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Do transnational economic effects violate human rights?

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Abstract

Transnational effects are identified as those economic effects which cross state boundaries. Where these effects are negative, as illustrated by the ‘transnational case,’ it is asked what the appropriate ethical analysis of such a case might be. If we leave aside a social-distributive justice analysis, for reasons given, then a typical move is to claim that transnational economic effects are analyzable as human rights violations. The paper examines this claim and identifies the specific view of human rights which motivates it; the ‘outcomes view of human rights.’ It is then shown how the outcomes view of human rights ultimately collapses into social-distributive justice-type standards and so suffers from the same problems raised against using those standards for transnational effects. An alternative approach to human rights is sketched, although a complete theory of human rights is not offered. Finally, a different type of justice analysis for transnational cases is offered in which a form of *international* justice proper is proposed.

Keywords: *human rights; poverty; causes; international justice; global justice; transnational economic effects; violation; cosmopolitan; distinctiveness approach; moral concepts; social justice; moral methodology*

The government of a prominent developed economy subsidizes its cotton-producing farmers to make their cotton more competitive (cheaper) on global markets. This sector of the economy is thereby given a boost. The political representatives of this developed country have been very successful at international trade negotiations, exercising a great deal of negotiating muscle, influence, and pressure, to secure a trade agreement which allows them to subsidize their cotton-producing sector. At the same time cotton producers in a less affluent country with no budget for subsidies, and much less muscle in trade negotiations, are driven out of business because they cannot compete with this cheap (subsidized) cotton. The subsidizing government is re-elected, partly because of its cotton subsidy policy. People in this economy buy the cheapest quality cotton available to them, which is more often the cotton sourced from subsidized production. At the same time investors buy shares in companies

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buying and selling the subsidized cotton, and manufacturing companies producing cotton goods. Consumers, including retailers in the underdeveloped economy, fail to buy the more expensive unsubsidized cotton produced by their own farmers. Many of the less affluent farmers, and those involved in dependent industries, end up unemployed. The underdeveloped economies do not give unemployment assistance to the unemployed farmers. These are forced to liquidize their personal assets, selling possessions and homes, but nevertheless eventually find themselves in dire poverty. The costs of important staples start to get beyond these unemployed farmers' reach, and consequently they begin to suffer poverty-related problems such as malnutrition. Their families are directly dependent on these farmers, coming from an economy in which other jobs are scarce. Some of the children are withdrawn from school and sent to work in factories. Malnutrition and unhealthy work conditions take their toll on the weaker members of the family. Levels of poverty-related disease and death rise.

It is important to note that the actions of the subsidizing state in this example are not directed at harming any specific individuals. They are not done, for example, with the intention of undermining political enemies or punishing opponents. In themselves, they are simply designed to give advantages to a sector of the domestic economy. In the context of a number of factors (global trade and domestic trade, a system of money and prices, and the operation of supply and demand for certain goods) these decisions can be related to negative effects. But note also that the chain of cause and effect is not direct; the effects require the actions and choices of others in, for example, acting according to supply and demand, trading in goods without loss and seeking the lowest prices for goods. Unlike firing a gun, the outcome is the result of a chain composed of choices, and each of the choices does not have this outcome as its aim. Furthermore, the choices are not imposed by obligation or authority. An official ordering subordinate to torture a prisoner employs power in the form of political authority; a system for creating obligations which subordinates are required to or expected to fulfill. A trader, on the other hand, has no authority of this kind. We will return to these reflections which will be important below.

Call this example the 'transnational case.' It is characterized by transnational effects; economic effects on persons in which an economic choice by an agent in one state jurisdiction has consequences for persons in other state jurisdictions. How should we understand these decisions and choices from an ethical perspective? They include domestic and international actions and transnational effects. They are set against a background of relations and institutions which make them possible, such as market systems, currency systems, trading organizations, regulative institutions, and so forth. The consequences of some of these actions are serious negative impacts on people's lives. An ethical analysis would require that we use an appropriate moral concept, expressed as principles of action, to judge these agents' behavior, and to guide that behavior in future cases. So what are the appropriate concepts and principles in this kind of case?

I have elsewhere argued that the standards of domestic social (distributive) justice applicable to the institutions of a political community would not be appropriate for

the international sphere. In the domestic case, there is an agent of justice in the form of a political authority which has powers to allocate rights and duties and so to establish and maintain patterns of distribution. There is no equivalent global agent of justice, capable of assigning rights and duties in a way consistent with the aims of just distribution.¹ In fact, accepting that there is a world of states, each with authority to distribute rights and duties across their citizens and each with an obligation to do so in line with principles of domestic social justice, is equivalent to saying that there is no global agent of justice that can be charged with fulfilling aims equivalent to those of domestic justice. Nevertheless, saying that there is some kind of deep injustice in the example I gave above is consistent with this view that domestic social justice is not the appropriate standard for the international sphere. At least, it is consistent if one accepts that different moral concepts, including different kinds of justice are applicable to different spheres of human relationship. On this view there is indeed such a thing as international justice. It is, however, of a different kind to domestic justice, and it is certainly different to the notion of global (social) justice, which, on this view, is not a coherent idea for a system of states. The question, however, is which concept of justice, or which ethical analysis is appropriate for these transnational effect cases. Some authors, however, have appealed to the concept of human rights to argue that states (and citizens) have transnational redistributive obligations. On this view (life threatening) poverty resulting from transnational effects constitutes a violation of the fundamental human rights of those who suffer it.² For example, by threatening life and health, poverty is an attack of people's right to life and security, and those who knowingly produce the transnational effects in question are violating these human rights. In what follows I wish to examine the claim that, independently from questions of distributive social justice, it makes sense to apply the concept of human rights in such cases. My contention shall be that if human rights standards are to have any distinct role in our moral repertoire, this is not the kind of scenario for which they are appropriate. At the end I shall sketch the kind of concepts of justice that are more appropriate for these transnational cases.

Human rights standards are, of course, a contested concept, and any account appealing to an appropriate 'catchment area' for them will be controversial. For this reason I will not give a complete theory of human rights as such, which requires a separate work. Instead, my approach here will be by contrast. I will describe what I take to be the appropriate moral role of distributive justice and argue that if human rights standards are given a role that collapses into this, then that is to stretch them beyond their appropriate domain. Appropriateness is more than an abstract idea in this context, as I take it that different moral concepts imply different moral principles; different distributions of obligation and different forms of accountability. One form of accountability may, for good reasons, hold different agents accountable and hold them accountable to different persons in different capacities. We can see this when reflecting on some plausible features of social justice and human rights. A political order, by which I mean the exercise of political authority, is morally accountable to a political community for the governing of that community. Some elements of that accountability are toward the community as individual citizens (with

regard to citizenship rights) while others (such as those regarding the aims of general patterns of distribution and the prospects of positive policies) are to the political community as a whole. Human rights, on the other hand, extend the accountability of political authority beyond citizens, inherently focusing on the accountability of that authority to individuals rather than political communities. These differences reflect the point of these different moral standards. On the view I have just sketched (and it is just one of many), the point or value of social justice is as a standard for political community. If we are indeed interested in whom to hold accountable, to whom and why, then it is important we get the mode of accountability right. This will give us a way of understanding human rights distinctive role as standards; uses they can and cannot be put to in transnational contexts. If human rights standards are simply the standards of social justice going by a different name, then they serve no special conceptual role and seeking a separate moral theory to explain them will be otiose. Of course, there might be a political or practical reason for packaging a theory of justice in a different wrapping. It might be a way of simplifying a political idea or of selling it to those that see social justice as a matter of state prerogative and communal discretion. However, I will proceed by assuming that theorists who write appealing to human rights in transnational cases think they are appealing to distinct standards that serve a special purpose in our moral economy. This is particularly important given the mentioned critique that applying standards of domestic social justice is inappropriate for the international sphere.

METHODOLOGY AND JUSTICE

Before moving on to that discussion it is worth pausing to consider the methodology I employ. The approach, which I call the distinctiveness approach, is to argue that a particular moral concept, whether it be justice or human rights, must be understood in terms of its distinctive contribution to our moral repertoire. Unless a distinctive role, or a distinctive element of its role, can be explicated the concept will be seen as redundant given other available moral concepts. That contribution is in terms of what judgments the concept allows us to make and the value of being able to make those judgments. For example, the concept of a promise implies distinctive principles of action which have a value that does not reduce to merely helping others or doing the right thing all things considered. An appropriate theory of promising will capture that distinctive point and value. It might, say, tell us that the value in promising lies in the ability to establish intimate relationships of expectation which at the same time offer opportunities to test other's character and integrity. What makes moral concepts distinct is that they apply to distinct spheres of human relationships. Within those spheres different benefits and costs are available for persons, with different types of agency involved. Moral principles are principles proposed for regulating the distribution of those costs and benefits. Their justification lies in that they express an appropriate value, a master value, which justifies a certain kind of regulation or distribution of goods and burdens. For example, master values

proposed for principles of social-distributive justice have included the value of fairness and the value of equal concern. These values distribute social goods and social costs, such as property, income, educational provision, health provision, and so forth, not personal goods and personal costs, such as the goods and costs distinctive of friendship (loyalty, constancy, fidelity, reliability, intimacy, and so forth). It would be inappropriate for the agent of social justice to distribute the goods and costs distinctive to friendship given the effect on the very relationship of friendship (and the enjoyment of its values) that such regulation would imply. In fact, given that distributive justice implies a high degree of impartiality and friendship a high degree of partiality, one sphere cannot coherently regulate the other. The agent of social-distributive justice is also distinguished by its ability to distribute in a certain way. It employs a power to assign rights and duties to members of the community so as to produce distributions of social goods and costs. The distribution of social goods and costs implies the assignment of rights and duties defining property and access to provision of social resources. This is the distinctive power of political authority.

Now while I do not develop this methodology fully here, I think its central features have a great deal to be said for them.³ The view holds that making a case for a particular interpretation of a moral concept requires a justification in terms of the distinctive contribution of that concept to our moral repertoire. It must make a difference for our practical reason. That is not to say that the concept will not overlap with other moral concepts in its applications in particular judgments regarding what to do and what matters in deciding what to do. Yet what will justify the use of that particular concept as a distinct moral concept will be those judgments it makes possible which do not coincide with those available under other moral concepts. A case for the non-redundancy of a moral concept has to be made. The difference between a right and a duty, a promise and a contract, justice, beneficence and human rights, I urge, are differences that must be made in these terms. We can, of course, give up the prospect of distinguishing moral concepts at all. However, for the purposes of this paper I take the highly plausible idea that there are separate moral realms, with distinct goods and costs present within them, as given. If one accepts that then we must ask in what ways different concepts can be said to appropriately apply or not apply to a particular sphere of action. The theoretical position I am criticizing in this paper implicitly accepts this, otherwise the move to human rights and away from distributive justice would not serve any purpose in the debate.

I am not denying, by the way, that some moral concepts might play a role in various areas of morality and political judgment. The notion of a duty and that of a right make appearances in various places, from contract law to human rights claims. Yet the role they play in those areas, if they do play a role, is characterized by the distinctive nature of those concepts, with rights playing a different role to duties alone. Any adequate theory of rights and duties would have to elucidate these different contributions. Furthermore, while 'more basic' moral concepts such as rights and duties can make appearances in various moral contexts, richer value concepts, among which I count human rights and distributive justice, define whole areas of moral concern.

Now, this idea that different moral concepts must serve distinct moral purposes; that their roles must be different, begs an important question as to how we fix the content of such concepts. As I have said, this requires attention to the goods and burdens which are to be regulated and the type of agent specific to a given context of human relationship. Most importantly, however, it requires attention to the master value according to which goods and costs ought to be distributed in this sphere of human relationship. Our ability to distinguish different areas depends on being able to identify special goods, burdens, and agents for those areas. Our ability to develop a moral theory, in the form of principles, for that area depends on being able to offer a master value/s supported by good reasons to take this value to be the best for regulating this context, given the goods and costs available and the agents that will have to shoulder obligations. A theory of morality for a concept, such as justice, human rights, promising, and so forth, will be a theory of what value is best suited to regulating the distribution of the specific benefits and burdens which characterize that sphere of human relationship. Much of the work of identifying different areas of morality and their respective concepts will be by contrast, because if we are seeking the distinctive role of a concept we must remain aware of other concepts that might play this role or adequately cover this role in order to avoid redundancy.

Applying this methodology to social-distributive justice we can say that what is distinctive about such standards is that they (1) express a value which (2) regulates social goods and costs (goods and costs dependent upon assignable rights and duties), (3) does so through the assignment of rights and duties, and (4) thereby identify a specific agent; the agent with the authority to assign rights and duties (assignment authority) in a political community (political authority). Furthermore, we can say that the regulative values expressed in the principles aim at the proper functioning of a special relationship between the political community and its members. In that relationship, political authority must seek to establish and continuously maintain (through necessary adjustments) a pattern of distribution in line with the master value. For example, it must establish a pattern of distribution which can be said to show equal concern for, or distribute fair shares across, all members of the political community over which it has political authority (assignment authority). That is to say a distinctive feature of social justice is its relational nature; the political authority of the political community is the agent of distribution and the distribution is relative. It relates shares between members of society and in so doing the political authority is fulfilling its appropriate moral role.

Another important feature of social justice is in terms of the responsible agent. The agent of principles of justice is distinct from those subject to the distributive patterns. Potentially any agent can, in one way or another, affect a distribution of goods and costs. Yet the agent responsible for the ultimate pattern distribution cannot be just any agent capable of affecting people's goods or their burdens. The reason for this lies in that distributive justice is not about direct accountability between persons but about patterns of distribution. Its aims are not to hold specific persons responsible to each other for their effects on each other (that is the domain of criminal justice and to some extent the principles of torts). Whether the affluent person caused the less

affluent to be at a disadvantage or not is not relevant to whether or not they should pay taxes toward improving the condition of the socially disadvantaged. This is because social-distributive justice is about how a community treats its members in relation to each other. It is relational in this second sense that the relationship of justice in terms of responsibility and accountability is not between an individual and other individuals, but between individuals and political authority. There is a good reason for this. The distribution of social goods and costs depends on social effects, which in turn depend on the background of decisions, actions, practices, and institutions which make those distributions possible. The ethical character of an individual action assessed independently of this context can be entirely innocent, or even good. It is only when the action is placed in the appropriate context that one has negative consequences. Giving work to workers in a new and competitive fuel business seems in itself a positive aim. Yet this might have negative effects on the jobs and salaries and lives of workers in old fuel industries. That, however, is because there is a market in which supply and demand, cost and profit, are given significant roles. By contrast, a company which knowingly or negligently exposes workers to deadly poisons thereby commits a moral crime. Furthermore, some actions which have negative effects today may have positive effects tomorrow. The new fuel industries might be bad for jobs today but good for jobs tomorrow. That is why characterizing actions, and their agents, as directly accountable in terms of their economic effects is misplaced. Not only that, identifying which actions are ultimately and definitively responsible and which are not is, on this account, not a coherent idea; today's cause of unemployment might be tomorrow's key to fuel production; the weakening of the agricultural sector tomorrow might lead to industrial development in the subsequent decades. For this reason, the distribution-affecting activities of individual agents must be treated separately from the task of establishing a just pattern of distribution. The latter task requires an agent set aside from the private interactions and relations of individuals and with the power to affect distribution in spite of those interactions. In fact, the notion of distributive justice as we know it in the domestic context, as making adjustments for the accumulated effects of individual interactions, only makes sense in the presence of a special agency which can play this role given its moral powers; the agent's capacities together with considerations of other moral obligations and commitments that agent might have.

Having sketched these specific features of justice, we can see the special role that the concept of justice plays in our moral repertoire. It applies to a specific kind of relationship and an adequate theory of justice will be one which responds to the specifics of that relationship. For the purposes of the present discussion, two of the above features of standards of social-distributive justice are important: (1) they do not imply individual responsibility and accountability for the economic effects of agents' actions on each other, because of the kinds of effects involved; and (2) instead they apply to a special agent, set aside from these effects and capable of adjusting for them.

HUMAN RIGHTS, HUMAN GOODS, AND THE OUTCOMES VIEW

Having identified the significant features of social-distributive justice and the kind of context in which it applies, we can now look at the transnational case. In that case the political relationship and the special agency are not obviously in place. This makes the case for standards of global social-distributive justice less compelling as these standards apply specifically to the political relationship and the special agency at its heart. Without an agency that can play the role of adjusting for accumulated effects, the notion of distributive justice seems out of place. While agents act and their actions have distributive effects on each other, responsibility in distributive justice cases is not between agents but between an agency that can establish a pattern of distribution and individuals. Absent that agency and the appropriate relationship for social justice is also absent. Nevertheless, as I have said, an alternative analysis has been offered in terms of human rights rather than social-distributive justice. Human rights do not seem to apply exclusively to the special relationship, but apply rather wherever and whenever those human interests at the heart of human rights are in jeopardy. The claim, then, is that by undermining fundamental interests or values for human persons, agents producing transnational effects with this consequence are involved in human rights violations. Those responsible for causing or contributing to the poor farmers' poverty and so the life-threatening effects of this poverty are thereby violating the farmers' right to life. This includes the government which subsidizes cotton production and even those who vote for that government. It is this kind of view that has led to criticisms of certain transnational economic effects, and the policies that permit them, as not only human rights violations, but even 'crimes against humanity.'⁴

One can hold that responsibility in such cases is either mediated or unmediated. In the first case violations are seen simply as the consequences of any action by any agent foreseeably and avoidably impacting on individuals' lives in this way. In the second case violations are the consequences of institutional set ups. Trade regulation agreements, allowing subsidies for some but not others, violate human rights. In the mediated case any agents seeking the agreements (such as governments), supporting the agreements, or upholding those who seek the agreements (such as individuals who vote for the government making the agreement, or pay it taxes) can be seen to have a hand in the human rights violation.⁵ We can either say that these agents commit violations or that they contribute to the violations. Either way they are in some way culpable for these violations. Whether we are talking about mediated or unmediated responsibility, what is important is that it is the transnational effect that constitutes a violation, and it is those who are connected with that effect who are morally accountable for the effect; violators or accomplices to violations.

Thus, on this account it is not necessary to appeal to an agent of social-distributive justice. Rather, the agents are all those who are appropriately connected with producing the transnational effects in question. Those agents have obligations to desist from such actions and where they fail to desist, to compensate or remedy the consequences.

This seemingly forceful account of what happens in the transnational case, however, relies on a particular view of human rights. That view, which I call the ‘*outcomes view*,’ while ubiquitous, is far from an obvious or irresistible understanding of human rights. It is not only controversial but, as I will show, ultimately collapses into the type of standards more appropriate to social-distributive justice. It thereby fails to appeal to human rights as standards with a specific role to play in our moral repertoire. In doing so it also suffers from the problems of applying social-distributive justice standards to transnational cases.⁶

What characterizes the outcomes view is that it interprets human rights standards as identifying goals to be achieved, desirable states of affairs for all persons or valuable conditions to be produced or fulfilled. It regards those goals as in themselves normative, in themselves giving rise to reasons for action. It, however, treats the question of who should be responsible for producing these outcomes as a matter that is independent and secondary to identifying the goals involved.

Examples of the outcomes view are ubiquitous in the literature on human rights. Martha Nussbaum, for example, holds that we can establish what people should have before establishing who has an obligation to provide it.⁷ James Griffin moves rapidly from the value of a particular human good to its grounding entitlements, in that order.⁸ Henry Shue explicitly says that we can have a goal ‘for everyone to enjoy everything they have a right to enjoy.’ And that the task of figuring out ‘how this can be arranged and how to allocate the tasks involved’ comes ‘next.’⁹ Cosmopolitan theorists too talk of the states of affairs independently and in advance of discussing who has the relevant obligations.¹⁰ While Pogge’s view is a mediated view, he nevertheless identifies and appeals to the states of affairs at the heart of human rights in advance of and independently of establishing obligations and responsibilities.¹¹

The outcomes view would contrast, for example, with an approach which says that until we identify a specific agent with obligations to carry out certain action, we are not identifying human rights at all. That, alternative, kind of view does not begin from valuable states of affairs for persons from which it works its way to establishing obligations. Rather, it begins from principles expressing specific values which assign obligations, and thereby distributes goods for persons, on the basis of those values. The bringing about of certain state of affairs on this alternative view, as valuable as they might be to human beings, is not an obligation until one has a principle which justifies doing so. Principles are not themselves justifiable in terms of the value of states of affairs but must include other considerations, such as which agent is appropriate as a duty bearer on the principle and given the other moral obligations and commitments of different types of agents. An individual, it has been argued, is less appropriate as the primary agent for domestic distributive justice because her power to adjust for continuous distributive outcomes and impacts of her actions are limited and because making her responsible in this way for everyone else’s distributive outcomes would destroy her capacity to live a recognizably human life, let alone the life of a citizen.¹²

In most versions of the outcomes view, the business of allocating obligations to bring about the outcomes is implicitly or explicitly taken to be a matter of capacity

and burden. That is, it depends on who is most capable of producing the outcome and likely to suffer the least cost in doing so.¹³ This view of responsibility which neatly accompanies the outcomes view is a '*capacity approach*.' In summary, the capacity approach holds that having the least burdensome capacity to protect or advance any human rights-relevant outcome is sufficient for an agent to have a moral obligation to protect or advance that outcome. The government subsidizing cotton production has the capacity to stop the subsidy, those persons voting for the government have a very low cost capacity to vote against it. For convenience, I will refer to the capacity approach and the outcomes view together under the name of the latter.

Before showing what is wrong with the outcomes view of human rights, we can list three features of human rights standards which are commonly accepted. These are that human rights standards must imply or involve duties for identifiable agents, these duties must be perfect duties and at for at least some of these duties failure to perform them must imply a violation of the right. Now while these are common assumptions, they are not universally accepted. The United Nations Development project, for example, under the influence of Amartya Sen's capabilities approach, has at least in one place rejected the idea that human rights standards necessarily imply perfect duties, or strictly identifiable duty bearers.¹⁴ Others have tried to reject the idea that a specific violator need be identified.¹⁵ There are good reasons, however, not to accept this move. One of the apparent advantages of human rights standards, and one giving them a special role in moral repertoire, is that they can be used to hold agents accountable for specific actions or inactions. Without the capacity to say that others have failed in their duty and are culpable for doing so, much of the point of human rights standards would seem to be lost. Yet if we allow that human rights do not necessarily imply perfect duties, that is if agents have discretion as to where, when and how much they will perform their duties, then the kind of *direct* accountability associated with human rights is impossible. We would not be able to hold agents responsible for any specific actions, but only for a general pattern of behavior. That is because imperfect duties, like the duty to 'engage in assistance to some degree,' or 'to contribute to human rights conditions generally, in a way that shows adequate commitment,' for example, are not duties which can be assessed in terms of individual specific actions; they are assessments of patterns of behavior. As such they cannot be used by specific individuals to hold agents accountable for specific wrongs against them.

The outcomes view can concur on all these points. It simply takes human rights duties to be derivative or secondary to identifying the states of affairs which are valuable for persons. It is the latter that human rights identify not the duties which are derived from them on the basis of capacity.

The key problem with this view is that it effectively collapses into social justice-type standards. That is because it asks us to look at those states of affairs or goals that are valuable for human persons while at the same time we must take into account the burdens associated with achieving those goals. If we did not take burdens into account, then this view would make us slaves of each others interests. Whoever had a

capacity to advance the condition of others would have to exercise that capacity in advancing other persons interests irrespective of how costly this was.¹⁶ If we incorporate costs, however, we then need a theory or principle for weighing costs against interests and benefits; we need an account of the appropriate way to distribute costs and benefits. That means we effectively need a theory of distribution; a pattern of distribution that must be maintained by adjusting for the accumulated effects of people's actions.

Consider a domestic context in which a company begins to produce a new transport technology. That technology is successful and drives other companies out of business. Similarly, consider a case where one company purposefully seeks to take over the market for a given good and so negatively impact other businesses. In such cases we have effects which can have negative consequences for people's lives. Yet it is not those actions, and their effects, themselves that we consider in terms of responsibility and accountability. It is the background order and its willingness to adjust for those effects by, for example, assisting the resulting unemployed.¹⁷ The reason for this is the same as was given when discussing the appropriate context of justice above. Each action taken by itself, or in itself, is neither harmful nor negligent. It produces the effects in question in the context of numerous other actions, practices, and choices. Why see the company as the culprit rather than those who buy the company's goods, or those who produce currency in which supply and demand is communicated?

This is, of course, different from cases where agents set out specifically to cause harm to others or choose to act negligently toward them. In those cases there is an intention (whether to harm or to be negligent) and the action does not depend simply on a context of accumulated choices. It depends either on direct harm or on the exercise of power over other's choices (such as where obligations are imposed on state agents to carry out the harmful actions). In these cases the actions are in themselves harmful. In these cases we have clear examples of moral wrongs, and where the wrongs are particularly serious moral crimes.

The analysis of transnational cases would seem to fit under this rubric of social-distributive justice. That is because the types of effect involved do not involve direct harmful or negligent intentions, but rather the consequences of an accumulation of actions.¹⁸ In some cases this action contributes to negative outcomes, in others it does not. It is therefore unlike an action aiming to, say, torture a person which is inherently a harmful aim. Only one part of the accumulation in the transnational case is due to the government and its subsidies, and that part taken alone does not involve intentions to cause harm or to act negligently toward the poor farmers. Such a case must, then, call not for direct responsibility and accountability, but rather for a principle of distribution of benefits and burdens, and so for an agent capable of making adjustments which preserve a distributive pattern. As I explained above, it is theories of social-distributive justice that deal with costs and benefits and their distribution in this way. However, I also pointed out that such theories only make sense in the context of a special political agent. That agent must be capable of assigning rights and duties in order maintain a just pattern of distribution of costs

and goods, values for persons, and the burdens of bringing them about. Applying the outcomes view of human rights as an analysis of transnational cases, then, does not get problems faced by a social-distributive justice analysis.

One way the outcomes view might be presented to avoid this kind of response would be to claim that the particular outcomes aimed at as a matter of human rights are of such importance that they outweigh the costs in most cases. The capable agent has a duty to protect or advance the given outcomes, and no pattern of distribution of benefits and burdens is sought. Instead, for example, of requiring in line with justice that burdens and benefits are distributed so as to show equal concern, or as to improve the position of the least advantaged, the duties implied are simply to achieve these outcomes for persons. The imperative is for agents to contribute to these states of affairs to the extent of their capacities. As no pattern needs to be established and adjustments made to maintain it, no special agent is needed to distribute the benefits and burdens. Instead, every capable agent is obliged to contribute according to their capacity. Whenever this kind of standard applies, then, the absence of an agency capable of adjusting for accumulated effects is neither here nor there. The agents contributing to those effects should simply desist.

Of course there are problems with defining exactly which outcomes are sufficiently weighty as to engage this kind of moral standard. A threshold principle is needed, and those who appeal to human rights in transnational cases appeal to thresholds without fully explaining them.¹⁹ Nevertheless, they might say that some of these cases, such as life-threatening poverty, are obvious.

This response to the objection seems a compelling way to avoid the collapse into social justice theory and its problems. Yet the response misses its mark. The same questions and problems are faced in identifying appropriate responsibility in the transnational case whether the effect is simply unemployment or it is life-threatening poverty. The effect is the consequence of accumulated human choices in a market system. It is neither the aim behind any one of those choices, nor can these choices taken individually be understood as having that aim. For that reason the same objection applies. The appropriate kind of standard for these choices is the social justice one, yet, as I have said, the correct agent for those standards is not obviously present.

Compare this with a case where a government policy creates poverty and starvation in a direct fashion. The policy of a Mugabe or a Pol Pot to starve certain sections of the country is a deliberate decision.²⁰ Its aim is definable in terms of the effect. It is a consequence of a decision to achieve that effect. The decision employs political power to impose obligations on others to carry out the acts that lead to the effect. Even where the effect is not the direct aim, as where the policy is to encourage people to live a different kind of life, the direct connection with the effect of this kind of action (restricting access to food) is sufficiently close to the effect to constitute a negligent act of harm serious enough to be a moral crime.

As a final response it might be posed that irrespective of the accumulation of choices leading to the effect, anyone capable of affecting the outcome should break the chain of causation and failure to do so constitutes a human rights violation. Thus,

the subsidizing government is obliged to break the chain of causation if it can do so. Once again this does not appeal to or depend on a pattern-maintaining distributive agency, as in the social justice case.

But once again, the response is awkward. To begin with, it implies that buyers of cotton at cheap prices are violating the rights, just as those who distribute currency in which the transactions are made. In fact anyone involved in the system which makes such effects possible that can halt some element in the system is a violator on this view, unless they interfere in the chain of choices and their effects. The bread seller whose prices are too high for the starving farmers to afford and those transporting traded cotton, are all violators of human rights. This is an uncomfortable place for the view to have got to. After all, it was supposed to offer us an analysis of transnational effects, and ends up distributing culpability in an over-generous fashion. Furthermore, an important feature of human rights standards is jeopardized here. If no agent interferes with the chain of supply and demand, transport and trade, then all agents involved are collectively violating the rights of the poor farmers. This tends to make responsibility rather amorphous, especially as actions to halt the system of trade will also have detrimental effects on others, even on the same poor farmers.

It would seem that the outcomes view of human rights faces deep problems in the analysis of transnational cases, and gets us no further than the social justice approach. Of course, a question is pending as to what kind of approach to human rights might work as an alternative to the outcomes view. As I said at the beginning, it is not my aim to supply a theory of human rights in this paper. However, there are alternative approaches to the outcomes view. A theory of human rights which is not goal driven, but focuses on the values expressed in specific relationships would not be an outcomes theory. Take for example a theory which focused on the specific relationship between political authority and individuals, irrespective of citizenship. That theory would be specific to that relationship, which would contrast with justice in that the latter is more specifically about political authority exercised in a political community. The account of human rights would thereby serve a specific role in our moral repertoire, without incursion into the territory of social-distributive justice.

What is distinctive about this kind of view is that in order to show an agent has a specific obligation toward another one must first show that the relationship between them is of the right kind. It must be shown that the relationship and the specific goods and costs involved in it require regulation by a master value. It is from that value that we derive the obligation. One does not begin from the existence of valuable ends, states of affairs, or outcomes, and then move to the business of looking for the agents best fit to hold accountable for those ends. Which value is the appropriate one to human rights, in contrast with social-distributive justice, and other moral standards, is what a theory of human rights would need to disclose. It would need to identify the specific role of those standards.

THE END OF ECONOMIC AND SOCIAL RIGHTS?

The above has been a critique of views which appeal to human rights standards as a way of analyzing transnational economic effects. Does it follow from that critique imply that there are no economic and social rights? No, that does not follow. The basis of the critique is to show that certain cases, transnational economic effects, are not apt for human rights analysis. That does not mean that no cases are apt for human rights analysis, and it certainly does not show that no cases involving economic effects are apt for human rights analysis. I have already, in passing, mentioned the harmful use of economic and social provisions for political purposes as relevant considerations for human rights concerns.

I have, however, pointed out that a great deal of what gets identified as apt for treatment in terms of economic and social rights is more appropriately dealt with under the heading of social-distributive justice. In the domestic context that is not a problem. I have, however, raised problems for applying social-distributive justice to the international context. By implication, then, the focus for economic and social rights provisions must be the use of political authority for nefarious purposes, whether that involves economic and social tools or simply state violence. Economic and social rights are, in this view, like other human rights, bound up with the use of state power against persons, whether that power be coercive or economic and whether those persons be citizens of the state or non-citizens. This gives human rights a distinctive role, without delegitimizing economic and social rights as such.

It is worth mentioning that the kind rights accountability, and corresponding duty, I have been focusing are what can be called primary duties, which most readily sit with the language of violation. There are many duties associated with human rights failure in which does not imply violation. The duty to pay my taxes to the state so that it can maintain an adequate standard of police training relates to the state observing human rights in custody. However, it would add nothing of practical relevance to the justification and understanding of the duty to pay taxes to say its failure implies a violation of rights. Duties such as these, which include duties to vote for governments that will secure human rights, duties not to interfere with the operation of institutions securing human rights, and duties falling on other states to assist governments in securing human rights, can be called secondary duties. Secondary duties can be both perfect and imperfect, as the above list shows. I have nowhere denied that a myriad of agents have secondary human rights duties. The purpose of this paper has been to ask if transnational economic effects can be understood as human rights *violations*, and so as relating to primary human rights duties.

A useful point in distinguishing human rights standards and social justice standards, as I have sought to do, is that many of those questions which the human rights movement places unreflectively under the heading of human rights might best be treated as matters of social-distributive justice. The primary responsible party for this will be domestic states. Social-distributive justice is a useful standard for holding state parties responsible when there are radical differentials in life expectancy and other social determinants. When a large part of the population are suffering poverty,

but a society is still exporting agricultural goods and there are sections of the population that live in affluence, we must subject that society to scrutiny under the lens of social justice.²¹

SHOULD WE GIVE UP ON TRANSNATIONAL CASES?

The above has formed a critique of the human rights approach to transnational cases. I have done that assuming that the social-distributive justice approach to transnational effects is also problematic. This leaves a question hanging. How, giving up these two approaches, should we analyze the transnational cases? Where domestic justice is insufficient to capture the sources of economic problems, how should we treat these if human rights are not an appropriate tool?

Applying the same methodology as outlined above, we can ask if there is a specific relationship in the international sphere with specific goods and costs that should be regulated by distinct values. What is distinctive about the sphere of international relations is the existence of distinct political communities, with their own state institutions and with their own jurisdiction and political authority within that jurisdiction. This forms the framework of international relations. In that framework, states act voluntarily to enter into agreements and associations. The goods and burdens specific to the international case, then, will be those associated with interaction of states, with cooperation between political communities, and the background conditions necessary for cooperation. They will include the goods achievable through state cooperation, association and assistance, equal respect of political communities and their self-determination, as well as the values of peace and security without which cooperation will be jeopardized. A political philosophy of international justice would be one that developed principles for the distribution of the goods of cooperation and mutual assistance for a world of separate political communities with separate powers and authorities.

Genuine political community, of course, does not exist where there is oppression, massacre, and starvation. This means that other states do not have duties to respect orders in which these disvalues are dominant. Where genuine political community does exist, however, respect for these states and their rule of law is required. That does not mean individuals are barred from criticizing or seeking to change their institutions where they are not just or not fully just, that is a requirement of social-distributive justice. It is just that it is not appropriate to apply social-distributive justice to the actions of states in their *external relations*.²²

In that context, the use of trade agreements which have differential effects, or whose terms are unfair between different states, is in conflict with the values that should regulate inter-state relations. Lack of fairness between states in trade relations produces negative consequences and disrupts stability and potentially even peace. It removes from political communities the ability to control effects on their economies to the same extent as other states, and so treats them unequally and unfairly. The exercise of power to achieve these unfair terms is also to be deplored for the same reasons.

At the same time, all capable states have obligations of assistance toward states incapable of fulfilling the minimal economic requirements necessary to act as genuine and self-governing political communities. Starvation, disaster, and pandemics destroy the ability to act as genuine political communities. Other states then have duties to respond to these, including duties to develop organizations and systematic ways of responding to states or populations in jeopardy. These obligations, however, cannot be perfect duties given the context of all possible interventions and all the assistance that could be given. There must be a degree of discretion as to how the project of assisting other states fits in with domestic justice priorities and other demands in international justice.

What is morally ruled out by a notion of international justice of this kind is forcing states to accept Structural Adjustment Programs, or assistance conditions which strip out their assets, undermine their capacity to help their citizens with basic public services, and which weaken them and their economies in the face of other states. Using debt as a form of political control is also a way of undermining the equality and self-governance of states.

So, as we can see, there are ways of approaching the transnational case that do not hazard coherence. Ultimately, however, a key problem remains in that the regulatory systems possible in a world of states are outstripped by the effects of globalization. Constant movements of goods, fluctuations of currencies and prices, produce effects that are not contained by institutions based on agreement and associations of autonomous political communities. Waves of investment in one industry or the motion of assets or debts from one currency to another can have devastating effects in absolute terms across the globe. As Jean Ziegler reminded us, moves to invest in biofuels can cause food shortages with devastating effect. To address those effects one needs a global system of regulation. It might also do well to consider the degree to which the market is relied upon as the primary form of economic interaction. These questions, however, are not questions of justice as such, because they are questions about absolutes; how to respond to the effects of an economic system which challenge the ability of human communities to contain them. The effects of the global system have in this way become alien forces. These challenges are nevertheless just as important as questions of justice.

NOTES

1. Saladin Meckled-Garcia, 'On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency', *The Journal of Political Philosophy* 1, no. 3 (2008): 245–71. I have also, in that paper, distinguished the basis of my view from those that claim that the international sphere is not distributive justice apt because there is no unified *coercive* order, such as Thomas Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs* 33, no. 2 (2005): 113–47, or views which make the claim on the basis that principles of justice are practice dependent, as in Aaron James, 'Constructing Justice for Existing Practice: Rawls and the Status Quo', *Philosophy and Public Affairs* 33, no. 4 (2005): 281–316.
2. See, for example, Thomas Pogge, *World Poverty and Human Rights* (London: Polity, 2002), 59 ff.; Simon Caney, 'Global Poverty and Human Rights: The Case for Positive Duties', in

Freedom from Poverty as a Human Right, ed. Thomas Pogge (New York: Oxford University Press, 2007), 276–7.

3. I develop and apply this approach as an interpretation of Rawlsian constructivism and specifically for theories of justice at Meckled-Garcia, *The Journal of Political Philosophy*, 247 ff. and 252 ff., although the setting out of the full view as an independent moral/political methodology (a theory for the interpretation of moral concepts) is pursued in a number of forthcoming works.
4. ‘it’s a crime against humanity to convert agricultural productive soil into soil . . . which will be turned into biofuel . . . What has to be stopped is . . . the growing catastrophe of the massacre (by) hunger in the world.’ Jean Ziegler, UN *Rapporteur* on the Right to Food (paper presented at the UN News Conference, UN HQ, New York, October 27, 2007) variously reported, e.g. in Edith Lederer, ‘The Production of Biofuels “Is a Crime”’, *The Independent*, October 27, 2007. Of course, Ziegler may have been using the description metaphorically, but given his position, and the absence of retraction, it appears he meant it.
5. Thomas Pogge, *World Poverty and Human Rights*, 64–7.
6. I should add that the problems created by the outcomes view, a form of egalitarian welfareist consequentialism, are not limited to human rights. The view is also ubiquitous in theories of justice, including interpretations of Rawls. See, for example, Liam Murphy, ‘Institutions and the Demands of Justice’, *Philosophy and Public Affairs* 27, no. 4 (1998): 251–91, 262 ff.
7. Martha Nussbaum, *Frontiers of Justice* (Harvard, MA: Belknap Press, 2006), 277.
8. James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 33 ff. See also, James Nickel, ‘How Human Rights Generate Duties to Protect and Provide’, *Human Rights Quarterly* 15, no. 1 (1993): 77–86, 80 ff.
9. Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton, NJ: Princeton University Press, 2006), 161.
10. Simon Caney, ‘Global Poverty and Human Rights: The Case for Positive Duties’, in *Freedom from Poverty as a Human Right*, ed. Thomas Pogge (New York: Oxford University Press, 2007), 276–7, the statement at page 277 that ‘An adequate account of human rights will include the human right not to suffer from poverty (where this refers to the right to avoid poverty)’ wraps this up as an outcomes view given that the author moves, *after* setting out this rights claim, to try to figure out who is duty bound to fulfill the right in question (277 ff.).
11. Thomas Pogge, *World Poverty and Human Rights*, 48 ff. As I have pointed out, Pogge’s view is more complicated than standard outcomes views, but only in that he sees human rights obligations as mediated through institutional effects. On his view where an institutional order foreseeably leads to lack of access to certain human goods for persons (i.e. leads to negative outcomes) and where there is an alternative order which would not have that result, then the order is violating the rights of those persons, see Thomas Pogge, *The Journal of Ethics* 9, nos. 1–2 (2005): 29–53, 43 and ‘Severe poverty as a human rights violation’ in Thomas Pogge, ed., *Freedom from Poverty as a Human Right*, 56. The human rights of persons, on his view, nevertheless impose on everyone a negative duty not to support an institutional order of this negatively impacting kind, see Thomas Pogge, *World Poverty and Human Rights*, 70, 144, 170, Thomas Pogge, ‘Recognized and Violated by International Law: The Human Rights of the Global Poor’, *Leiden Journal of International Law* 18, no. 4 (2005): 717–45, 20, ‘Severe poverty as a human rights violation’ in Thomas Pogge, *Freedom from Poverty as a Human Right*, 24. Thus we see, the negative duties of persons (infringement of which constitute a contribution to human rights violations) are derived from the idea that there are significant states of affairs (outcomes) that it is valuable to avoid. If he had said the negative duty on persons is not justified by the value of the outcomes but rather by a prior assignment of responsibility based in a regulative value, such as respect, then it would not be an outcomes view. As it stands, however, it is. The mediated part of the view, which assigns responsibility to political institutions for human rights, on the basis of an idea of ‘official

- disrespect' is close to escaping the charge of an outcomes view, see Thomas Pogge, *World Poverty and Human Rights*, 53 ff. However, that part of the view is poorly motivated, and when Pogge moves to claiming persons have a consequent duty (failure in which is correlative to human rights violations), then the attribution of duty on the basis of outcome becomes clear. That duty cannot be derived from the regulative value of official respect, as citizens paying their taxes or cooperating with the law are not acting 'officially,' but must be based in the value of avoiding the negative outcomes only.
12. Meckled-Garcia, *The Journal of Political Philosophy*, 253 ff.
 13. An explicit account of this capacity/cost view is found in Leif Wenar, 'Responsibility and Severe Poverty', in *Freedom from Poverty as a Human Right: Who owes what to the very poor?* ed. Thomas Pogge (Oxford: Oxford University Press, 2007), 255–74.
 14. See United Nations Development Programme, *Human Development and Human Rights*, UNDP Report 2000 (New York: UNDP Reports, 2000), 24 ff.
 15. Elizabeth Ashford, 'The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights', *Canadian Journal of Law and Jurisprudence* 19, no. 2 (2006): 217–35, 217, and 'The Duties Imposed by Human Rights to Basic Necessities', in *Freedom from Poverty as a Human Right*, ed. Thomas Pogge (Oxford: Oxford University Press, 2007), 183–218.
 16. Note that while relative cost is used by Wenar, *Freedom from Poverty as a Human Right*, 255–74, to identify responsible agents, no limit is placed on absolute cost once that agent is identified.
 17. It should be clear here that I am making a distinction between being causally responsible for an effect, in the sense of contributing in some way to that effect coming about, and being morally responsible to the point of being accountable for that effect in some way. I take it that moral accountability is the central form of responsibility for a conception of justice or human rights (that is, for public political moral standards).
 18. Thus, on the view I am pursuing, the empirical question as to whether domestic institutions or the global order are more causally to blame for poverty is not a useful question. A myriad of causal factors are involved, in a web of human choices. Singling out a single set of contributions to the causal story, except where other factors are involved such as intention to harm, is neither sound nor useful for the purposes of moral analysis. For this approach see Mathias Risse, 'How Does the Global Order Harm the Poor?', *Philosophy and Public Affairs* 33, no. 4 (2005): 349–76. Risse's work is nevertheless for the argument in this paper in that it alerts us to some of the different causal elements present in global economic effects.
 19. Thomas Pogge, *World Poverty and Human Rights*, 47; Alan Buchanan, *Justice, Legitimacy and Self-Determination* (New York: Oxford University Press, 2004), 127.
 20. In 2002, there were reports that President Robert Mugabe banned Oxfam and Save the Children from distributing food aid in areas of Zimbabwe where opponents of his government had support. Andrew Meldrum, 'Zim Bans Food Aid Charities', *Mail & Guardian (Johannesburg)*, October 18, 2002, p. 2.
 21. This was the case with Ethiopia which continued exporting agricultural products throughout the time of the famine that gave rise to the 1985 live aid campaign.
 22. See Meckled-Garcia, *The Journal of Political Philosophy*, 269 ff.