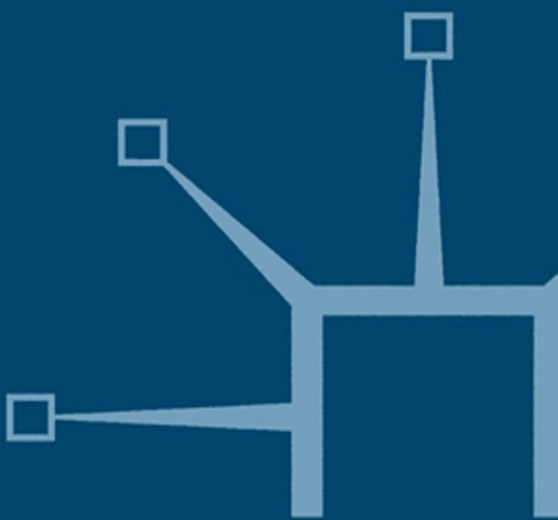
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Justice, the State and International Relations

Leo McCarthy



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5 Human Rights, the State and Global Justice

We favoured a conception of the state and international justice which appears as a viable response to the realist and cosmopolitan traditions. We have termed this a 'complex instrumentalist' conception. We still need to show why it is that the amendments proposed in a complex instrumentalist theory of the state to the basic premises of the natural law tradition are necessary in securing a more comprehensive range of types of international justice-claims than could be specified within the terms of classical natural law theory alone.

Questions of both the justice-claims and correlative responsibilities of political communities in respect of self-determination and the practice of intervention have already been raised. We have certainly not finished with them yet. I only wish that space allowed us to treat these issues more fully and separately at this stage. But it sadly does not. Anyway, to add anything of real significance to the existing literature would probably require another book.[1] Instead, our focus is on rights – individual and collective – as grounds for at least sketching an outline of principles of world justice.

5.1 HUMAN RIGHTS

We can best see what can be said positively about human rights and about the role of the state in upholding them if we first consider some of the more important arguments against introducing human rights discourse into international relations.

The first of these arguments proceeds from the denial that rights have any meaning except in relation to specific governmental and legal systems. Thus Jeremy Bentham ridicules the idea of natural or 'imprescriptible' rights; that is, rights that are said to be 'anterior to the establishment of governments' and that 'cannot be abrogated by government'.[2] Laws alone confer rights; the obscurantist belief in natural rights, says Bentham, encourages 'a spirit of resistance to all laws'.

If Bentham were arguing that individuals only have rights when they form themselves into a state, because (following Rousseau) they

only become moral beings at this point, then the state becomes in effect the source of rights, and as such ethically prior to the individual. The question of where the capacity for holding rights derives from is, for Bentham, a meaningless one. Any attempt to answer the question, 'Why do we have the rights that we do?' is bound to end up in metaphysical or naturalistic 'nonsense upon stilts'.

The natural law which is said to exist in the state of nature gives 'to each man a right to everything, which is, in effect, another way of saying, nature has given no such right to anybody: for in regard to most rights... what is every man's right is no man's right'.[3] This is only a 'nominal universality and real nonentity of right, set up provisionally by nature in default of laws'. Worst of all, on this view, the supposed indefeasibility of such rights implies more than that positive law is not required for their validity. Law is itself 'proscribed' from all interference with such rights.

Bentham insists that the rights that natural law is supposed to prescribe are contradictory. Laws take away liberty; but, at the same time, 'all rights are made at the expense of liberty'.[4] All rights have corresponding obligations attached to them. And, whilst laws limit liberty, the enjoyment of liberty in the sense of protection from coercion by other persons as opposed to the state requires laws: 'no liberty can be given to one man but in proportion as it is taken from another.'[5] Again, the right of property is said to be imprescriptible; but the right to property implies the further restriction of liberty, for it involves the prevention of others from making use of that property. This right is valueless unless its object is specified, and this is not possible within the unlimited sphere of natural rights. Bentham's objection is not simply that the actual rights guaranteed by government and law are the only ones with more than a fictive meaning; the assertion of natural rights as constraints on laws seems to him to subvert all positive rights.

This position may be compared with that of T.H. Green, who allows the idea of rights against the state, but not of rights against society:

> The sovereign, and the state itself as distinguished by the existence of a sovereign power, presupposes rights and is an institution for their maintenance. But these rights do not belong to individuals as they might be in a state of nature, or as they might be if each acted irrespectively of the others. They belong to them as members of a society in which each recognises the other as an originator of action in the same sense in which he is conscious of being so himself.[6]

Green says that the idea that rights proceed only from the sovereign power 'conflicts with the primary demands of human consciousness'. People may have rights as members of social groups, such as families, without the state existing. In the modern state, however, Green typically wants it both ways:

> it may still be true to say that the members of a state derive their rights from the state and have no rights against it. We have already seen that a right against society, as such, is an impossibility; that every right is derived from some social relation; that a right against any group of associated men depends on association.... Now for the member of a state to say that his rights are derived from his social relations, and to say that they are derived from his position as member of a state, are the same thing. *The state is for him the complex of those social relations out of which rights arise*.... [My italics][7]

In the end, this position is much like Bentham's, although it is derived from different premises. Green's position might seem less hostile to the idea of rights outside the state, because he locates rights within social relations, and we have argued for the existence of an international society. But he really means that society reaches its highest form in the state.

Positive Rights and Natural Rights

The rights that are secured exclusively by the state are not, then, the only ones we need to consider. If we confine our attention to these rights alone, there will be nothing to say about the justification of the state outside its own self-defining terms, and nothing whatever to say about its external rights and obligations. If the state is in effect the means by which rights are brought into the world, then each state is unique in this respect vis-à-vis its own population, and we have no comparative criteria by which to judge one state to be better or worse than another in terms of the defence of justice and rights.

The natural law tradition makes individuals the ultimate bearers of all rights and duties. Because the state in practice guarantees many of the (inherent) rights of its people, it is assigned a potent, though never an absolute, moral status. This respect for the state as an institution which makes rights effective leads Grotius to deny that citizens have, at least in most circumstances, a right to rebel against unjust rulers, although outsiders may intervene on their behalf. In the end, states

are bound by natural law in the same way as individuals are, and have rights and duties under natural law only because they are made up of persons, the only self-subsistent moral ends that exist.

A defence of the natural law epistemology of rights thus serves as a response to the deficiencies of the views we have just examined. We saw also that the natural law tradition has postulated a much richer and deeper set of obligations among states than the narrow, egoistic sort of natural right against which Bentham turned his scorn and derision.

But if natural rights are superior to legal-positive rights in defining the state as a constituency of justice and in accounting for its external obligations, they are not in themselves sufficient. In the form in which the classical natural law tradition developed them, they do not define the content of rights held by individuals against their states; nor do they offer other principles concerning the legitimacy of political authority. Whilst natural law tradition before Vattel made much of the obligations among states, it did little to place individuals' needs and welfare at the basis of those obligations. We are given no means of passing from the theoretical identification of the individual as the bearer of rights to the practical consequences of the existence of inherent, universal rights as the basis of rights and obligations existing not just between states, but between members of different societies.

If none of the arguments we have examined has succeeded in refuting the idea of inherent rights, or prevented us from seeking their philosophical justification, we still need to make a positive defence of the origin of extra-legal rights. To do so requires more than the natural law tradition as we have reviewed it can offer. We need an answer to the question, Why do we have the rights that we do? We need to show epistemologically significant characteristics of human beings in virtue of which we can assign authentically moral – in the sense of universalisable – rights to them.

Rights and Agency

A highly promising construction of a first-order theory of rights and why we possess them has been put forward by Alan Gewirth.[8]

Gewirth criticises both classical and modern versions of natural rights as being purely intuitionistic, and as not constituting an argument for rights, whilst the derivation of rights from interests undermines (since 'interests' vary greatly from one person to another) the minimum egalitarian content of rights which enables them to be

ascribed to all persons equally. In addition, attempts to ground rights in the inherent capacities of human beings, or to define rights as equivalent to justified claims for the fulfilment of crucial needs, raise the familiar problem of the derivation of an 'ought' from an 'is'. Instead we are offered a theory of human rights based upon the capacity of human beings for rational action:

> the concept of a right, as a justified claim or entitlement, is logically involved in all action as a concept that signifies for every agent his claim and requirement that he have, and at least not be prevented from having, the necessary conditions that enable him to act in pursuit of his purposes.[9]

Moreover, 'the agent logically must accept that all other prospective purposive agents have the same rights to freedom and well-being as he claims for himself.'[10] Agency is a feature, one might say the defining feature, of all human beings. Therefore, the rights to enjoy those conditions that make purposive action possible are generic rights, and not merely attached to the individual because of some peculiar feature that he or she displays. It follows that:

> since the predicate of having the generic rights belongs to the original agent because he is a prospective purposive agent, he logically must admit that every purposive agent has the generic rights.[11]

The individual cannot deny that he has a right to the conditions of action, either in a 'positive', material sense, or in the sense of being protected against the outside restriction of his freedom, without denying his own agency – a denial which would be meaningless as well as impossible. All human beings have the capacity to act intentionally and voluntarily, which does not of course means that they always do so. In consequence, no agent can rationally deny to another those conditions that he is unable rationally to deny to himself. The argument for rights is now moral in Gewirth's sense of being 'categorically obligatory', and in relating of necessity to the interests of others.

The necessary conditions of action must include material provision for the prospective agent, as well as the absence of outside interference. Therefore, the need for an account of positive rights is implied. As a further consequence of this, the specific capacities and needs of individuals must determine what kinds of resources are requisites of agency for each actual (and unique) person. If we nonetheless assume

that there are conditions of agency common to all persons, then the task that remains is to describe a set of universal, basic rights. But we can see that basic rights must be permissive as well as protective. They are rights *to* as well as rights *against*.

The main virtue of Gewirth's argument is that it suggests a way of overcoming the standard objection to Kant's moral philosophy, which is that it is purely abstract and formal, and that it does not lend itself to the specification of what actions in particular circumstances can be translated into categorical maxims. The introduction of the concept of agency, and of the necessary conditions for realising it, provide for a theory of human rights in which the recognition of the other as an end in himself, as a rational and purposive being bound by the moral law, requires the provision of opportunities and resources whose content is specifiable. Such an argument goes some way towards refuting the claim that human rights are 'essentially contestable' from an ethical and cultural perfective, and gives to them a first order, or categorical, basis.

Rights and Culture

Let us look again at some arguments against human rights from the standpoint of cultural relativism.

One of these is that the West, in general, has stressed civil and political rights (especially the right to ownership of property) above economic and social rights, whilst in communist states economic and social rights have been secured, where they have been secured, at the supposed cost of the suppression of civil and political rights.[12] The latter are respected only so far as they do not imply limitation of the powers of government or of the 'working class'.

Another problem of relativism is said to be that in the Third World, collective rights, including self-determination, have been viewed as democratic rights to self-government rather than as 'organic' rights inherent in the nation as such. Such collective rights are usually asserted, claim the sceptics, as primary in the sense that individual rights have no meaning in their absence. They are also asserted unconditionally; the right of self-determination comes to be considered independently of the practical capacity for self-government. Thus,

> To those who argue that freedom from colonial rule has led not to an increase but to a decline in respect for civil and political rights,

> that transfer of wealth from rich countries to poor has merely benefited the rich in the poor countries at the expense of the poor in the rich, or that the economic conditions of the blacks in South Africa are the best in the African continent, it can be replied that racial and national dignity represent a more vital human right than any of these things, even if those who have always taken them for granted find this hard to grasp.[13]

Not only are rights in the Western understanding not universally enjoyed; they are not accepted as morally valid in many societies: 'The idea that the universal validity of rights is self-evident in the light of reason is an eighteenth-century illusion.'[14]

These arguments are not convincing. In the first instance, the meaningfulness of the dichotomy between the classical liberal or 'negative' rights on one side and 'positive' rights in the form of resource entitlements on the other has already been questioned. In addition, the exclusive association of different 'bundles' of rights with antagonistic political systems is historically misleading. It suggests a very benign process of economic accumulation in Western societies, ignoring such inconvenient events as the Enclosure Acts or the repression of trades union activity in nineteenth-century Britain. Nor is there reason to believe that governments that suppress civil and political rights are better at guaranteeing economic and social ones.

This dichotomy implies that the polarisation of rights discourse is static. In fact, the recent history of Western countries has seen the transformation of the 'nightwatchman' state of classical liberalism, the guarantor of 'negative' freedoms, into the modern, interventionary state, which is expected to secure economic and social rights through collectivist provision. (Perhaps this process is now being put in reverse.) And evidence of increasing toleration of cultural, religious and even (to a lesser extent) political diversity certainly preceded the explosive events of 1989 in the communist world. Such evidence was there when the cynical manipulation of human rights rhetoric for cold war purposes reached its apogee in the years immediately after the Helsinki Accords.

The 'illusion' of the eighteenth century was not that rights existed in all societies in the sense of being actually secured, but that morally significant features of human beings *per se* gave rise to their having certain rights.

The understanding of emergent global norms of respect for human rights displayed by governments in their justifications of

internal policies, in their general reluctance to denounce human rights as significant, and in their efforts to interpret such so as to appear in conformity with them, suggests that there is at least an emergent common conception of rights. This does not entail the absurd claim that all governments, or all societies, are equal in their respect of human rights. It only entails that they are not always talking past one another when rights are under discussion.

The Practical Necessity of Both Positive and Negative Rights

Aside from the philosophical question of what respect for persons requires in terms of the assignation of rights, the dichotomy of economic and social rights on one side and civil and political ones on the other is practically specious. A certain minimum degree of economic provision is a condition of being able to enjoy the 'negative' rights of civil and political freedoms or legal protection and redress. None of these matters if I am starving. The right to equality before the law is denied to those who cannot afford legal representation, and to whom free or subsidised legal services are denied. Organisation by groups or separate individuals on behalf of an economic interest or a political, social or religious cause also requires access to resources. Classical pluralism does not assume an egalitarian distribution of resources – money, education, articulacy, contacts – between interest groups, but it does assume that no-one is denied access to them entirely.

The enjoyment of political and civil rights is also usually necessary for the protection of one's economic and social rights. The black migrant worker had no redress against sudden deprivation of his 'livelihood' in the cities if the apartheid South African government forcibly removed him under the terms of the Group Areas Act, or even sought to 'denationalise' him by forced removal to a 'homeland'. The former-Soviet bloc dissident found himself, after a prolonged period of unemployment owing to the fact that no agency of the state – the sole employer – would take him on, being prosecuted under 'parasite' laws for refusing to work.

The Universality of Rights

There is a double sense in which the ascription of rights is universal. One is that such ascription, if it is seriously intended to carry the

moral weight involved in the concept of a right, must imply the satisfaction of the other, minimal conditions that must obtain for the enjoyment of that right to be possible. The other is that the ascription of rights in a moral, as opposed to a legal, sense must relate to all human beings generally, since rights in this sense describe some intrinsic, equal moral worth and not one that is wholly culture-specific.

To some, it seems ridiculous to speak of rights except in the context of a particular society, state or era. It seems to them dangerously presumptuous to attack or displace the religious, social and cultural conventions of societies by abstract accounts of rights. On this view, the idea of the emancipation and equality of women has no place in traditional Moslem or Hindu society, intermarriage between the races may be prohibited if social mores oppose it, people may be denied the right to vote unless they are property owners or have attained a certain degree of education, whilst in other societies intellectuals who express independent views may be deprived of civil rights or imprisoned because the 'security of society' is said to warrant it.

The satisfaction of basic rights involves at the very least sufficient provision of the conditions both of security and of subsistence to allow a secure and worthwhile existence for individuals and for the groups of which they are members. Basic rights do not in themselves challenge the validity or importance of other substantive legal, cultural, civil, political, economic or social rights in societies, but specify a minimum content for such rights. They represent limits on moral relativism. Total rights enjoyed by people will extend beyond basic core rights in a just society. Justice as a maximal concept is certainly not coextensive with a minimum definition of rights.

Another consequence of dismissing basic rights is that it has the effect of shielding certain cultures and states from criticism. China has consistently refused to support international rights conventions on the grounds that rights attach firstly to states and nations, and then to classes, and lastly, and only derivatively, to individuals. China's legal system in the Mao era defined individuals in terms of their class backgrounds and, at least until the overthrow of the 'Gang of Four', conducted open trials, grimly named 'struggles', in which 'counter-revolutionary' and other 'bad elements' were subjected to humiliation and self-abasement at the hands of the 'masses'. The 1978 Amnesty International Report on the Chinese penal system, for instance, is most disturbing to read because the idea of the individual as a bearer of rights and with a moral, not to say a human,

personality of his or her own becomes in that system completely submerged in the doctrine of class war.[15] It is a graphic example of a familiar historical process by which the idea of class or nation serves not to express an aspect of the individual identity, nor to safeguard a part of individual autonomy and dignity, but to eclipse and even annihilate that personality.

The Philosophical Defence of Economic and Social Rights

It has been argued many times by conservative commentators on both domestic and international politics that economic and social rights are conceptually as well as empirically quite distinct from civil and political rights, in addition to being differently understood in different societies. The argument runs that because rights imply duties, only the latter sort of rights are truly universal. Both duties and rights must be possible to perform, whereas, argues Maurice Cranston, many economic and social claims, especially as put forward in poor countries, are impracticable of realisation, unlike political and civil rights.[16]

Sceptics about social and economic rights, and about redistributive principles intended to support those rights, have argued that rights need to be related to a given community, that demands for economic justice should depend on minimum welfare and social justice within recipient states. For now, we shall only consider the claim that positive rights lack the imperative form that negative rights possess. This claim can be understood in two senses: that the ascription of negative rights of security of property, civil liberties, and so on, to a person does not entail that he need be provided with the resources to enjoy the activities and opportunities which his negative rights exist to protect; and that positive rights, unlike the universal obligations of forbearance to which negative rights give rise, do not give rise to obligations on anyone's part to satisfy them.[17]

The 'Compossibility' of Rights

It is often argued that negative rights are 'compossible' in a sense in which positive rights are not. Their universal satisfaction (that is, the protection of 'individual domains' against coercion) is taken to impose no costs on finite resources, merely to require mutual forbearance, whereas in a world of scarcity, the fulfilment of one person's positive rights at a particular level of available social resources can only be at the disregard of another's. Furthermore, government

intervention and redistribution of resources which the satisfaction of positive rights requires, are said to violate negative rights to property and other economic freedoms.[18]

But this argument fails. It is by no means certain that positive and negative rights can be sufficiently distinguished in practice to permit the establishment of an order of priority between them. The violation of negative rights through outside interference, whether from domestic or foreign governments or from powerful interest groups, is one chief reason why many of the world's people are deprived of a livelihood. Therefore, what appear as demands for positive rights are often in fact demands for rights of non-coercion as the first condition of self-help and subsistence.

The truth is that to search for the origins of both sorts of rights will lead us in the same direction. The idea of negative rights, the claim that certain violations of this integrity should never be inflicted on people, is an assertion of people's abstract, equal moral value. But we have also noted that the introduction of the idea of agency lends a categorical element to rights, and that the respect of agency requires material resources, the substance of positive rights. This is itself a consequence of the equal moral value of individuals.

Yet the protection of property, for example, requires additional resources which, in times of mass privation or when there is otherwise a deep sense of injustice, may be great. It is not at all clear that the abstract negative right to security of property justifies indefinite claims on scarce resources for the protection of property, if only for the reason that it is unclear whom this right is being asserted against. It is presumably asserted against the potential thief; but not all members of society are thieves. So why should the opportunity costs incurred by the diversion of resources to protect a particular individual's property be borne by others who may neither benefit from his possession of it, nor pose a threat to his continued possession of his property?

F.A. Hayek attempts the witticism that the right of paid, regular holidays asserted in the Universal Declaration of Human Rights might as well be extended to Abominable Snowmen, such are its chances of being realised. Yet it does not seem prima facie unreasonable to draw up a set of 'basic rights' which could be generally satisfied without requiring limitless resources.[19]

Legitimate claims to economic and social resources can arise in other ways. Negative rights to non-interference may, as we noted, be violated in such a way as to prevent people helping themselves in

creating their own means of subsistence. This may take the form of coercive deprivation of resources – such as paramilitary thugs destroying peasant smallholdings to obstruct land reform or to encourage collectivisation – or denial of the fundamental negative right of initial equality of opportunity in creating the means of subsistence and in fulfilling personal projects in life. This denial takes many forms. In developing countries, production for consumption by privileged elites may effectively deprive the subsistence part of the economy of even minimum agricultural resources, whilst grossly unequal distribution of income generates a chronic inflationary momentum which leaves those on the margins of economic life in a hopelessly disadvantaged position. In developed societies, the translation of economic inequalities into social inequalities often creates effective barriers to equal access to opportunities and rewards. As a result, the lack of those resources that are the substance of positive rights comes to constitute a denial of negative rights also, at least assuming that the right to benefit from opportunities entails the right to be able to take them up.

Fundamental Needs and Rights

The nature of positive rights as such is clearer where absence of resources is not a consequence of external abridgement of the right of self-help. Children, the elderly, the disabled, or the majority of the world's population who live in countries without the resources to provide a minimally adequate diet, health provision or basic education, are examples of people who are not only being prevented from exercising their capacity for self-help, but who lack such a capacity, or possess it only in a limited way. The existence of fundamental need, where self-provision is not possible, gives rise to a right in respect of the object of that need.

To show this, we may again consider H.L.A. Hart's conception of 'special rights', which arise either from explicit contract or implicitly from the 'mutuality of restrictions' which is the necessary condition of civil society. All the people mentioned above may have special rights against others because of some special relation in which they stand to them. But the view that all persons derive the same kinds of rights, which are binding with the same kind of imperative force, from similar kinds of situations, is one that needs to be defended.[20] That defence must, in turn, depend on some deeper argument for the equality of all persons as potential bearers of rights. Since it is a familiar proposition that there are few if any empirical senses in which

human beings are equal, agency provides the most satisfactory criterion of human equality. Indeed, without the concept of agency as the essential condition for the ascription of rights, it is not clear why identical personal attributes would in any case lead to the requirement that persons be treated equally.

If needs are to be the criteria for the distribution of at least the most important social resources (let us for now say those that are indispensable to life, and to unstunted physical and social development), then the right to have one's needs provided for, where resources exist but where self-help is insufficient to meet those needs, is grounded in that same assumption of equality of persons-as-prospective-agents which is needed to make sense of the concept of special rights, as well as the broader range of negative rights with which classical liberal theory has been concerned. We cannot compartmentalise rights into negative as opposed to positive, or formal as opposed to substantial categories because the conditions of agency are either met or not met, and these conditions are always both protective and permissive.

Distribution and Relevant Reasons

In circumstances, then, where the individual is incapable of self-help, his fundamental needs ought to be the first condition met by the distribution of economic and social resources. The pattern of distribution of resources in a society must, of course, meet many other conditions, and satisfy other sorts of rights than basic ones. But with respect to that increment of distributable resources which is required to satisfy those basic rights whose objects are the satisfaction of fundamental needs, such needs are a sufficient and not merely a necessary condition of a just distribution. A corollary of this is that it is irrational as well as wrong to introduce other distributive criteria in respect of fundamental needs. Thus, Bernard Williams has argued that the provision of medical care, for instance, on the grounds of capacity to pay rather than of illness must be ruled out.[21]

This principle of the 'operativeness of reasons' has been disdained by libertarian thinkers and others who reject the notion of positive rights. For example, Robert Nozick denies that equality of treatment which is said by supporters of positive rights to require the distribution of (essential) resources according to need, can be argued for, as opposed to being merely asserted as desirable.[22] But this denial is unwarranted. The abstract equality which underpins negative rights and special rights becomes concrete in the equal capacity of all

persons to actually exercise those rights. Equality before the law is meaningless if some people by virtue of their superior wealth can 'purchase' a favourable legal verdict.[23] Equality requires that criteria for access to the particular good be relevant to the good itself.

Basic rights are operative in that sphere of needs which the principle of agency transforms into rights, and distinguishes from the sphere of 'wants' understood as claims on resources that are not primary conditions of agency as such, though they may be for particular sorts of activity. We have noted that basic rights thus understood establish priorities for the social distribution of resources up to the level at which basic rights are generally met. To maintain this is not to discount the importance of special rights as such above that level of provision. The idea that human needs generate rights is not in itself a principle of substantive equality; special rights may exist which legitimately give rise to unequal distributions of social goods.

The justification of those inequalities that are needed to provide incentives for economic growth and for the overall expansion of available social goods will depend on those additional resources being used to satisfy basic rights. If short-term incentives are resourced at the cost of anyone's basic rights, then that individual is thereby being sacrificed to the future welfare of others.

All positive rights are conditional in the sense that they cannot give title to resources that are non-existent. The abstract equality of which they are an expression serves only to guarantee the material conditions of agency to the extent that this is possible without further denial of another's basic rights, and the point at which this occurs is always defined by the level of available resources. But the question of availability must not be restricted to the particular state alone.

It has been our position that the moral authority of the state and of its external claims depends on its protection of justice and rights at home. This is so because all the justice-claims of the state are valid only to the extent that the state mediates the legitimate justice-claims of its members, and translates them into demands that may be made against the international community. There is nothing in the nature of the state that permits us to construe it as an autonomous or independent bearer of rights or entitlements to just treatment.

But 'ought' implies 'can': the obligation of the state to secure the basic rights of its people, for example, depends on its being materially able to do so. If it is not so able, then this obligation, being universal in its nature though falling initially on the state whose people are in need, passes on to other states. Again it does so only mediately, that

is, in so far as states are the representations of societies. It is between societies as groups of actual, living people, and not between states as political abstractions, that obligations ultimately exist. We may say that all individuals, wherever they may be, have obligations to provide resources to secure the basic rights of others, provided only that their own basic rights remain secured. The special rights enjoyed by people as members of particular societies and legal orders only become independently morally operative at this point.

The Primacy of Rights

Rights are not coextensive with morality as applied to the treatment of others, but they are primary concepts in the morality of politics, because other moral criteria for treatment, such as merit, or love, are of diminished importance in determining the just distribution of social goods amongst strangers. It is not necessary, or relevant, to have intimate or subjective feelings about another to recognise him as a prospective agent, with all that that entails. But it does entail making it possible for him to act when he cannot do so alone. That is why, whatever the independent value of negative rights or special rights, it is simply an insult to deny a person in such a situation the material conditions of a meaningful existence. There is an ascending scale of seriousness of such insults.

In a society in which education is sold as a commodity, so that material wealth, and not intelligence, motivation or other determinants of the capacity to benefit from education become the sole criterion for its distribution, the essential moral equality that the ascription to persons of all types of rights assumes and the degree of material equality that the concept of agency requires are mocked.[24] They are mocked still further when claims for food or primary health care are denied the status of rights. Negative rights do not strictly entail the satisfaction of positive rights; but when their assertion is associated with the denial that there are such things as positive rights, then they become worse than valueless.

5.2 THE STRUCTURE OF INTERNATIONAL ECONOMIC RELATIONS

The economic and social aspects of basic rights are quite evidently denied to untold millions of the world's population. We have con-

structed a theoretical defence of rights; we now need to answer the practical question: how far is the denial of these rights and justice-claims a consequence of the structure of international economic relations?

Interdependence and International Relations

In the realist perspective, national security is top of the agenda; its military, strategic and economic dimensions are the principal concerns of governments. International integration and co-operation are limited, voluntary, and exist only where tangible benefits to governments can be realised. In contrast, the theory of interdependence stresses the growth in salience of the 'low politics' of economic welfare and protection of resources and markets through international co-operation. Whilst national power is still accepted to be important, the hierarchy of issues is no longer inflexible.[25] It is the nature of the new global linkages that the 'power' of states is not uniform across all levels of interaction with other states and sub-state groups. For example, the representation of small states in international political and economic forums may enable them to extract concessions (economic or military aid, 'most favoured nation' status) from more powerful, developed states, in return for their support of the latter on issues of 'high politics'. The usually strong support of Caribbean states (Cuba obviously excepted) for the United States provides an example of this.

In general, interdependence theorists concur in regarding the conception of international politics as a 'zero-sum game' as being a dangerous anachronism. Whilst there is disagreement as to how far realist paradigms are able to incorporate the facts of interdependence, interdependence theory makes much greater use of the idea of reliance; there are mutual costs if relationships fail.[26] But there need be no presumption that the benefits or the costs of interdependence are shared evenly. Interdependence is still competitive; marginal relative advantage is sought between parties. Interdependence can be 'vulnerable' as well as merely 'sensitive'.[27]

Genuine interdependencies of ecological protection and scarce resources are stressed, without the rather affected pessimism of the World Order Models Project school that nothing short of system transformation will permit much to be done about these questions. Most of all, the synergistic nature of the international system of production is emphasised, along with the diminished significance of the nation-state as the basis of the global organisation of production.

This is not enough to make the state irrelevant as a sphere of distributive justice; but where the economic product available within a state is no longer the equivalent of the labour expended and the value added therein, distributive justice evidently no longer comes to an end at its borders.[28]

Interdependence and Inequality

Interdependence theory gives us a richer understanding of the dynamics of international power. We cannot always simply affix magnitudes of power and dominance to the relationships between particular states. These values will change across different areas of interaction, and over time, being negative in some areas and positive in others. Patterns of sensitivity and vulnerability are often subject to quite frequent and rapid change.

There is a real danger that interdependence theory can be used to obscure critical areas of international inequality and subordination which are of a persistent nature. The growing importance of 'low' politics does not alter the fact that the politics of security and military power still serve to reinforce international hierarchy. The idea of the 'relativity' of power relations in the new 'low' politics may come to serve as the ideological justification of this state of affairs. The rewards of sponsorship and 'most favoured nation' status for those developing or otherwise weak states that pursue compliant policies towards developed states and the economic interests based within them offer the former circumscribed possibilities of advancement on the coat-tails of the powerful.

The Brandt Report stresses the mutuality of benefits to be derived from an explicit recognition of interdependence as the organising principle of North–South relations.[29] Where asymmetries are compounded, however, and where economic inequality is translated into still greater discrepancies in political influence, and where interdependent 'growth for all' increases the gap between rich and poor and leads to the further immiseration in absolute terms of the already marginalised classes in poor societies – then interdependence comes to serve as an ideological disguise of pervasive structural inequalities.[30]

The theory of interdependence has been attacked as 'the new ideology of the development establishment',[31] implying a non-existent mutuality and equality in relationships between North and South, whereas in fact the relationships that exist embody systemic inequal-

ity. Supposed interdependence is seen as a means of buying off the radical demands of the Group of 77 states and, more importantly, as a means of discouraging cartelisation by Southern commodity suppliers in a manner similar to OPEC.[32] The discourse of international economic relations is shifted away from justice towards 'mutual advantage', without any conclusive demonstration that fundamental interests can be reconciled within the existing economic and political order.

The Nature of Economic Dependence

The background to demands for a New International Economic Order in the 1970s was a growing rejection by the leaderships of underdeveloped and developing countries of a sort of growth that served only to widen inequalities between North and South. This was combined with hostility, expressed by governments of the Group of 77 states who were increasingly frustrated by the effective stalemate of the UNCTAD process, towards the operation of 'market forces' and the idea of comparative advantage where these embodied grossly unequal bargaining strengths.

The combination of inflation and recession in the developed world led to a worsening of the terms of trade experienced by the South even where commodity prices were rising, as happened in the mid-1970s and early 1980s. The economies of the South were subjected to the combined effects of sharp price increases in imported manufactured goods, a decline in relative export earnings of particularly grave concern to export-oriented economies, and, after the loans free-for-all in the years of highly inflationary petrodollar surpluses, chronic and increasing indebtedness.

As already noted, a main feature of contemporary political economy is the shift from international trade towards the internationalisation of production. The value product of multinational corporations now exceeds the entire value of trade in the non-communist world, and even then the figures for international trade include intra-firm transfers. As Ankie Hoogvelt has persuasively argued, severe technological dependence has followed from this, with parent companies overcharging their wholly or partly owned subsidiaries in developing states for maintenance, sales and royalties, and thus replacing the old expropriation of dividends with hidden transfers.[33] She notes that this amounts to a new form of surplus extraction, based on a new separation of ownership and control. Technological dependence has replaced first political and then economic dependence. The effect of

the internationalisation of production on Southern states has been to open up a divide between those that have mineral and fuel resources and industrialising markets which enable exchange in world markets, and those that do not.[34]

Against this background, it is unsurprising that political efforts to restructure North–South economic relations have been hampered by differing and ultimately incompatible motivations. The principle of 'trade not aid' was adopted at the first UNCTAD meeting; in subsequent meetings and in the GATT rounds demands have centred on positive discrimination in favour of exports from developing countries. These demands have largely been rejected, especially by the United States, on the grounds that discriminatory preferences contravene the free trade principles from which all are supposed to benefit.

The question of how North–South economic relations are to be interpreted is of crucial importance for understanding the normative issues that the larger question of international distributive justice raises. We may distinguish 'liberal', 'structuralist' and 'Marxist' interpretations.

The Liberal View of North–South Economic Relations

The liberal interpretation informs the orthodox attitude of most governments of developed states towards Third World development. The importance of unrestricted economic contacts is stressed and developing countries are encouraged to adopt 'open door' policies on trade, investment and the movement of labour, which are seen as the only way to avoid both capital and labour shortages. In this dominant view, the principle of comparative advantage ultimately leads to growth on both sides, whilst the international specialisation it produces is also mutually beneficial. The South benefits from trade according to factor endowment. Trade facilitates higher levels of national savings and consequently of investment, encourages the production of material goods which in turn provide further incentives, encourages entrepreneurship, and serves to develop technical and management skills which are essential to future growth.

In addition to the assumption that contacts between the developed and the developing world are mutually beneficial, three further propositions may be taken to be generally typical of the liberal outlook. Firstly, the condition of most Third World economies is at least comparable to earlier stages of development in economically advanced countries. Questions of natural factor endowment and cul-

tural attitudes will be crucial for future development in poor countries, just as they have been in rich ones. The developed world can only offer assistance, such as through selective aid and non-discrimination against processed exports from developing countries (often more the exception than the rule), to encourage a process of growth which ultimately can come only from within developing societies themselves. Secondly, the wealth of the rich is not seen as in any way the cause of the poverty of others. On the contrary, global inequalities as well as those within developing societies are seen as indispensable to economic growth. The process of development in the Third World can only be assisted by access both to the capital and to the markets of the developed, industrial world. Thirdly, there is an assumption that private enterprise and free markets, both within states and internationally, are most conducive to growth, and there is a related suspicion of socialism and planning.

To take these arguments in turn, the idea of mutual benefit in international economic relations is a highly questionable one. Thomas Weisskopf has argued that capitalist forms of economic 'development' in the Third World tend even to worsen underdevelopment, political subordination and inequality in the distribution of income, both within developing societies and internationally. The structure of demand becomes biased in favour of elites, and against unskilled labour, which becomes increasingly economically marginalised.[35] Growing concentrations of wealth, the 'demonstration effect' of Western-style consumerism, the consequent increase in imported goods, and the influence of capital-intensive production techniques lead to persistent foreign exchange crises and the diversion of precious resources away from development. At the same time, the urgent need of developing countries for aid leads to political subordination by institutions like the IMF or the World Bank, and further compromises national autonomy when this has already come to mean little to elites, more concerned with safeguarding their privileged relations with foreign patrons than with the overall interests of their societies.

In addition to creating problems of technological dependence, multinational corporations may also come to erode the political authority and economic capacities of host governments in Third World states. Transfer pricing between different branches of corporations diminishes the tax-raising capacity of such governments, and thus deprives them of resources needed for infrastructure, education and health provision, and other objectives in improving social welfare and labour productivity, objectives which are themselves requisites

for future, self-sustaining growth. The effect of such corporate activity has often been to increase the metropolitan dependency of the 'middle class' of developing states and simultaneously to exclude them from strategic levels of management, so that domestic business elites remain at the level of 'branch plant managers', excluded from those decisions that vitally affect their countries' interests. At the same time, governments become overwhelmingly dependent on these corporations to provide funding through exports for imported capital goods, to avert foreign exchange crises, and to finance through their taxes government expenditure on infrastructure and training.

None of these effects is anticipated by the equation of conditions in the now developing world with earlier stages of progress in the developed world. Too many features of the situation of the modern South were never experienced by the economically advanced states. These include the absence of comparative advantage with respect to the already-developed world across most of the spectrum of manufactured goods, and the consequent reliance of most Southern countries upon food commodities, raw materials and mineral exports for most of their earnings.

The developed states of Europe and North America never experienced a phase of development where investment capital was almost wholly controlled by economic centres outside their ambit, which were able to control the supply of development finance principally to suit their own economic interests rather than those of the developing states.

The once-developing states of the Western world were never historically burdened with huge external debts which declining terms of trade and export revenues made it impossible even to effectively service, or as a consequence of which international financial institutions offering little help beyond the recycling of credit were able to insist that development resources be used to service debt, that export dependency be further increased, and that welfare and training programmes be curtailed: 'In summary, the developed states of the West never passed through the conditions which beset the developing world today.'[36]

In a world of fundamentally unequal exchange, and still more unequal ability to command development resources, it is unreal to suggest that patterns of consumption have no appreciable effect on the scale of these inequalities. This fact undermines the credibility of reliance upon 'market forces' for economic development. Production is only undertaken where demand exists. Aside from the difficulties of import substitution confronting developing states, the unequal con-

centrations of wealth in their societies and the consequent predominance of consumption by elites in the total composition of demand promise to skew unplanned production accordingly. The opportunity costs imposed by such production in terms of diversion of resources from agricultural development and the provision of other basic societal needs are evident.

The Structuralist Approach

Structuralist theorists, such as Gunnar Myrdal, have responded to the inadequacies of liberal theories of development by focusing on terms of trade as the crux of global inequalities.[37] Trade, so far from promoting growth, is seen to have widened the North–South divide. Inelasticity of demand for primary exports and a competitive international market lead to declining prices for commodities from developing states, whilst monopoly in the markets of the developing world leads to higher prices for developing countries' necessary imports. Income thus gets transferred from poor to rich.

Other structuralists stress disparities in power as a feature of transactions generally. Johann Galtung has focused on problems of structurally unequal exchange between 'centre' and 'periphery' states at many levels: economic, political, cultural, military, and so on.[38] These structural inequalities exist within societies as much as between them. The advanced export sectors of Southern economies created by trade have little effect on the rest of the economy in growth terms; indeed, they drain resources from it. Externally, unequal power relations are reflected in the limited opportunities for capital investment in supposedly developing states in the face of more lucrative Northern market opportunities. As a result, investment comes to be concentrated in export sectors. The modern sector in post-independence states has often been

> very small and narrow in its base, catering mainly to the consumption needs of a fraction of the people and unable to provide employment to a fast-growing population. The result [has been] that an increasing proportion of this population [has been] thrown on the backward sector of an economy based on subsistence farming and other primitive occupations, thus giving rise to the phenomenon of growing under-employment and poverty in these regions – as a result of being drawn into a common world economy.[39]

One major problem is the irrelevance of much of the technology which Southern states have imported to the real needs of their societies. A small and mechanised industrial sector absorbs a lower and lower increment of the expanding labour force, increasing underemployment where lack of investment in technology causes continuing low levels of productivity. The effects are to reduce the savings-potential of these countries and to shift resources and priorities to production to favour the rich, leading to a distorted form of economic development which is out of line with the real needs of the community.

This form of partial development has created an educated and urbanised middle class separate from and hostile to the rest of society in underdeveloped states. The elite/mass separation in these societies, based upon growing economic differences, is seen as the central problem of growth.[40]

Marxism and Dependency Theory

Marxist theorists have been critical of structuralist theory for not focusing on exploitation as the inevitable condition of international capitalist production, and for being too concerned with matters of unequal exchange. The absence or proscription of trades unions and the willing compliance of the repressive mechanisms of states with capitalist enterprise in the developing world have led to depressed wages and poor conditions of labour, and in consequence high rates of extraction of surplus value and profitability. The Marxist-Leninist perspective views trade between North and South as inherently exploitative, and not merely as unequal.

The theory of imperialism developed by Lenin and J.A. Hobson explained its motivations in terms of foreign investment opportunities for surplus capital unable to find profitable investment domestically, the search for new markets, and the need for cheap, new resources.[41] This position is open to a number of familiar objections, of which the most serious is that instead of an outflow of capital, an actual movement of capital back to the metropolises has characterised recent North–South relations, whilst the chronic debt burden of developing states has further transferred capital to the North. In addition, Marxist-Leninist arguments rely on underconsumption and export of surplus theories, and on the existence of dependence by advanced economies on Southern raw materials. But developed states may absorb surplus structurally, by means of Keynesian economic policies,

state welfare provision and other forms of public expenditure. Moreover, dependence on the supply of resources from the South, whilst important, is by no means total, since both substitutes and other sources often exist.

The modern, neo-Marxist school of dependency theorists have confronted the problems with the 'classical' approach, and incorporated a number of assumptions similar to those of the structuralists into their analysis.[42] Trade encourages backward forms of production in the South, whilst economic monopoly leads to declining terms of trade for Southern exports and still sharper increases in the prices of manufactured imports. The 'periphery' is seen to be integrated into a world capitalist system in which the division of labour denies possibilities for development. International economic relations are considered as a system within which surplus value is expropriated by the units of capital based in the developed states.[43] The poor countries are needed as reservoirs of cheap labour and materials. What development there is within them is uneven and unequal. Underdevelopment is seen as the underside of capitalist development.[44]

In dependency theory, capitalism is seen as a system of monopolistic exchanges whose effect is to transfer surplus from the peripheral to the centre. Within periphery states, this takes the form of monopolistic trade between provincial centres and the countryside, and the decapitalisation of the latter. Relations of production as such are no longer the exclusive or even the primary forms of exploitation.

It is not evident that dependency theory adds a great deal to the structuralist approach. In fact, it suffers from major problems. One is that the idea of exploitation has a very specific connotation in the Marxist corpus: the extraction of surplus value is the absolute condition of capitalist production. The unequal standing in terms of subsequent economic exchange (the distribution of income and commodities) between capitalist and worker is the consequence of this primary relation of exploitation in the process of accumulation. When it is unequal terms of exchange in themselves that are under consideration, 'exploitation' loses this exact meaning, and the structuralists' conception of 'unequal exchange' is more appropriate.

This sounds like a quibble in comparison with the fact that it is not exploitation that appears as the dominant characteristic of North–South relations. It is rather the marginalisation of most of the world's population by the global system of production, partly in consequence of the forms of development that have occurred. It is true that the profitability of foreign capital and the position of domestic elites may

depend on the prevention or limitation of real development in the South, but such development would itself provide future and greater rewards, at least domestically. It would be unwarranted to maintain that governments of developing states generally have been forced into pursuing anti-development strategies in response to such interests. Against the fact that exploitation remains a central feature of international economic relations must be set the still darker question of the irrelevance of the needs of the majority of the populations of the world's (supposedly) developing societies to the motives and objectives of international production.

In summary, the value of interdependence theory as a critique of the realist conception of the state is eclipsed when it is used to disguise deep, structural inequalities of power. Few relationships of interdependence produce equal benefits on all sides, or equal freedom in choice and availability of alternatives. North and South do not have an equal interest in not rocking the common lifeboat. The glib use of the rhetoric of interdependence does not justify the assumption that one party can be made better off without making the other worse off, nor the assumption that the costs imposed on the better off by improving the position of the worse off are to be felt only in the short term, before a new, higher plateau of benefits can be reached for all. The optimistic promise of mutual benefits contained in the Brandt report are belied by the fact that the reform of an international system in which inequalities are not self-correcting, and in which growth is far from guaranteed for the poorest, seems likely to require more radical proposals than those proposed.

5.3 GLOBAL INEQUALITIES AND RESOURCE TRANSFERS

Foreign aid, in the form of bilateral economic assistance and multilateral contributions to UN agencies and to world financial institutions such as the World Bank offering discounted loans and other facilities, has been roundly criticised by both left and right. From the left it has been argued that economic aid has been intended to serve the interests of the rich rather than the poor, either by being tied (in the case of bilateral aid) to the future purchase of imports from the donor states, or more generally by being made available only for those forms of economic development that are compatible with the interests of developed countries and of the corporations based within them. The corollary of this is that aid may be used by the developed

countries (particularly by the United States) to discourage the governments of developing ones from adopting socialist or collectivist approaches to economic development.[45] The Hickenlooper Amendment, providing for the suspension of US aid to any country in which US-owned assets have been nationalised without 'prompt and effective' compensation, is an example of such an approach.

The application of the economic theories of industrialised states to the economies of developing ones leads, it is argued, to wholly inappropriate policies, such as the diversion of funds away from desperately needed agricultural development to industrial projects of questionable efficiency. These are more than technical questions: aid is used as a lever to alter the social priorities of governments. The significance of the commitment of Northern donor states to liberal economic principles such as free markets, trade security and effective debt servicing is, in the view of many left-inclined critics of present aid policy, that first international monetary stability, then growth, then (if at all) questions of social welfare and distributive justice are the descending order of priorities for donor states. In practice, stability remains elusive, whilst growth exacerbates inequalities, and expenditure on social welfare programmes comes to be actively discouraged by donor governments and international organisations alike.

In sum, the radical critique of aid is that it serves to increase the trade and investment dependence of developing states, strengthens the position of elites within them, stunts agricultural development, and reinforces economic linkages which are already disadvantageous for developing and underdeveloped countries. In addition, the weighted voting system of the IMF and other organisations in favour of the major donor powers both enshrines and protects an international hierarchy in which the South plays a subordinate role.

It is important to identify the counterproductive and damaging features of particular aid policies, but to do so should be to support a plea for forms of aid which avoid these consequences and not to make a case against resource transfers per se. Nor does it seem consistent to describe aid as imperialism when it is simultaneously asserted that the level of aid globally is too small to have any significant effect on disparities of economic power between North and South.

Whilst aid intended primarily to serve the self-interest of donors has in some circumstances served to increase inequalities and protect elite privilege in recipient societies, this harmful interference by donor

governments and organisations does not serve to establish the converse case, that questions of distributive justice and efficiency of usage of resources are illegitimate criteria for the supply of aid, and that no attempts to influence the policies of recipient governments are ever justified. To argue against these assertions is certainly not to justify aid as a means of ensuring ideological conformity and the maintenance of international hierarchy. But nor does the rhetoric of 'aid as imperialism' justify the assertion of an absolute doctrine of economic sovereignty as a counter-principle to this hierarchy.

A Right-Wing Offensive Against Aid

Criticism of aid from the right has stressed market forces and trade as the basis of growth, and rejected the idea that there is a prior need for infrastructure or 'nation building'. Aid is said to have encouraged anti-market and *dirigiste* outlooks on the part of the governments of developing states. In this vein, P.T. Bauer has argued that planning leads to the 'over-politicisation' of economics and social life, and also hampers growth.[46] Resources are wasted on grandiose projects when even the provision of that basic infrastructure and functions that market incentives do not exist to provide would be enough to stretch the capacity of most developing states. Aid has only served to foster resentment in developing societies as a result of a false belief, inculcated by ideologically motivated elites in both Northern and Southern countries, that the societies of the former owe a debt to the latter. The redistributive effect of aid is said to be from the poor in the developed states to the wealthy in the Third World.[47]

What is important is the whole web of social and cultural attitudes within societies. The ceteris paribus assumptions of macroeconomics are rejected. Instead, certain social and cultural traits are associated with growth prospects. Asiatic authoritarianism, contemplative attitudes, lack of personal curiosity, and beliefs in the 'organic unity' of nature are seen as inimical to development. The remarkable economic success of certain Far Eastern states is rather problematic for such a hypothesis.

Aid, finally, is seen both to exacerbate economic dependence and to stifle growth by discouraging the free market conditions necessary for it. It thereby creates a self-perpetuating need for further aid, and may even widen the gap between rich and poor countries. As the benefits of aid tend to accrue to the better-off, it may also exacerbate inequalities within recipient societies. It may serve to feather-bed incompetent

and anti-Western elites, and to underwrite domestic repression of productive groups.

Not all of these criticisms are without value, but we should have serious reservations about the self-righteous tone of conservative commentators. It is disingenuous for arch defenders of the international status quo, such as Bauer and Robert W. Tucker, to excoriate wastage on 'show projects', such as multi-terminal international airports in developing countries, when the association of power and prestige with ostentatious wealth in the developed countries produces a quite inevitable example effect on the attitudes of elites in the developing world. Nothing is a surer butt of jokes at a country's expense than an international airport with a pitted runway and a corrugated-iron terminal building. However, the private consumption of elites, whilst frowned upon as wastage by the wise and virtuous men of international development agencies, is usually on a much lower scale than is regarded as the just reward for people of equivalent seniority and responsibility in the developed world. Such lifestyles may still consume resources unjustifiably when primary social needs are unmet; but ideas of status and merit are globally contagious and hard to overcome.

The claim that inequality and maldistribution within recipient states lessen the responsibility of the developed world to transfer resources is far from obvious. Once again, blame is transferred to the victims. Domestic injustice, wastage, governmental incompetence, and even persecution of the most productively advanced groups are major problems with which the administration of aid and other forms of resource transfer must contend. They are constraints on the degree of global distributive justice that can be achieved, not reasons to abandon all efforts in that direction.

Needs or Rights?

We have so far spoken about basic rights at quite a high level of generality. We need now to be more specific, but let us begin with the idea of 'basic needs'.

Such an approach is developed by Paul Streeten,[48] who views the diminution of inequality as much less important than meeting needs. More particularly, the redistribution of increments of income which the fulfilment of basic needs necessitates is seen as more practicable in political terms than is the redistribution of total wealth. 'Equality' is said to be an abstract and as such a divisive concept, compared with

the real and tangible benefits which the basic needs approach promises to the most deprived groups in a community, and which can be more easily measured as an index of economic success. Equality as such 'is probably not an objective of great importance to most people other than utilitarian philosophers and ideologues'.[49] The moral priority of the relief of poverty, as opposed to the pursuit of wealth as a goal in itself, is also thought likely to be more germane to the cultures of most developing societies. Social equality is not a primary objective for the further reason that inequalities are said to be justified, following Rawls,[50] where they improve the position of the worst-off members of society, as compared to a wholly egalitarian distribution of resources:

> A development strategy guided by the goal of meeting the basic needs of the poor points to a different composition of products and choice of techniques. A strategy to make income distribution more egalitarian is likely to encourage more labor-intensive methods of production and thereby generate jobs and primary sources of income for the poor.[51]

The value-assumption here is that the provision of basic needs has a claim on resources when these are not met which is always greater than that of non-basic goods. Where there is a gap between available resources and what is needed to meet basic needs, a policy to fulfil the latter is still to be preferred.

On the credit side, the basic needs approach places the satisfaction of primary needs as prior to more extensive rights, including in the most general sense 'special' rights as understood in the first section of this chapter. However, the emphasis placed upon social knowledge as a condition of response to needs may be taken to imply that a philosophical defence of certain types of need as giving rise to rights is impossible or irrelevant, whilst we have argued the contrary. The securing of the minimum resources for a secure physical existence is an imperative which takes precedence over (but does not invalidate) questions of historical responsibility for the creation or perpetuation of need. This latter factor is not to be dismissed, but its exclusive assertion as a source of obligation can be, and has been, used as a device by the governments of communist states and the more advanced developing states to place the responsibility for resource transfers solely with the former colonial powers. Whilst these continue to have special obligations, the recognition that the provision of basic needs is a general imperative extends the scope of

international responsibility way beyond what many states would wish to countenance.

Basic Needs, Distributive Justice and Paternalism

Unfortunately, the concern of the basic needs approach with equality and justice is narrowly circumscribed beyond this point. The relationship between needs and the specific benefits accruing to developed states and their commercial interests from unequal economic exchange is understated or ignored. There is a convenient consequence of this for the developed world. The double-edged effect of making basic needs primary is that, whilst the provision of minimum conditions of existence is valued more highly than non-essential consumption, the narrow definition of basic needs may be compatible with a fixed or only slightly increasing total supply of resources. Scarcity becomes less of a problem, and claims on the resources of the rich are thereby diminished. A recognition of historical and contemporary responsibility as a factor in the obligations to which poverty gives rise must produce a conception of distributive justice which exceeds the minimalistic criteria of basic needs.

Concern seems to be shifted from national economic growth to an exclusive attention to the needs of the poorest. International measures of redistribution come to be dependent upon internal redistribution in recipient states, yet no adequate conception of the nature of social justice within those states, nor of the legitimacy of the external claims of their members, is offered. On one view, the basic needs approach is a step towards an international social policy designed to complement the global management of an increasingly internationalised system of world production[52] and a means of avoiding the main questions of international distributive justice which confront that system.

Basic Rights

One particularly valuable conception of basic rights as the grounds for international resource transfers has been put forward by Henry Shue.[53]

The first thing to note is that basic rights are conceptually and practically broader than basic needs as we have described them. The complementarity between rights to shelter, food, education, and so on and civil and political rights is stressed; together these constitute 'integrity rights'. In rejecting the view, which we earlier associated

with Maurice Cranston[54] and others, that economic and social rights are not absolutely binding in the way that 'negative' rights are, Shue argues that those economic rights that are subsistence rights have the highest priority. They are to be considered at least as important as those political rights concerned with the integrity of the person:

> three particular substances – subsistence, security, and liberty – are basic rights. The main conclusion is that subsistence rights are basic, but a valuable part of the case for taking subsistence to be the substance of a basic right is the demonstration that the same reasoning that justifies treating security and liberty as the substances of basic rights also supports treating subsistence as a basic right.[55]

These rights are complementary and basic because respect for people as agents requires respect for their autonomy and their capacity to act in fulfilment of their projects. If basic rights are not secured, this capacity for agency is denied. Basic rights, then, are everyone's minimum reasonable demands upon humanity. They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept. Why should anything be so important? The reason is that rights are basic in the sense used here only if enjoyment of them is essential to the enjoyment of all other rights.[56]

Subsistence rights are not to be considered as coextensive with minimum economic rights generally, nor do they imply an equality of condition. Rather, they specify a minimum level of provision below which no-one should be allowed to fall, a level below which the possibility of enjoying an active or fulfilled life disappears. And rights always imply correlative duties.

Basic rights are 'a restraint upon economic and political forces that would otherwise be too strong to be resisted, and they are social guarantees against actual and threatened deprivations of at least some basic needs'.[57] Within the category of basic rights, security and subsistence rights cannot always be sharply differentiated. Security rights must also be guaranteed by society, which itself imposes costs:

> Rights to physical subsistence often can be completely satisfied without the provision by others of any commodities to those whose rights are in question. All that is sometimes necessary is to protect the persons whose subsistence is threatened from the individuals and institutions that will otherwise intentionally or unintentionally harm them. A demand for the fulfilment of rights to subsistence

> may involve not a demand to be provided with grants of commodities, but merely a demand to be provided with some opportunity for supporting oneself.[58]

The extension of this theory has important implications for the relationship between Western policies towards Third World and satellite states, and rights observance within those states. The sphere of moral responsibility includes more than support for politically repressive and barbaric regimes. For the West, it would include denying support for economically exploitative regimes, refusal to back multinational corporations whose operations have dire effects on rural underemployment and poverty and which predominantly service elites and comprador groups, as well as stopping aid and development policies that encourage dislocated and harmful economic growth.[59] Drawing on the history of communist and other authoritarian states, the list would include support for governing parties that impoverish their people through brutal and incompetent planning strategies and 'class warfare', or that waste vital resources on military expenditure which their own internal policies of repression necessitate.

Denials of negative or 'liberty' rights may come to constitute denials of positive rights also. There is more to be said for positive rights than the right not to be deprived of one's capacity for self-help, but those who assert the primacy of negative rights often ignore their violation as a factor leading to material deprivation and to consequent claims by and on behalf of the afflicted, claims which they then dismiss as spurious. When people are already deprived of the means of subsistence by external agency, strictures against further interventions and the 'threat to liberty' which they pose add insult to injury.

Basic rights, then, are premised on the insistence that the integrity of the person requires, along with a range of basic liberties, the recognition of entitlements to resources where self-help is insufficient to provide them, as well as rights to security of person and property. This complementarity of rights is seen to be necessary at a practical level. Once we supplement the idea of basic rights with the philosophical conception of agency we have a deeper understanding of them, one that is grounded in the essential attributes of personality and not merely in external contingency. The concept of basic rights arises from a recognition that the characteristics of human beings that produce the idea of rights in the first instance point to the necessity of both permissive and protective conditions of action.

The securing of basic rights is the minimum responsibility of any government towards its people, where this is materially possible for a government acting on its own. Where it is not, the imperative nature of basic rights imposes obligations on other states to provide assistance towards securing these rights, where this can be done without compromising the basic rights of the citizens of donor states. These mutual rights and obligations, however, exist ultimately between *societies*. States are the immediate mechanisms of their satisfaction, but only actual persons can be the subjects of moral rights.

Basic rights are in many respects akin to natural rights as Grotius and the other classical natural law theorists conceived them. The idea of agency and the conditions of its effectiveness give a specific content to those rights which was previously lacking. In so doing, it also gives specific content to international obligations between states and societies in respect of their fulfilment.

Basic rights are also basic in the sense of being restrictive: they cannot be arbitrarily substituted for the full range of other operative rights. They are also basic in the more important sense that their fulfilment takes priority over that range of rights – legal, civil, political, and cultural as well as to welfare beyond the basic rights minimum – that people enjoy by virtue of belonging to a particular society or living in a particular state. The securing of basic rights is itself the condition of their enjoyment. These more extensive rights come into effect with independently binding moral force only when basic rights are universally met. Put another way, basic rights define the demarcation of *droits nécessaires* and *droits volontaires*. They separate that area in which political communities may legitimately look to the rights and the broader welfare of their own from that other area in which global rights and welfare take precedence over the interests of the particular community. This is, perhaps, the crux of our whole argument. The state becomes legitimate as a constituency of justice when, and only when, it works its hardest to ensure that basic rights are met globally. That it require the co-operation of other states is no argument against this.

5.4 PROBLEMS OF INTERNATIONAL DISTRIBUTIVE JUSTICE

Two recent approaches to distributive justice differ markedly in their international implications. If neither entirely works, they do at least shed light on the subject.

John Rawls and International Justice

In Rawls' theory of justice, the circumstance in which the need for principles of justice for economic and political institutions arises is a self-sufficient society which is 'a cooperative venture for mutual advantage', but in which there is both 'an identity of interests since cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts' and 'a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are to be distributed, for in order to pursue their ends they each prefer a larger to a lesser share'.[60]

To decide upon the principles regulating the distribution of the advantages and costs of social co-operation, the persons who will constitute the society enter into a hypothetical Original Position in order to choose principles of social justice. These persons do not know what positions they will occupy in society, what economic, social, educational or other advantages or disadvantages they will enjoy. Indeed they know nothing about their own personal and social identities beyond the 'veil of ignorance'. They are, however, assumed to be rationally self-interested and mutually disinterested.

The Original Position is not meant to be a literal account of the formation of societies and states, but an abstract and hypothetical version of the social contract, the results of which permit the assessment of how close institutions and distributive arrangements in a society come to an ideal of free, rational and voluntary social co-operation. The principles of justice Rawls believes would emerge from the Original Position are:

> First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.[61]

These principles are serially ranked: equal liberty is prior to greater social and economic advantages, and must not be sacrificed to it. It is, however, recognised that the full enjoyment of personal, civil and political liberties requires at least that level of economic and social provision to allow a life of minimum dignity and security. What is to be shared out in society is given in Rawls' account of primary social goods, including such things as 'rights and liberties,

powers and opportunities, income and wealth'. The principles of distribution are part of a larger and more basic conception of 'justice as fairness':

> All social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.[62]

Rawls assumes a 'conception of justice for the basic structure of society conceived for the time being as a closed system',[63] and devotes only a few paragraphs to its extension to international relations. At various points he describes the society he has in mind as 'self-sufficient' or 'more or less self-sufficient', although this supposition is relaxed for the derivation of principles of international law.[64] Here, the Original Position is extended in such a way that the parties become representative of different nations, ignorant both of the relative position of their own nation with respect to other nations, and of their own position within their national societies. Rawls' suggested principles are, in his own words, familiar:

> The basic principle of the law of nations is a principle of equality. Independent peoples organised as states have certain fundamental equal rights. This principle is analogous to the equal rights of citizens in a constitutional regime. One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers. Another consequence is the right of self-defense against foreign attack, including the right to form defensive alliances to protect this right. A further principle is that treaties are to be kept, provided they are consistent with the other principles governing the relations of states.[65]

It should be noted that no international difference principle operates in Rawls' extension of his theory. There is consequently nothing about global redistribution of wealth. The state is seen as the appropriate constituency of justice. However, as we have often noted, states are not closed systems; the facts of trade and interdependence prevent the idea of a 'co-operative venture for mutual advantage' being restricted only to domestic society. Therefore, an international difference principle must apply.[66] If principles chosen in the Original Position are to protect the worst-off, it would be important to insure against being born into a poor society. As Robert Amdur has noted,

> Global application of the difference principle is thus likely to push Rawls' theory in a more radical direction. It is almost certain to require a far more egalitarian distribution of wealth than that which presently prevails. Under this principle, an affluent state that is perfectly just internally (whose inequalities all work to the benefit of the worst-off group) may still be unjust vis-à-vis other nations. Justice is likely to require monetary and trade reforms, debt cancellation, and, more important, massive development aid; in short, a substantial redistribution of wealth from the rich nations to the poor.[67]

Such a principle might be thought even more important to the participants in the Original Position. By and large, both the minimum resources available and the chances of improving one's position are greater in richer societies, whereas in societies with an acute shortage of resources, both may be effectively non-existent. Disadvantage may be absolute as well as relative. Therefore, the need to compensate for the mishap of finding oneself in a poverty-stricken society would be pressing. It should be noted that the difference principle has no relation to past exploitation or deprivation of resources; such arguments are irrelevant to the Rawlsian justification of initial principles.

The major problem of Rawls' theory is with respect to the role of the state in global distributive justice. He assumes the state as the appropriate constituency, but does not specify why those in the Original Position, knowing that co-operation extended beyond the boundaries of the state, should nonetheless choose it as the sphere of operation of the principles of justice to be chosen. Even if they did, unless there were a necessary reason for confining questions of distributive justice to the state, or unless there were an international difference principle in operation, it is unclear how Rawls could defend the view that a 'war for economic gain' would necessarily be unjust. There is no requirement for the poor to respect the advantages and possessions of the rich, unless the rights of both are incorporated in a difference principle to which both could have consented.

Independent states are also assumed for the negative reason that the idea of a world government conflicts with Rawls' belief in individual participation in decision-making. As a result, redistribution where an international difference principle requires it is still to be mediated by sovereign governments, who may not use it to benefit the worst off in their societies. International redistribution is not internal redistribution writ large. But since states are, considered morally, fictive entities

without the capacity of a unitary and rational being for choice, individuals and not states remain the ultimate beneficiaries of international justice. In consequence, donor organisations (including governments) must be considered to have a right to tie the transfer of resources to the adoption of fair distributive policies (as specified by the difference principle operating domestically) on the part of recipient governments. The claim of the latter that sovereignty is thereby infringed is not to be allowed. Intervention might even be chosen in the Original Position as an automatic means of implementing the difference principle whether it is violated internationally by states refusing to deliver up the resources to which others are entitled, or domestically by conditions of social injustice.

We have noted the dangers of intervention as an overt (and usually of necessity) military activity, despite the existence in relations between certain states of what amounts to 'structural intervention'. There are excellent reasons not to choose intervention as an imperative principle. And an obvious question is, 'Wouldn't people value the autonomy of their states more than to allow for regular interventions, with all their attendant dangers, and risks of escalation?'

These ambiguities about the state arise because Rawls' theory of the value of the state as a constituency of rights and justice is too thin. The same may be said about Beitz's extension of the Rawlsian argument,[68] in which the facts of mutual benefit through global co-operation extend the difference principle to international relations. The interpretation of this as a principle of international justice is both too permissive – it ignores the rights and justice-claims individuals and groups may hold against their states, and against one another within their states – and too restrictive: there are rights that do not arise through co-operation or interdependence, and basic rights as we have understood them are among these.

It is also interesting to note that whilst Rawls' justification for self-determination is grounded in the assumption that societies are self-sufficient, the granting of such an assumption would not make it clear why the facts of internal co-operation and self-sufficiency should give rise to external rights of autonomy. A source of ambiguity in Rawls' position on self-determination is that whilst the value of collective goods (including the right to autonomy and respect as a member of a group) is defended in Rawls' theory, individual choice places constraints on collective claims whenever these pose a threat to individual autonomy, and there is the at least latent danger of this in most claims for self-determination.

Radical Global Egalitarianism

From a different perspective, Peter Singer takes an uncompromising view of the extent of the obligations of private individuals as well as of states in overcoming global poverty. He contends that

> neither our distance from a preventable evil nor the number of people who, in respect to that evil, are in the same situation as we are, lessens our obligation to mitigate or prevent that evil . . . : if it is in our power to prevent something very bad from happening, without thereby sacrificing anything else morally significant, we ought, morally, to do it.[69]

If it is the case that in a time of famine, for example, few other people are likely to donate the amount to relief which would, if that amount were donated by everyone, prevent the famine, then this fact serves to increase rather than diminish my moral obligation; so that

> it follows that I and everyone else in similar circumstances ought to give as much as possible, that is, at least up to the point at which by giving more one would begin to cause serious suffering for oneself and one's dependants – perhaps even beyond this point to the point of marginal utility, at which by giving more one would cause oneself and one's dependants as much suffering as one would prevent . . .[70]

Whilst Singer does not go along with Bauer in claiming that

> The moral obligation to help the less fortunate cannot be discharged by entities such as governments. It can be discharged only by persons who are prepared to impoverish themselves and weaken their material position relative to others in order to help their poorer fellow men[71]

he sees no reason to assume that the responsibilities of individuals are subsumed in those of governments.

The basic rights approach, indeed the whole argument for justifying positive social and economic rights, requires equality only in the sense of equality of treatment in the satisfaction of those rights. Arguments could be made to show that a fuller conception of rights requires a more substantive social and economic equality, but equality in this sense has not been our concern. Basic rights certainly do not require an absolute equality of condition among persons, according to a principle of comparing marginal utilities of donors and recipients. It

is not in any case clear how such utilities could be measured. Material wealth has different significance, and leads to different opportunities, in different societies. A cross-cultural comparison of the utility derived from the possession of material resources would be, in practice, impossible to make. Social opportunities, respect and autonomy are also rights of agency, and the relationship of these rights to physical resources are also cross-cultural variables.

Causality as a source of obligation to redistribute resources is a vital element left out by Singer. It is surely warranted to assume that those societies, and those individuals and groups within them, that most benefit from an unequal system of economic exchange thereby incur the greatest obligations of redistribution. Causality is not a necessary part of the obligations to which primary need gives rise, but the distribution of those obligations across donor societies is as important as it is where rights exist because people have been deprived of resources through unequal exchange. Singer offers no account of how the burdens of redistribution are themselves to be subject to a principle of distributive justice across society.

The rights to resources to which deprivation gives rise have at no stage been argued to be coextensive with rights to resources or opportunities in general. Special rights arising from contract, promise, family and kinship relations, and, in a general sense, membership of a society are also to be considered. It has only been remarked that the idea of agency as the ultimate source of all rights requires that basic rights be assigned priority over the satisfaction of other rights, since otherwise the minimum conditions of agency are denied. One of the values of providing for people's basic rights is that a range of personal opportunities is opened to them, and these include opportunities to enter into relations with others from which special rights arise. Instead of these distinctions, Singer offers an account of undifferentiated, and unexplained, obligations to redistribute resources which avoids all discussion of rights and the circumstances which create them.

Distribution to the point of equalisation of conditions may even undermine the agency of the recipient. The most poignant feature of global poverty is that it is for want of the most basic resources for self-help that so many suffer it. Charity is at the whim of the giver; once the permissive conditions of self-help are created, the autonomy of the recipient is restored. Everyone has the right to have his or her fundamental needs provided for, but beyond this point it is common experience that people's enjoyment of resources depends on their being able to proffer reasons relating the possession of those

resources to their own actions (even if these reasons are sometimes unsound).

Basic Rights and International Obligations

The weaknesses and omissions of the approaches we have been considering further encourage us to believe that basic rights should be the most important criteria of international distributive justice. They are not of course the only criteria: questions of unequal and coercive economic exchange and compensation for past exploitation and subjection are of great importance also. But the conception of basic rights that we have defended here, and the specification of the circumstances which cause those rights to be denied, takes some account of those other conditions of injustice, as we have seen. We begin with a fundamental problem which we have not yet tackled. We have spoken a great deal about obligations existing between states and societies, in respect of past exploitation, political and economic subjection, or currently unequal or even coercive economic relations, as well as in respect of basic rights. But what exactly does it mean to say that collectivities like states or societies have mutual responsibilities? How do group obligations differ from individual ones, and how do these obligations devolve upon private individuals or sub-state groups?[72]

The Problem of Collective Responsibility

Evidently states vary greatly in their promotion of the common good. States often act to uphold powerful sectional interests or classes, and thereby incur moral responsibilities which correctly pertain to those interests and classes alone. Most historical variants of imperialism have generated such responsibilities. The potential of the state to represent the common social interest is no ground for holding that all classes of society bear common responsibility for all externally directed actions of the state. Nor, by the same token, does popular support for imperialistic policies, or for any other rights-violating policies, imply popular responsibility where that support has not been a necessary condition of such a policy's being adopted or maintained.

Claims made in terms of international distributive justice may be considered as restitutive where they have their basis in former exploitation, or as claims for the satisfaction of basic rights where primary human needs exist unmet. The distributive principles of the

obligations to which the different rights embodied in these claims give rise will also be different. In the case of restitutive claims, those social groups whose economic position has benefited most from the past exploitation of others will have the greatest responsibility to make good that exploitation. The fulfilment of this responsibility can be at least approximately secured through progressive taxation as a means of funding overseas aid and other resource transfers.

In this instance, the responsibilities of states and societies are not coextensive. What about instances where the violation of the rights of people outside a particular state benefits all or most groups within that state? Above all, what about the distribution of obligations to meet basic rights when the circumstances in which those rights are not secured cannot be said to be caused (at least not directly caused) by external action?

A relevant concept here is that of 'moral proximity'.[73] An agent is responsible for the outcome of his action to the extent that the action was a sufficient and not merely a necessary cause of that outcome or that the action constrained the choice of others whose actions were necessary conditions of the outcome, and in either case that the action was intentionally directed towards the outcome produced. Such a concept is not without pitfalls, not least in that the people who most benefit from policies and actions are not always the ones who instigate them. This consideration aside, there are at least three levels of practical application of the concept of moral proximity.

Firstly, it determines how far rights violations are caused as a direct result of state policy, whether it be support for depredatory multinational corporations, or diplomatic resistance to changes in international economic agreements that benefit domestically based corporations operating abroad.

Secondly, it determines to what extent various social groups have benefited from a rights-violating policy, where this is unequal between groups. Once again, it appears unacceptable to hold collectivities responsible in an undifferentiated way. Lastly, in the case of the obligations to which the existence of the basic rights of members of other societies give rise, the distribution of those obligations should not be such as to increase inequalities within donor societies. Any regressive element to the funding of resource transfers is morally arbitrary if all the members of the donor society are equally innocent of causing deprivation. In fact, a stronger supporting case for progressive taxation is that there is often a causal relation between economic policies that benefit aid donors and the condition of poverty

of the aid recipients. Again, a principle of proportionality between the distribution of benefits received and the distribution of obligations of restitution is required.

Where the moral proximity argument becomes most obscure is in its application over time. Firstly, where distributive justice requires restitution, the determination with any degree of precision of how obligations should be distributed may be difficult. The institution of inherited private wealth in capitalist societies does permit the identification of which contemporary individuals and social groups have most benefited historically from rights-violating policies, but the way in which benefits have accrued to different social groups over decades or centuries may be visible only in outline. Robert Nozick, for one, offers no real evidence that it may be visible at all.[74]

It can be argued, for example, that the more privileged sections (at least) of the British working class benefited in absolute economic terms from the access to markets and resources provided by the Empire, even as they were themselves victims of high rates of economic exploitation.

Secondly, the estimation of the extent of the effect of imperialism on the retardation of economic development in former colonies is beset with counterfactual arguments, even though that effect was certainly not zero. Historical responsibilities cannot be evaded; but they are unlikely to be as clear as is the evidence we have seen that contemporary economic relations between rich and poor countries severely damage the development prospects of the latter.

Lastly, an initial inflow of resources obtained in an exploitative manner may be a necessary but not a sufficient condition of economic growth. Members of societies have rights as a result of their co-operative efforts, and on the basis of what are best termed 'settled expectations'. By the latter is meant rights to those resources that sustain a pattern of social life and provide the basis for provision for future generations, even where those resources were initially obtained unfairly. It is not claimed that such rights are any more absolute for societies than for individuals. The obligation to make good a theft is never completely avoided, whatever subsequently was done with the loot. Nor does it follow that any of these possible sources of collective responsibility for previous harm is beyond all determination. What is clear is that the calculation of economic benefits and therefore of the degree of restitution required between societies that have historically stood in a relationship of exploitation and subjection is difficult and often ambiguous.

For this reason, and not because the historical determinants of current patterns of distribution within and between states and societies are either morally or politically unimportant, in questions of international distributive justice greater weight will in practice have to be given to the current identification of clear causal links between policies of benefit to the developed world or to elites in developing and underdeveloped countries, and the denial or erosion of rights in the latter.

But distributive questions where such a link is tenuous or uncertain are often equally pressing. Severe need and deprivation themselves necessitate the international transfer of resources. Of course, where 'historical' determinants of global inequalities consist of policies which are very recent, or are continuing, many or all of the problems of historical attribution of distributive obligations become much less vexed. Beyond such policies and relationships, international distributive justice requires the satisfaction of basic rights, which exist without the support of arguments concerning the apportioning of blame for current circumstances. One of the reasons why underdeveloped states insist on the historical, restitutive aspects of justice-claims is that without these considerations, aid and resource transfers have the quality of mere charity.

Natural Resources and Distributive Justice

The examination of the distributive obligations existing between states inevitably raises the question of entitlement to natural resources. Distributive justice involves more than historical and present relations of production and trade. The question of how a society or a state can be said to have a moral right to the resources on or under its territory leads to further questions. One of these is how redress for past exploitation of resources essential to the wellbeing of communities (past and present) by colonial or otherwise predatory states is to be made. Another question is whether states whose territories contain natural resources inadequate to sustain even the basic conditions of social and economic life for a people can be said to have a right to resource transfers by virtue of their plight alone, and not in respect of past depredations.

A possible approach to the international distribution of resources that would tend towards similar consequences rests on the Lockean theory of property rights.[75] A community can be said, on such a view, to have a right to that with which it has mixed its collective labour.

The difficulty is that the usual proviso that 'enough and as good' be left for others to appropriate is belied by the exclusion of outsiders practised by communities (this being, indeed, a condition of their self-identity as such) to which legal and political expression is given by the sovereign state. The modification of the proviso to one in which it is enough that those excluded from appropriation should benefit, in some general sense, from the economic and social benefits generated by a system based on restricted access to resources is hardly one that finds expression in the reality of the international economic system.

It might be argued that the aim of global redistribution of resources should be to compensate for those deprived of resources in accordance with the modified proviso. But aside from the loss of autonomy and opportunities for self-sufficiency which such a redistribution would view with equanimity, the practical problems of such an approach, not least that of whether ownership and control of resources can ever be separated in the real world from distributive outcomes, should dissuade us from placing much faith in it.

One response to this line of argument has been that the distribution of physical resources presents a quite different problem for international as opposed to domestic justice, because in the latter case (at least assuming a self-sufficient society) unequal access to resources by individuals within a community can be compensated for by redistribution by governments of the total social benefits accruing from the exploitation of those resources. Evidently, this is not so readily achieved among states. Since resources are not, like natural talents, merely a morally arbitrary question of luck whether one is born with them or not, global principles of distribution must apply to them.

It is possible here only to sketch out some of the relevant considerations in developing principles for the (re)distribution of physical resources. The key point is that the question of entitlements to (at least) those resources essential to some minimum level of economic security and the possibility of a shared social existence is related to the supposed distinction between positive and negative rights. The securing of both sorts of rights was seen to be required as a moral consequence of the recognition of human beings as sentient beings, capable of purposive action.

To argue that someone has only 'special' or negative rights to security of property or the person, when this is intended as more than a statement of legal fact, is indeed to attribute to him an inviolable moral character by virtue of which he has the capacity to bear such rights. But the concept of agency which gives real ethical

substance to that character is only hypothetically recognised, since it is denied that anyone has any positive (resource) entitlements against others, even where provision through self-help is not possible.

The relevance to the question of entitlement to natural resources becomes evident. The conditions of agency permit and require the special rights, including those to resources, to which particular instances of contract or promise give rise. The equal capacity, and equal freedom, of individuals to acquire special rights is generally, perhaps necessarily, assumed by rights theorists as diverse as Locke, Nozick and Hart. But this assumption requires a deeper theory of moral equality. Given the unequal capacities of human beings in almost all respects, agency has emerged as the best way of understanding this deeper equality.

To recognise agency as a moral idea involves the imperative, as we saw, that the conditions for agency be met. To recognise agency, but not the imperative nature of the conditions of its realisation amounts in fact to self-contradiction. If people have the capacity to acquire rights to property, it cannot be morally irrelevant that there simply are no resources for them to acquire. The normative importance to be attached to the empirical rights and obligations which individuals acquire in their common existence proceeds from their capacity as agents; but the very recognition of this fact must lead to an acknowledgement that the justice of the content, and distribution, of property rights within a society cannot depend alone on the special rights attached to individuals in that society.

The conditions of agency mean that the initial distribution of natural resources cannot be considered as morally arbitrary. The redistribution of natural resources *per se* poses extraordinary practical problems. Firstly, the above arguments suggest that a distinction be made between that component of any society's wealth derived from the exploitation of natural resources through co-operative endeavour, and to portions of which special rights are held by individuals, and the remaining component to be donated to some international scheme of redistribution. The guiding principles for such a 'division' of national wealth would inevitably be speculative and open to endless counterfactual objections. Moreover, whilst territory as a basis for statehood does not carry with it unconditional rights to the resources under the territory, there is no practical way of sharing out resources by means of land transfer, or even by means of multiple sovereignty over particular areas of territory, which does not challenge the integrity of established communities, and the basis of secur-

ity and settled expectations which gives particular value to the idea of community.

Since the actual transfer of physical resources is often impractical, not least since the technology for the efficient exploitation of resources has obviously developed and become most concentrated in those countries with the greatest resource assets, principles of distributive justice must address the problem of resource entitlements indirectly by relating national shares of global wealth to their relative endowments of resources. The problem of resource entitlements becomes in large part one of compensation for certain communities' lack of access to resources. The basic rights approach to international distributive justice must lead to principles of compensation.

The qualification to this requirement must be to avoid paternalism by compensating relatively resource-deprived societies in such a way as to make self-reliance possible. It would be particularly appropriate to do this by transferring to them the technological means of exploiting what resources they do possess more effectively. In fact, the questions of historical exploitation in terms of the overall relations of production, and the coercive historical expropriation of resources, are unlikely to be separable.

Resource entitlements, then, enter more indirectly into the general context of global redistribution, but only because of the practical difficulties to which their implementation gives rise, and not because they are intrinsically any less important than redress for historical exploitation. For one thing, inappropriate aid may serve to undermine the essential self-subsistence of agricultural economies by reducing local market prices.

Basic Rights, Society and Equality

We saw in the first part of this chapter that a standard objection against the idea of rights that specify resource entitlements is that it is impossible to say against which group of people those rights are held. Related to this is a further objection that we must confront at this stage: why should membership of a particular society confer special entitlements which are denied to outsiders? Surely accidents of birth should be discounted as morally irrelevant to questions of rights and distributive justice. Indeed, it might be objected that concepts like 'membership' – and even 'society' – are tendentious in that they disguise pure contingency with ill-defined implications about special duties and rights among individuals of a sort that need to be argued

for rather than to be surreptitiously introduced by the use of such terms.

This objection might be countered by following Rawls in defining society normatively as a sphere of co-operation for mutual benefit. We have already argued that the international sphere can be said (at least to a degree) to resemble a society in this sense also: in terms of economic interdependence to a still greater degree than in the realms of international law and other forms of social and cultural co-operation. What then is so special about belonging to one society rather than another as the criterion for determining what sort of rights one possesses?

Critics of the idea of positive rights pose this problem in the belief that it has no solution and that it reveals the absurdity of claiming such rights for non-members. In their view, we should either dispense with positive rights altogether, or accept that the rights enjoyed by individuals in a particular society, and guaranteed by the state, are arbitrary from a moral point of view and must give way to a more or less infinite set of rival claims for the global redistribution of wealth, freedoms and opportunities.

The conception of basic rights that we have developed avoids this crude and simplistic choice of alternatives. The rights and correlative duties which arise only through participation in civil society and which are enforced only by the state are recognised. Equal political obligation and the equal rights to liberty to which it gives rise, as much as the contractual relations between individuals upheld by civil law, produce a pattern of entitlements, opportunities and resources peculiar to each society. But beyond these rights and duties lie basic rights as we have described them. It is because people are agents, autonomous moral beings pursuing their separate ends in a context of mutual dependence, that they are capable of holding the general and special rights distinctive of civil society. Before these rights can be meaningfully exercised, basic rights, the indispensable minimum conditions of individual action and social participation, must be secured.

Pace the legal positivists, all rights derive their ultimate meaning from the fact of human agency. It seems impossible that any truly determinist theory of human behaviour could lead to a theory of rights in either the permissive or protective senses, when the enjoyment of such rights is always optative in its nature. That is to say, rights are valued as means of securing particular ends. Basic rights are logically as well as empirically prior to other rights because they are

the prerequisites of the exercise of agency. The consequence of this is that the universal, global fulfilment of basic rights takes precedence over the satisfaction of the fuller range of rights peculiar to the particular state and society. 'Takes precedence' – but in no way refutes or undermines such rights, which are themselves the product and consequence of agency.

The satisfaction of basic rights, the provision of resources to satisfy needs without whose satisfaction purposive human action is impossible, becomes the first task of global distributive justice. But basic rights are by no means the only source of distributive justice-claims. They are not commutative or restorative in their nature; that is, they apply independently of any previous action or inaction by others. Agency leads first to basic rights, and then on to the fuller range of political and social, public and personal, rights and obligations. The material substance of these latter of course depends on the stage of social and economic development achieved by a society, and this is at least in part the result of the effectiveness of individual and social action in achieving their goals. There is a didectical relationship between agency and the preconditions of its realisation. The synthetic resolution manifests itself in the practical impossibility of conceiving abstract agency as something wholly separate from the concrete conditions of its self-realisation.

Strict egalitarianism may, in the end, overturn the consequences of agency. Now, to secure the condition of purposive human action is in itself pointless if that action, and its consequences for good or ill, is not allowed to be free and self-determining.

Though it is no ultimate test of the viability of an argument that it conforms to popular prejudices, the arguments we have adduced in favour of basic rights are at least implicitly recognised in many powerful and important social beliefs. It seems to many to be intolerable to assert the abstract, moral equality of individuals and simultaneously to argue that there is no responsibility placed upon any individual or group to provide urgently needed resources for a poor or destitute person without other access to them. It seems equally unacceptable that individual property rights should be made the cardinal tenet and assumption of liberal political philosophy in a world in which mass starvation persists. Hayek believes that these responses are merely 'atavistic'.[76] On the contrary, the philosophical premises of the basic rights argument lend to them a powerful justification beyond the sphere of the purely emotive.

Basic Rights and Distributive Justice

That social life generates special rights of reciprocity in consequence of the self-limitation which co-operative existence requires is more perspicuous than more grandiloquent notions of social contracts. A climate of reasonably settled expectations as a condition of enjoying such special rights may itself be understood as a corollary right. But the content of these special rights is not a matter of indifference from the standpoint of distributive justice. There is an important sense in which respect for individuals gives rise to justice-claims against society.

A central weakness of modern libertarian and neo-liberal political theory is that, in their denial that there is such a thing as social justice or positive rights, they fail to perceive that people do take the level of their incomes as an indicator of the social esteem in which they stand, and as an implied recognition of their value. The context in which such recognition occurs includes a distribution of resources according to some widely if approximately understood (though not necessarily accepted) 'index' of values attached to various occupations. Being thus recognised, in addition to having one's basic rights respected, is an important part of the sense of belonging to a society, and of being thus acknowledged. This is another facet of the fact that the meaning and value of social goods are largely specific to societies in the way that basic rights are not.[77]

The protection of these rights, and the preservation of conditions of social justice in which rights of agency and social respect are secured, is the heart of the moral justification of the state. Where social justice addresses basic rights it is categorical in its nature, but it is also highly particular in its relation to cultural understanding and the assignment of values within each society. It is the corresponding particularity of the state, in most instances formed by long interaction with its society, which is the origin of the special relation of the state to justice. It is, however, the universal element of moral propositions that prevents the sphere of justice being exclusively defined by states' boundaries, and prevents the rights of the individual being ascribed to him solely as a member of his society. Cultural pluralism is limited by basic rights.

A consequence of this is that intervention in a society in which basic rights are violated has a different moral character from other intervention defended on grounds of prohibiting unjustifiable practices. The latter kind of intervention is paternalistic, and threatens cultural

autonomy. In practice it may be difficult to distinguish one kind of intervention from another, and consequentialist arguments against intervention still apply, but to deny such a difference is to assign an absolute moral character to the state, and to make cultural integrity subordinate to this.

The persistence of injustice within developing states is repeatedly urged as a reason for denying aid. Where such aid is essential to the securing of basic rights, the stipulation that it be linked to domestic reforms does not amount to illegitimate intervention. It addresses the claims of the individual and the society to just treatment, and no absolute value can be attached to sovereignty as a counter to those claims, nor as a means of defining every external attempt to influence state policy as paternalistic.

Where attempts to induce governments to introduce social reform meet with limited success, the obligation to transfer resources is not absolutely terminated, as long as there is at least a possibility of some of the resources reaching those who are currently deprived of basic rights. To deny all forms of aid because of the self-interested stance of ruling elites is to bring further punishment on the victims of their policies, and to deny the validity of their independent claims for justice. The primacy of the state itself, as represented by its rulers, as the source of claims is asserted by such a denial.

The tying of aid to increases in improvements in social justice no more destroys the practical exercise of sovereignty, and its role as the organising principle of international relations, than does the recurrence of military intervention, or the existence of customary international law. Instead, it provides a new determinant of the environment in which sovereignty is effective. It is when 'absolute' sovereignty is asserted as the indispensable condition of the state's guarantee of justice and rights that what is essentially a means becomes an end. Intervention automatically constitutes unjust interference only when it is not aimed at securing the most basic of those rights, but at protecting an economic or political hierarchy that embodies injustice. Intervention is not to be condemned simply because it trespasses in the inner sanctum of the deity known as 'sovereignty'.

5.5 THE COMPLEX INSTRUMENTALITY OF THE STATE

There are now sufficient grounds on which to make a full defence of a complex instrumentalist theory, and to show the validity of the

additions we have made to the specification of our revised and expanded paradigm beyond the basic premises of the classical natural law tradition. We can see in particular how important the concept of agency as the primary source of rights has become in the development of our theory of the state and international justice. In this summary of our argument, it will be necessary to restate the initial premises from which we have drawn our conclusions thus far, as well as to see what further conclusions can be reached.

The Continuing Relevance of Natural Law Tradition

Our first proposition in Chapter 1 was that natural law tradition continues to offer the most appropriate conception of the state and international justice. The difficulties in the natural law prescription of individual rights are met by the idea of agency as the ground of rights.

The insights of natural law theory, at least prior to Vattel, and the tradition of the 'society of states' to which they led, have been defended, albeit selectively and not without criticism, as continuing to offer the most satisfactory background ethical theory of international relations. The ethical self-subsistence of the state is denied, whilst a moral theory respecting the rights of individuals as ultimate, but which at the same time transcends their purely egoistic nature, is offered. What natural law theory by itself has lacked is a deeper theory of rights and of the central place of rights in defining the conditions of the legitimacy of a particular state. The strong conception of human rights offered in the present study, and their location at the centre both of the justification of the state and of principles of international justice, helps at least to supply this omission.

Natural law theory does not of itself set out to bring about an international society; its relevance depends on the existence of sufficient mutual understanding and respect to allow international relations to be conducted on a basis of at least a minimum set of shared values. Positive law is a practical index of international society; natural law specifies its ideally binding principles. We have seen that the present international system merits the description of a society, albeit one in which international law only imperfectly reflects ideal justice. Nonetheless, it is a society to which the principles of natural law remain highly relevant.

The metaphysical status of natural law and the difficulties in specifying those features of human personality and the 'greatest good' for

man are well recognised. These difficulties are perhaps less relevant in the tradition of natural law as it relates to international society than in its application to domestic society. In its international application, it does not set out to determine the conditions of social existence *ab initio*, but to provide ultimate standards of conduct in the relations of existent social and legal entities, that is, sovereign states. We have seen enough evidence to sustain the argument that it is precisely because the natural law tradition does not specify immutable and precise principles applicable to each and every circumstance of conflict over issues of international justice, but rather retains the character of a flexible yet comprehensive moral outlook on international relations, that it gains its strength. It seeks to provide an effective framework for international moral theory, one that recognises both the diversity and the flawed nature of existing political institutions and practices.

The conceptual and practical distinction between natural law and positive, international law or the Law of Nations – higher and lower law, we may say – is more apposite than the essentially unstable ethical dualism of the realists. The natural law tradition recognises at once the inevitability of cultural and political diversity, the perilous nature of intervention in support of any transcendent conception of the good, and the critical tension which exists between the undoubtedly universal element in our conceptions of rights and justice and the dangers of 'cultural imperialism'. Charges of the latter are usually brought where critiques of justice and rights-practices come to reflect and to exacerbate inequalities of international power.

At the same time, the natural law tradition avoids outright moral scepticism or solipsism. It embodies ultimate principles as ideal criteria of just conduct and relations, but insists that the translation of such principles into political action should occur in a context of tolerance and restraint. It is recognised that intervention and force, even – or especially – when employed in the service of high moral principles, are often the causes of other moral evils of equal or greater magnitude.

If the natural law tradition recognises the persistence of conflict, it also stresses the possibilities and advantages of co-operation. It is based on the conviction that historical experience and human reason lead to deductive principles concerning how states and societies can best coexist. In a world of vast nuclear stockpiles, of a growing global ecological crisis, and of resurgent nationalistic and ethnic aspirations,

it is ill-advised to sneer at the idea that we might have something to learn from the moral aspirations – or even the practices – of theorists and statesmen of distant centuries.

The natural law or 'society of states' conception of world politics nevertheless faces up squarely to the conflict of the real and the ideal. If pure natural law is an image of the moral ideal, the best to be hoped for from positive domestic and international law is that it should embody a code of behaviour that men and states can actually live up to. The natural law tradition accepts the distance between the good and the possible. It embraces an authentic moral realism against the seemingly sophisticated but often facile and unwarranted scepticism of many authors of the realist school. It accepts the universal element of international moral principles insisted upon by Kant and his successors in the cosmopolitan tradition, but does not ignore the costs or dilemmas of implementing such principles. In short, it rejects the stark choice offered by other traditions between a discounting, or even rejection, of international moral imperatives and an impossible doctrine of moral perfection.

If natural law tradition has been seen to offer a more appropriate description of the ethical context of international relations than either of the other main traditions with which we have been concerned, it still does not adequately describe the most significant moral features of the state in relation to justice and the individual. This is because it lacks an adequate theory of the individual as a bearer of particular rights. Individuals are seen as the ultimate subjects of natural law, but the rights ascribed to them by that law are formalistic; in the end, it is left up to the state to determine their content. The state's legitimacy rests only ambiguously on its upholding of the natural rights of its subjects. Thus, Grotius will not allow subjects the right to rebel against a tyrant, although other states may have the duty to overthrow him.

We saw too that there is a bifurcation in the naturalist tradition on the question of the necessary or voluntary status of obligations between states. A theory of basic rights premised upon the concept of agency sets minimum substantive conditions concerning the relationship of the state to the individual. In the event of the non-fulfilment of these conditions, neither the political authority of the state nor its external justice-claims can be considered to be legitimate. Furthermore, such a theory is necessary to give substance to principles of international distributive justice. *Basic agency rights fill the essential lacuna in natural law theory.*

Justice, the State and Ends in Themselves

The second and third propositions we put forward in Chapter 1 are related, and derive much of their force from natural law premises. They are, however, often associated with liberal, and more especially contractarian, political theories which may dispense entirely with natural rights assumptions.

Our second proposition was that the state can never constitute an absolute, an ethical end in itself. The state can never rise above being a means for the realisation of individual and collective values. These values change over time and across societies, but possess a universal and irreducible content in the form of basic rights. For this reason, there can never be an a priori defence of the state. The value of the state is derivative; it comes from its securing of other, first order values.

Our third proposition concerned the content of those values. It was that the securing of individual and collective rights forms the basis of the state's legitimacy, and the legitimacy of its own mediated justice-claims. At the same time, we have seen that neither natural rights in the classical formulation nor legal-positivist accounts of rights are sufficient for our justificatory purposes. Rights based on agency, which point in their positive content to the universal provision of at least minimum conditions of subsistence, must be satisfied.

Since human action also takes place, and finds its meanings, within a social and cultural context, collective rights also follow from the same capacity for agency to which we ascribe basic rights. Indeed, we have argued that 'collective' rights from a formal, ontological point of view are properties of individuals, but of individuals in their capacities as parts of a whole.

One of the greatest and most lasting values of the classical natural law tradition is in its dispelling of the idea that the rights and other justice-claims of states can be considered as self-subsistent, arising directly from the state's supposedly autonomous moral personality. All organicist or constitutive conceptions of the state as in some way existing on a different, higher ethical plane than that of mere individuals are rejected. They are, in fact, no more than insidiously misleading metaphors.

The most important premise we have drawn from the natural law tradition, and for which we have argued most strongly, is that states have rights and obligations only because individuals do, and the same moral laws ultimately specify what these are in either case. The state is the guarantor, not the progenitor, of rights and justice.

The role of the state in securing particular forms of international justice has been analysed from a viewpoint of the individual as ethically prior to the state, and from the view that the interests and welfare of the individual provide the criteria of legitimacy of the external claims of the state. These and all other ethical features of the state are wholly derivative of those of its members. Rights are not reified in the state. The very idea of an international society, as understood in its moral sense by the natural law theorists, depends for its coherence on the supposition that individuals are its ultimate constituents, even though their interests are represented mediately by states.

The legitimacy of the state and of its external justice-claims, then, lies in its relationship to the rights of its people *qua* people and not merely *qua* citizens. This means, as we have already indicated, that we must look beyond the particular rights embodied in a given legal and particular order if we are to determine the conditions of that legitimacy. Otherwise, we shall remained trapped in a circular, even tautologous argument, unable to ask meaningful questions about the nature of the state from outside, as it were. We should have to abandon any serious enquiry into the forms of international justice or the state's relationship towards them. We should have to accept that rights and all other justice-claims are essentially statist terms of discourse, which serve at best as rhetorical devices when translated into the language and the practice of international relations.

Individual Rights, Collective Rights, and the State

Fourthly, there is a sense in which all forms of justice are primarily both individualist and distributive in their form. Justice is concerned with the way rights, resources, opportunities, privileges and obligations are assigned to particular people. It points to particular, distinguishing features of individuals as appropriate criteria for distributing these benefits and burdens. However, 'social justice' is often used as a synonym for 'distributive justice' in its more usual and narrower sense, that which concerns the allocation of wealth – the whole range of economic and social resources – among members of a society. Social justice in this sense recognises the mutual obligations of members of society in respect of material provision, and usually specifies further criteria such as equality of opportunity, rights of political participation and representation, and other goods held to be important for the equal respect of persons. But it remains, when defined in

this way, essentially individualistic in its assignments. Only when social justice is defined in a broader sense, one that recognises the fully social aspect of the individual's existence and stresses the rights of individuals as participants in the social whole, does it become remotely adequate as a condition of the legitimacy of the state's internal standing or of its international claims.

Social justice understood in the latter, broader sense involves more than the satisfaction of the claims of individuals, and embraces the fact that collective rights are more than the sum of the rights of all the individuals who make up the group. The presupposition here is that whilst the purely abstract individual is a source of ends from a formal point of view, no substance can be given to his claims for justice unless he is considered as a member of society. Justice is above all a relational idea, and social relations do not have an 'objective' existence independent of the meanings attributed to them by human beings.

We might seem about to fall into a contradiction. If collective rights are in some sense qualitatively different from the claims of individuals, it might seem that the state, which has been accepted as a necessary but not a sufficient or exclusive condition for the realisation of justice and rights, attains by the same token a moral standing which is different from, and perhaps greater than, the aggregate of the morally legitimate claims of the people who compose it.

Fortunately, it is not necessary to accept an individualistic account of justice, nor to deny any distinct meaning to collective claims, in order to avoid this apparent contradiction. The nature of the rights of states and of nations can be understood as conceptually independent (though related in terms of the reasons for their assignation) of those rights we normally think of as belonging to individuals as such, without conceding that the former have in any sense a life of their own. Groups, including states, would not have any rights if their citizens had none. But it does not follow from this that the individual's needs or rights can readily be met irrespective of conditions pertaining to the group as a whole, if the social identity of the individual and his own deeper sense of well-being depends closely on his affiliation with the social group.

The state acts too as a protective sphere of distinct cultural, ethnic and social traditions; it is a sphere, properly understood, of mores, rather than an independent and self-subsistent ethical order. Self-determination as a justice-claim may be spuriously made, may in certain cases express political demands that can be met at a level below full political independence, and certainly may serve as an

internationally disruptive principle with significant moral costs. There is ultimately no answer to the question why nations as opposed to other collective identities should alone have the 'right' to political independence. It seems that in a world of other nation-states, the chronic hunger some nations feel to give concrete expression and reinforcement to their self-identity can be satisfied by nothing less than sovereign statehood. This satisfaction becomes for them the condition of the realisation of most, or even all, other values.

Cosmopolitan theorists might respond by saying that the individual's legitimate interest in the wider social good may simply be counted as the grounds of one of his rights. This would be a recognition of the fact that it is a feature of certain rights or justice-claims that they cannot be enjoyed by the individual unless they are enjoyed by others. This in itself, the argument might continue, does not give rise to collective claims or rights which are understandable only in themselves.

An important distinction must be made here. Certain forms of justice or rights can only be enjoyed in common with others; but other sorts of justice or rights can only be understood in relation to the group. My enjoyment of material wealth may be diminished by the mass poverty with which I am surrounded; how much it will be diminished depends upon my psychological traits and not upon ethical principles as such. But I cannot be said to enjoy a right of self-determination whilst other members of my nation are living in political subjection, for the very obvious but important reason that such a right is indivisible, and this defines the nature of a collective right.

We can understand justificatory doctrines of the state based on claims of self-determination, or on some other corporate aspect of the state's relationship to society – doctrines which cosmopolitan theorists disallow – without either reifying the state or regarding it as a source of ends in itself, just as we can understand the qualitatively distinct nature of collective rights without losing sight of the fact that individuals, and not collectivities of any kind, are the only ends in themselves.

The Values Secured by the State Point Beyond It

Our fifth proposition was that, however great the role of the state in securing justice and rights, the nature of those values points beyond the state as an exclusive sphere for their satisfaction. To understand this more clearly, we have emphasised the quite separate logics of

what we have termed 'special rights' and 'basic rights', to which we shall turn in a moment.

The insights of the natural law tradition have supplied this element of universality of rights and justice, at least up until the point in the historical development of that tradition where the direct analogy of states and persons led to the displacement of individuals as the ultimate members of international society and the ultimate subjects of international morality.

The state is indeed 'porous' in terms of international distributive justice, but the content and extent of such claims must be accommodated with the legal-customary rights to resources and to specific forms of treatment by the institutions of the state and by other members of the political community which have their origin in the legal, political and cultural structures of civil society. This accommodation preserves the *droits nécessaires* of natural law theory against the belief common to Vattel and his successors as well as to 'realists' of all historical ages that all other-regarding actions by states are voluntary in their nature.

Such an accommodation is often not easy; but the theory of agency as the basis of rights provides a direct answer to the question, why do we have the rights that we do? and provides, too, a means of reconciling intra-societal rights with obligations existing between states and societies. Most importantly, it gives specific content to those mutual obligations of states to which natural law theory addresses itself, but for which it fails to provide an independent justification. Finally, and in accord with natural law, the concept of agency places the individual firmly at the centre of all justice-claims.

The international securing of basic rights in a world where sufficient resources exist for this to be possible must be the minimum stage at which the special rights of groups and individuals within independent civil societies begin to give rise to obligations of equal or greater concern.

To deny that justice and rights are inescapably statist forms of discourse, that they must assume the political order of the state, is to hold that justice and rights have a continuing existence beyond the state. Basic or subsistence rights create responsibilities elsewhere than for the governments of states in which those rights exist unmet. The location of these rights, not within a particular political or legal order, but within a philosophical conception of individuals-as-agents, means that the above holds true even, indeed especially, when the governments of potential-recipient societies are indifferent to or engaged in the suppression of those rights.

It has emerged from our criticism of cosmopolitan theories that the practical effectiveness of the state in securing justice and rights lends to it a high (though conditional) value as a political institution. We can acknowledge this without holding for one minute to the view that the continuing dominance of the state in the modern world means that the justice found within it, where it is found, is the only sort that matters. We can also acknowledge that there may be relatively few unvarying and precise principles enabling us to apportion rights, resources and other goods between the province of the state and the universal human interest. But however high the level of generality of such principles, and however broad and non-specific their scope may seem to be, to discover them is of the highest importance.

What has been offered here is a set of first principles and conditions which require specific and concrete application to be of value in terms of practical policy. All political action begins with a 'world view' of some kind. There never has been nor can be action without values. Such action would best be guided by the recognition, at the very least, that justice does not stop at the water's edge.

Ideal Theory in the Real World

This leads us on to consider our final proposition. Noting that, whilst the values secured by the state do indeed point beyond it, the state remains the principal or only means of securing justice and rights for most of the world's people, we have emphasised that to make any sense of the problem of the state and international justice, the conflict between claims of sovereignty and of justice and rights must be considered at its empirical and normative levels. The analysis offered so far permits us to draw a number of conclusions concerning this conflict.

We have dealt at length with one of the central disputes in the political theory of international relations, a dispute that extends beyond the cosmopolitan versus realist terms of debate. It is between those who see nothing distinctive about the state in its capacity to promote human values (a position held by those who base the defence of the state on a 'narrow' reductionist criterion such as social justice in the restricted sense we discussed above, as well as by more thoroughgoing cosmopolitans) and those who maintain that the sorts of justice-claims with which we have been concerned all point in their 'inner logic' to the state as the condition of their meaning as well as their realisation.

A complex instrumentalist characterisation of the state and international justice offers an alternative to these persistently opposed views, the ultimate sterility of which is indicated by the seeming impossibility of any discourse between them.

Just as we have rejected the view that all claims for justice find their meaning only within the state, and just as we have rejected the deprecation or denial of the state as a necessary arena of justice, so we should reject the view that the relevance of the state in the promotion of human justice is no more than a practical misfortune of contemporary world politics (or perhaps of human nature). There are classes of interests and rights which it is difficult if not impossible to imagine being upheld if the sovereign state were to disappear. We must repeat that no narrowly reductionist, and certainly no exclusively individualistic, justificatory theory of the state can be allowed to follow from the denial, already made, of its moral autonomy. The state as an independent political order may serve as the only effective means of protecting the rights and welfare of collectivities, and of safeguarding and expressing the self-identity and cultural integrity of a people. The emphasis is on the word may: such claims are often made quite spuriously by the leaders of states and of majority groups within them in an attempt to draw a veil across injustice and oppression.

We have insisted on two conditions for the admissibility of the securing of collective rights as an argument for the legitimacy of the external claims of the state. The first is that collective rights are to be understood as ultimately being assigned to the individuals who make up the collectivities, not to mythical corporate entities called 'the people' or whatever. They differ from what we usually think of as individual rights in that they refer to individuals in their aspect of participants in a collectivity, individuals whose welfare cannot be secured or even understood outside this context.

The second condition is that justice-claims made by states by virtue of their securing collective justice must be demonstrably valid in the particular instance; there can be no appeal to any general principle of the inviolability of sovereignty to set aside the facts of the particular state's case.

It is evident that the tension between prescriptive – let alone ideal – political philosophy and the reality of international practice is most acute at this point. After all, states are generally regarded as sovereign, and their rights as such respected, whatever the degree of domestic observation of individual and collective justice and rights.

Yet no philosophically coherent theory of the state and international justice can draw back from this practical conflict. We cannot now allow, at this late stage, the state to present itself as an absolute, as a self-subsistent ethical being, or let its leaders plead immunity from moral censure. If a state does nothing to secure the rights and other valid justice-claims of its people, if it is instead indifferent to those claims or deliberately violates them, its claims of sovereignty and associated rights deserve no moral respect whatever. There can never be a presumptive claim of sovereignty because the state can never be considered as a morally independent entity.

There are good pragmatic grounds for respecting the principle of state sovereignty in international relations as a general rule, and sometimes even in the case of a state that evidently violates the principles of legitimacy we have described. We have noted that individual and collective intervention against offenders in this respect may do greater damage in respect of justice and rights than it succeeds in preventing. A high value must be placed on peace and security. But none of this is an argument against insisting on a prescriptive theory of the state, or against denying it ethical self-subsistence. It is only to say that in the real world the moral and material costs and benefits of alternative courses of action must be considered. Whatever the dictates of the prudential arguments, they can never render the existing state of affairs less reprehensible or regrettable. Those who maintain that practical politics must set aside moral evaluations have no way of explaining how moral dilemmas come about, and come about constantly. If there were no moral principles, there could be no moral dilemmas. We could never understand Max Weber's distinction between an ethic of pure intentionality and an ethic of responsibility if we ever believed that moral principles were optional in their binding effect.[78]

Once again, natural law theory has shown us the way. It distinguishes a sphere of positive law, or the Law of Nations, from the sphere of natural law not merely out of a recognition of the incorrigibility of human conduct, but because it insists that man's highest duty is to seek justice in the world of the possible and the actual. At the same time, it never allows conduct, whether at the individual or international level, to be excused from judgement before the higher court of natural law. If there were not rules of justice that transcended what is commonly, or for that matter ever, attained in international relations, then there would be no standards by which to judge one type of action as better than another. This is more than most realists

can swallow. The conflict between the just and the practically attainable is not something to be conjured away by the equivocal semantics of the realist school; it is part of the fabric of the world we are all obliged to live in.