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JUST TAXATION AND INTERNATIONAL REDISTRIBUTION

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I. Compossible Rights

What should we provide to other persons, and what do we morally owe them? Most people, I think, would agree that these two questions are not equivalent and that we can make little headway toward understanding the demands of justice unless we see the various items sought in the second question as forming only a subset of those sought in the first. There are many things—goods and services, including services of forbearance—that we ought to provide to others and that we would therefore do wrong to withhold from them. Their flourishing, their autonomy, their liberty, often their very survival, vitally depend on such provision. Yet only some of these things can be said to be owed to them. Only some of these correlate to rights in those persons. Only some of them are concerns of justice. Which ones?

Evidently, answers to this question vary substantially from one conception of justice to another: memberships in the set of owed things are notoriously contested, though some are more contested than others. Among the less controversial are those

items that we owe as restitution; that is, no theory of justice that I know of treats the deprivation consequent on a rights violation simply as a regrettable piece of misfortune occasioning no claim in its victim.[1] Thus, the owed status of those items is due to their (sometimes imperfect) capacity to substitute for other owed things and to compensate for our failures to provide them.

A second type of owed thing—at least as uncontroversial as restitutions—consists of those items that we contractually undertake to provide.[2] Even so meager a conception of justice as Hobbes's seems to underwrite their inclusion. Hobbes's account of the matter also serves to remind us how problematic even contractual duties can be, how contracts can fail to be worth the actual or hypothetical paper they are written on. My contractual undertaking to supply you with the Brooklyn Bridge fails to vest me with a duty to do so (and fails to vest you with the right correlative to that duty) if I have already given such an undertaking to someone else or, more generally, if the Brooklyn Bridge is not mine to supply.

For what is true of both restitutional and contractual duties to provide is that they unavoidably presuppose rights on the part of the putative providers. They presuppose their antecedent rights to whatever it is that they owe. Thus we might usefully characterize these presupposed rights as *prior rights* and the rights doing the presupposing—the rights correlatively entailed by restitutional and contractual duties—as *posterior rights*.[3]

Even if what I owe you is (merely?) a forbearance, it is clear that others' noninterference with its provision is a necessary condition of my being able to provide it and, thus, of my having a duty to do so.[4] If, contrarily, others do interfere and, moreover, are at liberty, empowered, or even duty bound to do so, then the set of rules sustaining my forbearance duty and their liberty (power, duty) is incoherent. It generates a set of incompossible rights, and such sets imply contradictory judgments about the permissibility of particular actions.[5]

So if the set of restitutionally and contractually owed things is to be a possible set, if none of these duties to provide is to be deemed invalid because it cannot be fulfilled, it must be embedded in a larger set of owed things: a set that therefore includes *non*posteriorly owed things. As Hobbes correctly perceived, I

cannot have a duty to forbear from blocking your exit if others, who have a right "even to my own body," install it permanently in the doorway. Nor can I owe you the corn I contracted to deliver if others, lacking a duty not to deprive me of it, do so.

This key feature of the logic of compossible rights is succinctly captured in Locke's remark that "where there is no property, there is no injustice."[6] Injustices, we are presuming, consist at least of nonfulfillments of restitutional and contractual duties. For such injustice to be possible, for such duties to exist, they must be fulfillable. A set of jointly fulfillable posterior duties presupposes a further set of duties that are thus nonposterior and that protect the domains—the action spaces—in which posterior duties can be fulfilled free from anyone's permissible interference.[7] And of course, those nonposterior, domain-protecting duties must themselves be jointly fulfillable ones. Hence and as Locke's remark suggests, it requires no great conceptual strain to see these domains—these zones of noninterference—as consisting of property rights.

II. The Global Fund

If the set of owed things must include a core subset of forbearances—prior negative duties not to encroach on others' domains—what are the contents of those domains? The immediate answer is that these are bewilderingly variable. Who owns what or, conversely, who owes whom forbearance from interference with what activities, is plainly not a question that can be interestingly answered in the abstract. The contents of respective domains vary enormously both temporally and interpersonally, for the simple reason that domain owners have—and tend continuously to exercise—protected liberties to engage in multifarious activities amounting to transformations of those contents and/or transferences of them to the domains of others.

What can be answered in the abstract is what sort of rule can justly constrain the initial formation of those domains. Given their highly variegated contents and the corresponding variety of forbearances correlatively owed to their several owners, what sort of rule appropriately determines the initial conditions from which all this variegating activity then generates permissible

departures? In short, what must persons' initial domains be like to be just?

It is a sufficiently agreed feature of justice that however varied and complex its complete set of distributive demands may be seen to be under different theories, there is some foundational level at which equality is the appropriate norm. Precisely what must be distributed equally and, consequently, what sorts of thing may be distributed unequally remain a matter of philosophical dispute. But that something requires equal interpersonal distribution seems to be an intrinsic feature of justice, however it is construed.[8]

According to the view being developed here from the requirements of rights compossibility, the items to be justly equalized are persons' initial domains: the ultimately antecedent or prior rights that they have and successively transform and transfer to create posterior rights and duties for themselves and others. So those ultimately prior rights look like being ones to *un*transformed and *un*transferred things. Others' ultimately prior duties are to refrain from interfering with the varying dispositional choices that each makes in respect of those things. If each person is justly vested with an equal initial domain, it follows that each is justly bound by correlative duties of equal initial forbearance. What things, then, can count as untransformed and untransferred?

Here we could do worse than again to follow Locke's general guidance and construe such things as being of two basic types: our bodies and raw natural resources.[9] To say that persons have the initial rights to their own bodies is not to deny that they are at liberty to transform or transfer parts of those bodies or those bodies' labor—or, more generally, to invest those things in pursuit of their several ends—and thereby successively to modify those initial rights. It is to imply only that others' initial forbearance duties include not interfering with their doing so. These various duties of equal initial forbearance—this foundational bundle of entirely negative duties—can thus be compendiously construed as correlating to the initial rights of self-ownership vested in each person, initial rights against any form of enslavement or lesser servitude.

But if equal initial domains—equal initial action spaces—give us each titles to our bodies, they must also give us titles to things external to our bodies, since unimpeded access to such things is a necessary condition for the occurrence of any action. And this is where raw natural resources come to figure as the other constituents of those domains. Part of our foundational set of duties of equal initial forbearance are duties to acquire no more than an equal portion of such resources, leaving (as Locke put it) "enough and as good for others."[10]

What if some persons acquire more than this, leaving others with less? Then presumably the former, having defaulted on their duties of initial forbearance to the latter, owe them restitution. This compensation, whatever form it may take, must be equivalent to the value of what has been overacquired. So here we have a case of noncontractual but nonetheless positive duties to provide goods: duties that, though noncontractual, are clearly in the owed category and correlate to rights vested in those to whom they are owed. These are not what Brian Barry aptly characterized as "duties of humanity," and indeed, their validity is in no way predicated on their beneficiaries being in a state of need.[11] These duties are ones of justice and they arise, posteriorily, as straightforward restitutional implications of the overacquirers' failure to comply with their prior negative duties of forbearance.

It is not hard to see how this line of thinking begins to approach the issue of just international redistribution. The world's raw natural resources are compendiously describable as constituting a set of territorial sites, and the value of any such site is the sum of the values of all the sub- and supraterranean resources, as well as the surface areas, it comprises.[12] The aggregate global value of these sites thus constitutes the *dividend* in the Lockean computation of what "enough and as good for others" amounts to. No doubt this aggregate global value fluctuates over time, as does the magnitude of the Lockean *divisor*, that is, the number of others that there are. Whatever these fluctuations may be, each person's initial domain includes a right to the *quotient*: a right to an equal portion of the aggregate global value of territorial sites.

Elsewhere, I have suggested that we can conveniently conceive of the rights and duties implied by this argument as jointly constituting a global fund.[13] Liabilities to pay into the fund accrue to owners of territorial sites and are equal to the value of the sites they own, and claims to equal shares of that fund are vested in everyone. The global fund is thus a mechanism for ensuring that each person enjoys the equivalent of enough and as good natural resources.[14]

An essential characteristic of nations is that they are actual or aspiring claimants of territorial sites. The scope of their jurisdictional claims extends not only to sections of the global surface but also to the resources found below them and the airspace, portions of the electromagnetic spectrum, and so forth located above them. Private persons and state agencies who control the use of these things usually have a fairly shrewd idea of what they are worth. They know that an acre on the Bangladeshi coast is worth less than an acre in the center of Tokyo. Accordingly, the global fund's levy on the ownership of the latter will be greater than on the ownership of the former.[15]

Of course, within the limits of what justice permits, nations are presumably licensed to determine their own domestic objectives and to deploy the range of redistributive measures appropriate to those ends. But what justice clearly does not permit is their determining the distributive entitlements of persons outside their respective jurisdictions. Thus, although the full value of that Tokyo acre is justly owed to the global fund, whether liability for its payment should fall exclusively on its owner or should be financed in some other way may be a matter for decision by Japanese political-choice processes. What cannot justly be a matter for such political choices is the amount owed to the global fund for Japanese territorial sites.

The core idea here, that just redistribution is to be funded by an egalitarian allocation of natural resource values, is not a novel one. Nor should its Lockean origins be allowed to obscure the fact that it has more recently come to figure—in one form or another—in a wide variety of conceptions of justice, many of which are distinctly un-Lockean in provenance. Indeed, several of these accounts have similarly extended this idea to the international plane. It is on the two most developed

such accounts that I wish now to focus, since, in my view, their lack of Lockean foundations seriously impairs the coherence of that extension.

III. Against Beitz

Charles Beitz has advanced what must count as one of the first sustained attempts to derive an argument for international redistribution from a more general theory of justice.[16] His claim is that Rawlsian theory can underwrite the extension of the difference principle to the international plane in two ways. As is familiar, Rawls sees this principle as determining a fair distribution of the benefits and burdens produced by social cooperation. Rawls's mistake, in Beitz's view, is to assume that the boundaries of the cooperative schemes to which this principle applies are given by the notion of a self-contained national community. For the facts of contemporary international relations—in particular, the interdependence resulting from international investment and trade—indicate that the world is not made up of self-contained nations but imply the existence of a global scheme of social cooperation.[17]

But Beitz wants to go further and to privilege one kind of international redistribution by liberating the case for it from any reliance on these contingent facts of contemporary international relations. Accordingly, he argues that even if we counterfactually suspend the assumption of such functioning schemes of social cooperation and interdependence, the veiled parties to a set of Rawlsian international contractual deliberations would nonetheless know that natural resources are distributed unevenly over the earth's surface. Hence they "would view this distribution of resources much as Rawls says the parties to the domestic original-position deliberations view the distribution of natural talents."[18] That is, these contracting parties—each appropriately ignorant of their comparative territorial circumstances—would regard this natural resource distribution as a morally arbitrary fact and, consequently, the benefits derived from these resources as justly subject to redistribution.

Beitz is not slow to acknowledge the problematic aspects of Rawls's view that the natural talent distribution is morally arbi-

trary. These problems have been well rehearsed in the literature and include such considerations as the fact that

> natural capacities are parts of the self, in the development of which a person might take a special kind of pride. A person's decision to develop one talent, not to develop another, as well as his or her choice as to how the talent is to be formed, and the uses to which it is to be put, are likely to be important elements of the effort to shape an identity. The complex of developed talents might even be said to constitute the self.[19]

Because talents are tied to persons as identity-constituting elements, their location and consequent relative interpersonal distribution do not seem best described as morally arbitrary. Indeed, it is plausibly suggested that persons' claims to their talents are protected by considerations of personal liberty, that is, by Rawls's lexically prior first principle.[20]

Moreover, this line of reasoning suggests another important respect, unremarked by Beitz, in which differential talent distribution may be an unlikely candidate for moral arbitrariness. For even if—at some cost to the standard interpretation of his principles—Rawls were thus to concede nonarbitrariness to the distribution of self-developed talents, he might still wish to insist on the arbitrariness of the distribution of pre-self-developed ones. Indeed, it is precisely this distinction that is underwriting his attribution of arbitrariness to talent differentials, in his insistent imputation of those differentials to individuals' differential genetic endowments and background social circumstances.

Yet even this concession would not suffice to sustain his thereby modified arbitrariness claim. For if my talent's being constitutive of my self is conceded to be a matter of moral relevance, the fact that its initial development occurred at the hands of others—notably, my parents—rather than my own, does not obviously deprive it of that relevance. Parents typically choose whether to attach considerable value to, and invest considerable sacrifice in, the development of their children's talents or, more generally, their capacities.[21] Consequently, it is misleading to characterize the level of talent we possess when we arrive at the threshold of adulthood and moral agency as fully imputable to chance contingencies, insofar as this is suggested by a phrase

like "background social circumstances," a phrase that implausibly leaves delinquent parents morally blameless.[22]

In any case, Beitz argues—and however problematic may thus be Rawls's construal of talent differentials as arbitrary—no such difficulty attends the claim that nations' natural resource differentials are similarly arbitrary. "The natural distribution of resources is a purer case of something being 'arbitrary from a moral point of view' than the distribution of talents."[23] The two cases are said to be importantly *dis*analogous and for two reasons. First, and unlike talents, natural resources cannot be understood as constitutive of selves. Hence the denial that they are tied to persons in morally relevant ways does not engender the sorts of problem associated with the corresponding denial in regard to talents. Second, and unlike talent acquisition, natural resource appropriation is a rivalrous affair: "The appropriation of scarce resources by some requires a justification against the competing claims of others."[24] There must be principled reasons that the latter should bear the opportunity cost of refraining from the beneficial use of resources that are no one's product and of which the former's appropriation deprives them. The only plausible such reason for that forbearance appears to be that, by so doing, forbearers become entitled to a share of those benefits.

Consistent as this conclusion is with the Lockean one advanced previously, two serious difficulties beset Beitz's manner of reaching it. In the first place, it is unclear that postulating the competing claims of others, as a warrant for the presence of Rawlsian distributive concerns, is consistent with his counterfactual suspension of the assumption that the world is not made up of self-contained nations and that international relations therefore exhibit functioning schemes of social cooperation and interdependence. For situations in which some persons' appropriative claims compete with those of others and these groups are each (members of) different nations, are unmistakably situations in which the nations involved cannot be described as "self-contained." One group's self-denying respect for the claims of the other, whose otherwise unattainable level of prosperity thereby depends on that forbearance, would surely be an instance of what Rawls often refers to as the "burdens of coopera-

tion."[25] This implies the presence, not the absence, of international cooperation and interdependence.

Equally significantly, it is unclear that Beitz is correct to claim that natural resources lack the identity-constituting quality of natural talents. It would be patently absurd to think of them as constitutive of individuals' selves: a resource's owner is fully identifiable without any reference to that resource. But within the Rawlsian framework, that is not the relevant point of comparison. Nor, therefore, does it support Beitz's disanalogy claim. For on his own reading of it, the Rawlsian forum for fashioning principles of international justice is a second original position: one that, unlike the first, is populated not by individuals but, rather, by nations.[26] And it would be difficult, to say the least, to think of any single feature—or combination of them—that is less controversially constitutive of a nation's identity than its territorial site.[27]

So I am driven to conclude that Beitz is unsuccessful in his attempt to use the Rawlsian framework to underwrite the international redistribution of natural resource differentials. The charge of distributional arbitrariness, which is what usually occasions redistribution in Rawlsian theory, is not made to stick. And since the special case—for privileging the redistribution of those differentials as noncontingently just—is one that relies on the inconsistently sustained heuristic assumption of noninterdependent nations, that case also fails.

IV. Against Pogge

More recently, Thomas Pogge has been similarly engaged in constructing an international extension of Rawlsian principles for just redistribution.[28] But his enterprise begins with an explicit caveat on what Rawls actually says about the basis for that extension, although it is a caveat that Pogge sees as amply warranted by more fundamental Rawlsian commitments. Rawls, as was noted, conceives of the principles of international justice as chosen in a second original position, the parties to which are nations, not individuals. Pogge—persuasively in my view—argues that the arrangements that would emerge from such a situation "would be incompatible with Rawls's individualistic conviction

that in matters of social justice only *persons* are to be viewed as ultimate units of (equal) moral concern."[29] In support of this claim about Rawlsian justice and individualism, he quotes a passage that might well have come straight out of Nozick's *Anarchy, State and Utopia* but that, in fact, is Rawls's own methodological statement that

> we want to account for the social values, for the intrinsic good of institutional, community, and associative activities, by a conception of justice that in its theoretical basis is individualistic. For reasons of clarity among others, we do not want to rely on an undefined concept of community, or to suppose that society is an organic whole with a life of its own distinct from and superior to that of all its members in their relations with one another. . . . From this conception, however individualistic it may seem, we must eventually explain the value of community.[30]

A person's nationality, Pogge suggests, is just one more deep contingency (like genetic endowment, race, gender, and social class) that is present from birth and operates as a morally arbitrary factor in generating interpersonal inequalities. Accordingly, it is more consonant with the individualistic spirit of the Rawlsian project that parties to the second original position be persons, not nations—and even more consonant that there be only a single (person-populated) original position that generates a single set of norms for global application.[31]

All this seems to be going in the right direction as far as the Lockean view, advanced previously, is concerned. Leaving aside their deep differences over the foundationalism of contracts,[32] both the Lockean and Poggean positions conceive just principles as generating a set of egalitarian individual redistributive entitlements of global scope. Moreover, Pogge, too, sees natural resource values as especially eligible to fund these entitlements. My complaint, as with Beitz's argument, is that the case for this eligibility is not convincingly made out—though for different reasons.

Pogge's mechanism for this egalitarian redistribution is one that he dubs the *Global Resources Tax* (GRT).[33] Like Beitz, his claim for its privileged plausibility rests on its alleged nonreliance on several highly defensible theoretical and empirical

assumptions that would lend it even greater support. Specifically, he believes the case for it can be made even if we accept (1) that the forum for choosing international principles is to be a second original position populated only by nations; (2) that each of these nations is a "people," that is, is a linguistically, ethnically, culturally, and historically homogeneous unit; and (3) that no injustice has attended the emergence of current national borders. Although Pogge himself accepts none of these propositions—ones that he finds present in Rawls[34]—his project is to vindicate GRT despite this "self-imposed triple handicap."[35]

So what, then, is GRT?

> The basic idea is that, while each people owns and fully controls all resources within its national territory, it must pay a tax on any resources it chooses to extract. The Saudi people, for example, would not be required to extract crude oil or to allow others to do so. But if they chose to do so nonetheless, they would be required to pay a proportional tax on any crude extracted, whether it be for their own use or for sale abroad. This tax could be extended, along the same lines, to reusable resources: to land used in agriculture and ranching, for example, and, especially, to air and water used for the discharging of pollutants.[36]

Pogge argues that although the incidence of such a tax would fall exclusively on resource owners, its burdens would not, inasmuch as it would raise prices for consumer goods and services in proportion to their natural resource content, that is, in proportion to "how much value they take from our planet." The cost of gasoline would contain a higher proportion of GRT than would the cost of a museum ticket.

In another passage, Pogge suggests that the theoretical appeal of this tax ought to be very wide indeed:

> The GRT can therefore be motivated not only forwardlookingly, in consequentialist and contractualist terms, but also backwardlookingly: as a proviso on unilateral appropriation, which requires compensation to those excluded thereby. Nations (or persons) may appropriate and use resources, but humankind at large still retains a kind of minority stake, which, somewhat like preferred stock, confers no control but a share of the material benefits. In this picture, my proposal can be presented as a global re-

> sources dividend, which operates as a modern Lockean proviso. It differs from Locke's own proviso by giving up the vague and unwieldy condition of "leaving enough and as good for others." One may use unlimited amounts, but one must share some of the economic benefit. It is nevertheless similar enough to the original so that even such notoriously antiegalitarian thinkers as Locke and Nozick might find it plausible.[37]

Pogge then offers a perceptive discussion of the moral, political, and economic problems of both setting the Rawlsian-optimal rate of GRT and ensuring the intended redistribution of its proceeds. Some of these problems are indeed ones facing any redistributive global tax. However, the issue I wish to address is the prior one of whether GRT, as described, actually does possess the broad theoretical appeal Pogge attributes to it.

Clearly, and leaving aside the disputable claims about Locke's antiegalitarianism and the vagueness and unwieldiness of his own proviso, GRT at first glance appears to come very close to the Lockean-inspired global fund proposal advanced earlier. It, too, sponsors a global resources dividend by entitling everyone to a share of the benefits from natural resources that only some unilaterally control. The difference—and it is one of the utmost theoretical relevance here—lies in their respective identifications of the tax base to be used.

In Pogge's account, that base is the aggregate value of only *used* resources, with only some proportion of that value to be taxed. Whereas for the global fund (and, I think, for Beitz), that base is the aggregate value of *owned* resources—whether used or not—with that value to be taxed at a rate of 100 percent.

To see the significance of this difference, let's return to Pogge's example of Saudi oil. Suppose there is a large oil deposit located beneath the Ka'aba mosque in Mecca. If, as Pogge is heuristically assuming, each nation is to be taken as a fully homogeneous unit; if it owns and fully controls all resources in its territory and is not required to extract, or to allow others to extract, any of these resources; and if it is required to pay GRT on only those resources that it does choose to extract, then we can be reasonably certain that the Ka'aba oil will not be extracted. Nor, therefore, will it be GRT taxed, whereas the ownership of that site, like any other, would be global fund taxed to the full

extent of its natural resource value. This does not imply that under the global fund, the Saudis would be required to defile that sacred site and sink wells to extract the oil it contains. It implies only, in Pogge's own terms, that in unilaterally appropriating that site, they must compensate those thereby excluded. What they choose to do with that site is justly up to them.

The more general theoretical point here is simply this: If nations are presumed to be homogeneous in the way Pogge is counterfactually stipulating and if they are to be fully sovereign over the natural resources in their territorial sites, then some set of what Pogge calls "collective values and preferences"—some common conception of the good—will inform the domestic rules regulating the use of those resources. For some nations, these regulations will be far less restrictive and will allow far more extraction or varieties of use than are permitted by other nations' value sets. Rules regulating the extraction of American oil will, we might assume, be less restrictive than their counterparts in some other places. And one question thus is: Who should justly bear the costs of each nation's value set? For of any two nations with equal resource endowments, the more restrictive one will contribute less GRT than its counterpart does. Yet other things being equal, both will receive the same share of the total revenue thereby yielded. From an egalitarian perspective, from a global fund perspective—perhaps from *any* perspective—it looks as though the value set of the former is being subsidized by the latter. And this seems sufficient grounds to eliminate at least Lockeans and Nozickians from Pogge's list of theoretical constituencies who will find GRT attractive.

It is true that the question for Pogge is not directly the one just posed: Who should justly bear the costs of each nation's value set? Rather, it is, What natural resource tax would the nations, which are the veiled parties to the second and international original position, rationally choose? This is how that former, more direct question must be couched in the broad Rawlsian contractualist framework that Pogge embraces. More specifically, would they choose GRT or the global fund?

How should we approach the answer to this question? I assume that each nation's being veiled in ignorance means that it is crucially unaware of two things. It does not know whether and

to what extent it is resource rich or resource poor, that is, above or below average in its resource endowment. Similarly, it is ignorant of the content of its value set, that is, whether and to what extent it is use restrictive or use permissive with regard to natural resources. With these two variables in play, all that each nation can know is that when the veil is lifted, it will find that it occupies one of four positions: (1) it is resource rich and use restrictive; (2) it is resource rich and use permissive; (3) it is resource poor and use permissive; or (4) it is resource poor and use restrictive. Being use restrictive lowers one's liability to GRT but not to the global fund, whereas being resource rich raises one's liability to the global fund but not to GRT. Thus, as we have seen, under GRT but not the global fund, a resource-rich nation whose value set is strongly informed by, say, "green" concerns or location-based religious ones, will contribute less to international redistribution than will an equally resource-rich nation whose value set assigns less prominence to such restrictive concerns.

In general, the global fund promises a higher tax yield for this redistribution than does GRT, for two reasons. The first is that it taxes owned resources rather than used resources and the latter are only a subset of the former. Second, in taxing only use, GRT rate setters must consider the disincentive effects of setting that tax rate too high. Whereas the global fund rate is invariable at 100 percent, the GRT rate must not be so high as to discourage the use of those (fewer) resources that are not subject to use restrictions. It is, of course, a matter of empirical investigation as to what higher tax rate will deliver a lower total tax yield than some lower tax rate. But we know almost certainly that a GRT rate of 100 percent on what is in any case a lower maximum tax base will strongly discourage the use of all those resources. So compared with the global fund, GRT labors under a double handicap in seeking to maximize funds for global redistribution and is bound to deliver less. And this seems sufficient grounds to eliminate consequentialists, as well, from Pogge's list of theoretical constituencies who will find it attractive.

Can GRT retain some appeal for, at least, Rawlsians? Would rational choosers behind their veil of ignorance prefer it to the global fund? I think that although there are strong reasons to

suppose otherwise, nevertheless and under Pogge's heuristic assumptions, the answer is ultimately yes—but at a significant cost. Let us first look at those strong reasons against it.

From a Rawlsian perspective, the global fund also labors under a redistributive handicap, namely, that it must distribute its proceeds equally to all and cannot target them to the worst off. Although an equal share of global fund proceeds is bound to be greater than an equal share of GRT proceeds, Rawlsian *maximin* does not require such proceeds to be distributed equally. Hence whether it would be GRT or the global fund that maximizes the receipts of the worst off would depend entirely on the aggregate yield of GRT, which in turn depends on both the proportion of global resources that are not subject to domestic use restriction and the optimal tax rate that can be levied on them. In some circumstances, it would be GRT that maximins; in others, it would be the global fund. However, a resource tax that would invariably trump both of these in the maximinning stakes would be one that imposes the global fund's levies but discards its equal distribution of them in favor of a maximinning one. So on the face of it, GRT should have no appeal for Rawlsians, either. Fortunately for Pogge's argument—though unfortunately for the worst off—this is not true. Why not?

As we have seen, the global fund is no respecter of nations' value sets: it taxes all their resources indiscriminately and regardless of whether or not domestic value sets permit their use. Now a plausible suggestion is that the relation between nations and their value sets is not unlike the relation that Beitz previously found between individuals and their talents: that is, that its value set is constitutive of a nation's identity.

I myself have no definite view on this suggestion. But if we take it to be true—and it is not made less plausible by Pogge's heuristic assumption that nations are each completely homogeneous entities—then it looks like the liberty-protecting apparatus of Rawls's first principle must again swing into play in an original position populated, as Pogge also heuristically assumes, by nations and not by individuals. For as Beitz noted, the possession of identity-constituting items is not appropriately viewed as an instance of moral arbitrariness and is protected by lexically prior considerations of liberty. Accordingly, to tax use-restrictive

nations as heavily as equally resource-endowed nations whose value sets are use permissive—as the global fund would do—is akin to taxing talented individuals purely for having those talents and regardless of whether or not they use them to secure benefits. The Rawlsian first principle clearly prohibits this: it does not penalize potentially successful neurosurgeons for becoming mediocre poets instead. Hence, citing Rawls's remark that "greater natural talents are not a collective asset in the sense that society should compel those who have them to put them to work for the less favored," Pogge himself observes that "this much is enshrined in Rawls's first principle"[38] and insists that

> Rawls simply takes for granted [that] persons have their natural endowments in a thick, constitutive sense and are fully entitled to (exercise control over) them. There is no question that Genius's talents must not be destroyed or tampered with or taxed and that she must not be coerced to develop or exercise them.[39]

So GRT, despite its lower maximinning capacity, looks like the best resource tax that the worst off can hope for. Ironically perhaps, it thus appears that what Pogge described as self-imposed handicaps on his argument for GRT—namely, the heuristic assumptions of national homogeneity and a nation-populated second original position—turn out to be key supports for that argument.

This is not the end of the matter, however. For since Pogge himself offers convincing reasons for rejecting those assumptions, an obvious question is how the case for GRT would fare in that event. What if—consonant with the individualism that he finds at the core of Rawlsian theory, though not in Rawls's own international extensions of it—the contract situation were instead Pogge's favored single global original position populated by individuals rather than nations and, moreover, individuals whose nationality is simply one more of those nonconstitutive deep contingencies that are hidden from them behind the veil of ignorance? Would these choosers still prefer the resource-use base of GRT, or would they opt for the resource-ownership base of the global fund? The latter but not the former would exact the value of their oil deposit from whoever chose to acquire the

ownership of the Ka'aba mosque site. But it would also yield a greater maximin. Which would be chosen?

Here we need only recall that a defining feature of Rawlsian contractors is their ignorance of the contents of their value sets. Moreover, individuals' respective conceptions of the good, being revisable without a loss of personal identity, are nonconstitutive of them. In Rawls's famous phrase, "the self is prior to the ends which are affirmed by it."[40] These contractors are similarly ignorant of their respective natural resource holdings, which are similarly nonconstitutive of them. So individuals, unlike nations, are not constrained by the first principle's lexical priority in their choice of resource tax. Hence the same risk-averse reasoning that leads them to prefer maximin distribution ought to induce a preference for the global fund's tax base over that of GRT.

If this is indeed the warranted conclusion for Rawlsians, it nonetheless remains an open question as to whether Rawlsian maximin or Lockean equality is the appropriate norm for distributing the proceeds of that tax. Elsewhere I have argued that a comprehensive understanding of what counts as natural resources—along with consistently factored culpabilities, and the corresponding redress, for individuals' adversities—imply that those who remain worse off under Lockean resource equality do so because of their own choices.[41] But since that is another whole story in itself and one that raises much larger issues about the foundations of these two conceptions of justice, it is probably best left unaddressed here.[42]

NOTES

1. This is not to deny either that many restitutional claims are difficult to substantiate or that even if sufficiently substantiated, fulfilling them may be undesirable from the perspective of values other than justice.

2. At least, under appropriate conditions of voluntariness—with these being variously implied by the different conceptions of justice in question.

3. And hence their respective correlatives as *prior* and *posterior* duties.

4. On the principle that "ought implies can." That is, another person's preventing my doing the dutiful action A is a sufficient condition for denying any delinquency on my part. The same is true with regard to preventing my doing B, when the latter is (1) permissible and (2) a necessary condition of my doing A.

5. See Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), pp. 74–101.

6. John Locke, *An Essay Concerning Human Understanding*, ed. Peter Nidditch (Oxford: Oxford University Press, 1975), p. 549. Similarly, Hobbes: "It is consequent also to the same condition [that is, the absence of the possibility of injustice], that there be no propriety, no dominion, no *mine* and *thine* distinct" (*Leviathan*, ed. Michael Oakeshott [Oxford: Blackwell, 1946], p. 83).

7. That is, they protect these domains or action spaces in the normative sense of precluding permissible encroachment on them—not in the empirical sense of precluding actual encroachment.

8. See Amartya Sen, *Inequality Reexamined* (Oxford: Oxford University Press, 1992), p. ix: "A common characteristic of virtually all the approaches to the ethics of social arrangements that have stood the test of time is to want equality of *something*. . . . They are all 'egalitarians' in some essential way. . . . To see the battle as one between those 'in favor of' and those 'against' equality (as the problem is often posed in the literature) is to miss something central to the subject" (italics in original).

9. Locke himself believes that our bodies are owned not by ourselves but by God. Cf. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1967), pp. 289, 302.

10. I interpret this as a duty that, like all correlative duties, can be owed to only those who share some element of contemporaneity with us. For an argument as to why future generations lack rights against present ones, see Steiner, *An Essay on Rights*, pp. 259–61. It is also argued (pp. 250–58, 273) that symmetrically, past generations lack rights against present ones and that accordingly, the estates of the dead are subject to this same egalitarian distributive norm.

11. See Brian Barry, "Humanity and Justice in Global Perspective," in J. Roland Pennock and John W. Chapman, eds., *NOMOS XXIV: Ethics, Economics and the Law* (New York: New York University Press, 1982).

12. That is, the value of a territorial site is equal to the difference between the aggregate market value of all its contents and the aggre-

gate market value of those of its contents that constitute improvements made to it by human activity.

13. See Steiner, *An Essay on Rights*, chap. 8.

14. In this sense, the global fund is a source of what is currently called "unconditional basic income."

15. Too many accounts of natural resource values continue to take an unduly "geological-cum-biological" view of their subject and fail to appreciate—as persons in real estate markets do not—that portions of sheer (surface and aboveground) space also possess value.

16. Charles Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979).

17. Ibid., pp. 143–53.

18. Ibid., p. 137.

19. Ibid., p. 138.

20. Ibid., p. 139.

21. Such investment strongly reflects parental ambitions. And theories denying its moral relevance thereby lack what Dworkin aptly labeled "ambition sensitivity" in his argument that just distributions are ambition sensitive and endowment insensitive. See Ronald Dworkin, "What Is Equality? Part 1: Equality of Welfare, and Part 2: Equality of Resources," *Philosophy & Public Affairs* 10 (1981): 185–246, 283–345.

22. To impute it to chance contingencies is problematically to imply that our identities are invariant with respect to the identities of our parents. It is true that what is more adequately so characterized is the factor of our talents that is supplied by their genetic endowments. In *An Essay on Rights*, pp. 237–49 and 273–80, I suggest how and why that factor may be construed as an element of natural resources without impairing self-ownership and what the just redistributive implications of this are. On the just liabilities of delinquent parents, see also my "Choice and Circumstance," *Ratio* 10 (1997): 296–312.

23. Beitz, *Political Theory and International Relations,* p. 140.

24. Ibid., p. 141.

25. There are many degrees of cooperation. In Hobbesian states of nature, to refrain from predatory activity is to be a cooperator. Any denial that such scenarios constitute the relevant baseline for identifying cooperation itself presupposes an alternative precontractual baseline that must consist of a distributive norm prescribing a set of inviolable domains whose owners' interactions would then count as cooperation.

26. Ibid., pp. 133–34. See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972), p. 378.

27. It is under the description *territorial site*—rather than in terms of "x gallons of crude oil, y hectares of arable land, etc."—that nations

designate the object of their jurisdictional claims. That is, not just any old x gallons and y hectares will do.

28. See Thomas Pogge, *Realizing Rawls* (Ithaca, N.Y.: Cornell University Press, 1989), and "An Egalitarian Law of Peoples," *Philosophy & Public Affairs* 23 (1994): 195–224.

29. Pogge, *Realizing Rawls*, p. 247 (italics in original).

30. Rawls, *A Theory of Justice*, pp. 264–65; cf. Pogge, *Realizing Rawls*, p. 247.

31. Pogge, *Realizing Rawls*, pp. 246 ff.

32. As suggested previously, the core of one argument against foundational contractualism is simply that a necessary condition of the joint performability—the possibility—of the set of contractually undertaken duties is the joint exercisability of the liberties they presuppose: an exercisability that is guaranteed only by a set of prior (compossible) rights. For recent debate on locating the foundations of justice in contracts, see the exchanges among Brian Barry, Neil MacCormick, and myself in "Brian Barry's *Justice as Impartiality*: A Symposium," *Political Studies* 44 (1996): 303–42.

33. Pogge, "An Egalitarian Law of Peoples," p. 199.

34. See John Rawls, "The Law of Peoples," in Stephen Shute and Susan Hurley, eds., *On Human Rights* (New York: Basic Books, 1993).

35. Pogge, "An Egalitarian Law of Peoples," p. 199.

36. Ibid., p. 200.

37. Ibid., pp. 200–1.

38. Pogge, *Realizing Rawls*, p. 64.

39. Ibid., p. 79.

40. Rawls, *A Theory of Justice*, p. 560.

41. See Steiner, *An Essay on Rights*, and "Choice and Circumstance." That their adversities are self-incurred certainly does not imply any absence of duties to relieve them. It implies only that such duties are ones of humanity rather than justice and hence are not justly enforceable.

42. This chapter has greatly benefited from comments and criticisms supplied by Jerry Cohen, Katrin Flikschuh, Ian Shapiro, and Andrew Williams.