “large investments in agriculture or the high productivity of its farmers.”²⁹ Beitz tentatively proposes the “redistribution of a portion of a country’s food production depending on the ratio of its arable land to its total production,” presumably in order to control for the variation in yields that result from social factors, acknowledging that “the calculations involved would be complex and probably controversial.”³⁰

Pogge develops his GRD proposal as a tax on oil extraction, but notes that it could in principle be “extended to limited resources that are not destroyed through use but merely eroded, worn down, or occupied, such as air and water used for the discharging pollutants or land used for farming, ranching, or buildings.”³¹ His

²⁵ Beitz (1975), p. 370.

²⁶ Steiner (1994), pp. 271–72.

²⁷ Beitz (1975), p. 372.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Pogge (2008), p. 203.

examples are of resource stocks (land and sinks for pollution), not flow resources like X, and in describing both as being “eroded, worn down, or occupied,” he suggests that such a tax would be applied to the unsustainable use of renewable resource stocks rather than against their inequitable allocation. If applied against stock resource degradation, the GRD may generate conservation incentives, consistent with his claim that the GRD aims to maintain “the planet’s abundant resource wealth” and avoid “degradation of our natural environment,” but exempting sustainably managed resource stocks would fail to give effect to his claim that the global Poor have any economic stake in them. Taxing resource flows would create such a stake, if applied to all economically valuable ecological goods and services, and could create incentives for environmental protection if levied on the use of flow resources like carbon sinks (e.g. through a carbon tax). But he doesn’t develop such ideas, and the oil extraction tax that he describes would be at odds with another carbon tax at the point of assimilation of its waste products, as the two are often viewed as alternative means of taxing carbon. Most significantly for the Ps, however, Pogge’s GRD cannot provide the bases for a claim to the redistribution of either X, since he argues only that the global Poor have an economic stake in the world’s resources, not any entitlement to the resources themselves. At most, his GRD proposal would provide the economic resources needed for purchasing X, as a poverty alleviation measure, but provides the basis for no claim to X itself.

By contrast, Steiner argues for redistributive taxes that are levied on resources that are *owned*, not merely those (as with Pogge’s GRD) that have been used. Acknowledging that this might create an incentive structure that encourages the rapid exploitation of resources—since owners would be taxed on the market value of the resources they command but don’t develop—Steiner claims that this ecologically perverse incentive nonetheless reflects the equal per capita stake in global resources. “In unilaterally appropriating that site,” he argues, those controlling resources “must compensate those thereby excluded,” basing that compensation not on the value of the land prior to its appropriation, but according to its potential value once it has been economically developed.³² The value of my land, and thus the tax that I would pay upon it, would suddenly and significantly increase if a valuable mineral to which my land title granted me property rights was found underground. Under Steiner’s scheme, my choice to leave that mineral in the ground so as not to destroy the surface of my property could only come at my considerable expense, once it was discovered that I was in so doing depriving others of far more resource value than originally estimated. Fossil fuel resources in the ground and under the control of national governments would therefore incur Steiner’s tax but not Pogge’s dividend, creating incentives for such governments to use their “resource privilege” of selling off those resources to extractive firms in order to realize economic gains from their sale and to avoid future taxes. The tax would likewise create incentives for the rapid and complete extraction of privately owned and controlled resources, deterring their conservation and accelerating environmental degradation from pollution and resource depletion. As with the dilemma

³² Steiner (1999), p. 184.

noticed by Beitz, egalitarian imperatives to reduce poverty within a generation could perversely impoverish future generations by degrading the planet's resource stocks and increasing hazards associated with future exposure to pollution.

Beitz, Pogge, and Steiner all appear to ground their global justice proposals in resource egalitarian premises, but none provide the basis for entitlement claim by the Poor to their share of any specific resource, like X. All three, that is, assume that economic goods are perfectly substitutable for natural resources, and so require from egalitarian justice only that overall bundles of social and natural goods are equitably distributed, in principle allowing for deprivation of any natural good or service so long it is compensated for with equivalent social or economic goods, and assuming that such compensation is always possible. But from the same premises—that the Poor are entitled to their equitable share of the world's natural resources—entitlement claims to equal (and not merely adequate) resource shares could be inferred by joining the resource egalitarian premise with the strong sustainability premise regarding substitutability, through which all persons would be entitled to critical resources themselves when economic equivalents or compensation could not suffice to remedy harm related to the deprivation of such resources.

If X was now subject to market distribution, weak sustainability would hold and the justice demands of the Poor could be satisfied by the transfer of economic resources sufficient for them to secure their just share of X; if not, they could claim the X itself. In either case, the egalitarian claims of distributive justice approaches would allow for claims upon shares of X that significantly exceed those associated with rights-based claims, which are satisfied by bringing the global Poor to subsistence levels of resources, not granting full equality in them. But such a claim would require an argument more ambitious than those made by Beitz, Pogge, or Steiner, in that it would need to reject weak sustainability premises of full fungibility between specific natural resources to which persons may have some egalitarian entitlement and economic resources that could substitute for them in the allocation of bundles or shares. No such argument has appeared in the context of scholarly debates over climate justice, which has treated emissions rights or shares as fungible (as they are in trading or offsetting schemes), and this not any unique basis for egalitarian claims.

The Poor might appeal to global egalitarian justice more generally in order to appeal for the economic resources to acquire more X, but this fails to justify any entitlements to X itself. Alternatively, they might make claims upon some annual entitlement to the resource in question if some principled basis for allocating it in accordance with egalitarian criteria were available, but that principled basis does not appear to arise from egalitarian justice theory itself. Claims to equal per capita shares to the planet's greenhouse emissions absorptive capacity (one form of X) stipulate such an egalitarian entitlement, but typically with reference to justice theories that grant no unique standing to the distribution of either stock or flow resources, thereby begging the question of why persons have any entitlement to this resource in the first place. Absent a claim to some specific thing, persons cannot be compensated for being deprived of that thing, nor can they voluntarily exchange it for something else, insofar as dispossession requires prior possession. While the Poor stipulated disadvantage might be recast in terms of general global economic

injustice rather than in terms of their inequitable access to X, they must then strategically consider the further obstacles to calling for full global economic justice, compared against the relatively limited appeal that they initially contemplated making for justice in X.

5 Conclusions

How, then, should the Poor frame their appeal? If their selection criteria were based on which approach would call for the transfer of the most X from Rich to Poor, then they should make resource egalitarian claims to their rightful share of the world's X. Whether as a one-time redistribution to nullify the effects of unjust historical acquisition or transfer, or on the basis of claims about the arbitrary nature of territorial resource distribution, an egalitarian distributive justice would entail the largest transfer of X, albeit one with perhaps the least well-established justificatory framework, given that egalitarians tend to focus on economic rather than natural resources as the currency of justice.

As noted above, historical injustice appeals could at best restore some historical baseline of holdings among Poor and Rich, and so might allow for claims to more than an equal share insofar as the Poor once controlled disproportionate shares of global resources. Although no such prior unequal distribution was stipulated, such a remedy would be difficult to cast as just, especially if that inequitable baseline distribution was the product of some equally dubious history through which the Poor would owe rectification to the Rich. Apart from this baseline problem, such approaches rely upon such opaque historical facts and convoluted counterfactuals that real-world appeals of this kind would be unlikely to generate more than a token remedy, with the supersession of historical injustice arising as resource inequality persisted over time. While potentially entailing a more robust basis for transfers of X from Rich to Poor based in restorative justice rather than humanitarian concerns with subsistence, historical claims encounter difficulties also with issues of excusable ignorance and collective agency when based on the claim that past generations of Rich wrongfully deprived the Poor of valuable resources that would only later come to be recognized as such, as with the case of carbon sequestration capacity. If the criteria were instead based on coherence with well-established principles of international law, historical injustice approaches would be more attractive the more recently the alleged wrongful transfer of X had taken place, and less so the further back in time the original injustice was alleged to have occurred. Evidentiary requirements would likely be too onerous to demonstrate any constructive injury of Poor by Rich to warrant legally-imposed remedies, except where the Rich had clearly and recently taken some X that belonged to the Poor.

Appeals to subsistence rights, by contrast, require no such evidence, and are at least widely recognized by states in their international law commitments, even if that law is largely aspirational rather than enforceable. As noted, however, subsistence rights claims to natural resources or services make the most quantitatively modest claims among the three, demanding only access to the minimum quantity of resources necessary for subsistence, and then only if no substitutes for such resources are

available. Rights-based claims also entail the weakest entitlement claims, since they cannot be to the stock resources from which flow goods and services emanate, leaving their claimants less secure than historical injustice or resource egalitarianism (both of which make claims upon the stock resource in question, or at least more durable and less contingent control over flows).

The Poor might, as Pogge does, appeal to all three philosophical approaches at once, hoping that different appeals resonate with different parties, and assuming that any remedial action that results from any one of these three kinds of appeals is better than nothing, so the quite different remedies implied by each are practically irrelevant. Pogge's broad appeal to ethical pluralism may well succeed in his limited purpose of identifying several normative bases by which a redistributive GRD could be justified, but it is maddeningly imprecise in identifying precise remedies for the "radical inequality" he identifies. First invoking backward-looking historical responsibility analyses, then conflating these with ahistorical resource egalitarian claims and consequentialist considerations about how much poverty-related suffering the \$300 billion in annual proceeds from the GRD could alleviate, and conscripting all three of these "distinct and competing political philosophies" in the service of a remedy for poverty grounded in human rights, Pogge sacrifices clarity over the nature of the problem and its proper remedy for the greater urgency of a pragmatic convergence hypothesis.

While the Poor may likewise see the pragmatic potential for claiming all three conceptions of justice on behalf of their desperate attempt to make some appeal that will resonate with the Rich, this strategy will not help them in choosing among them, or indeed help to settle the more fundamental question of how much X any person or people is entitled to, if indeed natural resources can be the objects of entitlement claims rather than humanitarian appeals at all. And indeed, conflating theories of justice along with categories of natural resources in the matter will not help in sorting out what is distinctive about the resources in question or the historical relationships of Rich and Poor with them, or in how indeed justice applies to any or all of them. But recognizing the potential and shortcomings of their normative alternatives, and applying these to an adequate understanding of natural resources as non-homogenous sources of value, may at least make some headway in ascertaining the challenges in developing such a view. The building of consensus around approximate remedies has its place in politics, given value pluralism and social heterogeneity, with the stubborn insistence upon a particular normative rationale allowing the perfect to become the enemy of the good. But moving too quickly toward this consensus building phase without adequately considering the relevant differences between both the normative foundations and prescribed remedies of various justice appeals threatens to undermine the normative force of such appeals by dissociating remedies from the justificatory reasoning, replacing the moral clarity of principled diagnosis with an opacity of approximate remedy, in the process likely contributing to real-world remedies falling further from their objectives.

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