

1-1-2005

# Three (Potential) Pillars of Transnational Economic Justice: The Bretton Woods Institutions as Guarantors of Global Equal Treatment and Market Completion

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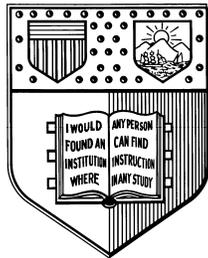
## Recommended Citation

Hockett, Robert C., "Three (Potential) Pillars of Transnational Economic Justice: The Bretton Woods Institutions as Guarantors of Global Equal Treatment and Market Completion" (2005). *Cornell Law Faculty Publications*. Paper 59.  
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# CORNELL LAW SCHOOL

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## **Three (Potential) Pillars of Transnational Economic Justice: The Bretton Woods Institutions as Guarantors of Global Equal Treatment and Market Completion**

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Cornell Law School research paper No. 06-034

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**THREE (POTENTIAL) PILLARS OF TRANSNATIONAL  
ECONOMIC JUSTICE:  
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ROBERT HOCKETT

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**Abstract:** This essay aims to bring two important lines of inquiry and criticism together. It first lays out an institutionally enriched account of what a just world economic order will look like. That account prescribes, via the requisites to that mechanism which most directly instantiates the account, “three realms of equal treatment and market completion”—the global products, services, and labor markets; the global investment/financial markets; and the global preparticipation opportunity allocation. The essay then suggests how, with minimal if any departure from familiar canons of traditional international legal mandate interpretation, each of the Bretton Woods institutions—particularly the GATT/WTO and the IMF—can be viewed at least in part as charged with the task of fostering equal treatment and ultimate market completion within one of those three realms. The piece then argues that one of the institutions in particular—the World Bank—has, for reasons of at best negligent and at worst willful injustice on the part of influential state actors in the world community, fallen farthest short in pursuit of what should be viewed as its proper mandate. The article accordingly concludes that a fuller empowerment of the Bank to effect its ideal mission will press the Bretton Woods system more nearly into ethical balance, and with it the world into justice; and that full empowerment of the GATT/WTO and IMF should be partly conditioned upon the fuller empowerment of the Bank.

Keywords: justice, global justice, justice theory, global economy, international economics, global finance, global trade, Bretton Woods, IMF, World Bank, WTO.

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## 1. Introduction

1.1. The justice of the global economic order has received a healthy dose of renewed philosophic attention of late (e.g., Pogge 2002; Shue 1996; Steiner 1994, 1999; Unger 1996).<sup>1</sup> Replace the word *philosophic* with

<sup>1</sup> I would like to thank Dick Arneson, Jack Barceló, Christian Barry, Jerry Cohen, Jerry Mashaw, Richard Miller, Herbert Morais, John Roemer, Bob Shiller, and David Wippman for helpful conversation on the subjects of this essay.

*critical*, and the same may be said of three institutions widely viewed as lynchpins of that order—the International Monetary Fund (IMF, or “the Fund”), the World Bank (IBRD, or “the Bank”), and the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO)—which, taking minimal license, I shall call collectively “the Bretton Woods Institutions” (e.g., Blustein 2001; Caufield 1996; Dunkley 2000; Stiglitz 2002).<sup>2</sup>

The recently renewed attention paid to global justice, however, has not as yet been notably rich in focus upon the constitutive roles originally envisaged for, or currently played by, the aforementioned institutions, or upon how those institutions act, or are designed to act, in concert. Nor has the widespread, and surely warranted, public controversy generated by the Bretton Woods institutions featured much in the way of any systematically articulated point of view from which to judge their performances.

I wish, therefore, in this contribution to bring two important lines of inquiry and criticism together—a task that now would seem to be both possible and pressing. For it is striking that on both a compelling, institutionally informed conception of global justice and a plausible reading of the mandates of each of the Bretton Woods institutions, the three organizations together can be viewed, at least in potential, as a kind of “three-legged stool” upon which might rest a just global economic order. As the simile suggests, however, each leg must be adequately constructed before the founding might be considered secure. And each must bear its proper portion of the weight borne by the whole.

*1.2.* In what follows, then, I first lay out what I take to be a compelling sketch of what a just world economic order will look like. That account prescribes what I shall label “three realms of equal treatment and market completion”—namely, the global products, services, and labor markets; the global investment/financial markets; and the global preparticipation opportunity allocation. I then note how, with minimal if indeed any

<sup>2</sup> “License” because (a) the Bretton Woods conference actually brought us only the IMF and IBRD and (b) the WTO did not come into being until 1994. “Minimal” because, on the other hand, (a) the Bretton Woods framers explicitly viewed the financial institutions that they conceived as essential complements to the GATT (see, e.g., James 1996) and (b) the WTO, brought into being in 1994, in essence took on the role originally envisaged for an “International Trade Organization” (ITO) fifty years earlier (*idem*). It should also be noted here that the International Bank for Reconstruction and Development (IBRD) is but one of a small cluster of institutions collectively known as the “World Bank *Group*.” I use the word *Bank* to refer to the collectivity rather than to the IBRD alone and use “IBRD” to refer specifically to one member of that collectivity.

departure from familiar canons of traditional international legal mandate interpretation, each of the Bretton Woods institutions can be viewed at least in part as charged with the task of fostering or guaranteeing equal treatment and market completion within one of those three realms. Thence I suggest that one of the Bretton Woods institutions in particular—the Bank—has, for reasons of negligent, reckless, or willful injustice on the part of influential state actors in the world community (*not* on the part of its *staff*), fallen farthest short in pursuit of its ideal mandate. And I suggest, only somewhat more tentatively, that many anxieties over the operations of the other two institutions—the GATT/WTO and the Fund—actually stem from dysfunctions visited upon the system as a whole by the Bank’s falling short. I conclude accordingly that a fuller empowerment of the Bank to effect its mission will press the full system more nearly into balance—kicking the stool to its feet, so to speak—and thereby the world into justice. Short of that fuller empowerment, I suggest, the continued conferral of powers upon the other two Bretton Woods institutions should be conditioned upon those powers’ likelihood of yielding or conducing to some “second best” that is substantially more just than the status quo.

## 2. Justice in Theory, Metatheory, and Mechanism

2.1. I shall not here argue exhaustively for one, detailed conception of global justice (see Hockett 2004a, 2004b, 2004c). Nor shall I survey all candidates currently on offer or anticipate and address every objection that might be, or has been, raised to sundry components of the summary account that I shall set forth here (*idem*). I shall instead offer what I believe nearly anyone will recognize to be a presumptively persuasive conception. This conception bears critical resemblances to several quite influential accounts of justice (e.g., Arneson 1989; Cohen 1989; Dworkin 2000; Roemer 1998; Sen 1993), the realization of any of which would be preferable to the state in which we find the world at present.

2.2. Justice is concerned with appropriate distributions of benefit and burden over individuals.<sup>3</sup> That raises at least three constitutive concerns, as well as a trio of critical collateral concerns, that must occupy any

<sup>3</sup> One could take the variable “individuals” to range over any number of sorts of entity—human persons, sentient beings, families, cities, “peoples” (linguistically or culturally identified groups), nation-states, and so on. I believe that any such selection that does not ultimately reduce consistently to justice over persons would be objectionably fetishistic, but I cannot argue for that proposition here. Please see Hockett 2004a and Hockett 2004b.

complete theory of justice. Constitutively, we must give an account of what shall count for purposes of justice as relevant benefits or burdens. We must also give an account of the individuals whose benefits and burdens will concern justice. And we must say something about how we are to determine the propriety of the distribution. Collaterally, the fact that (a) we are concerned with distributions over plural individuals and that (b) plural benefits and burdens might be of various kinds requires that we also take account of three measurement concerns either in our constitutive account of justice, in our considerations of our justice account's practical instantiability, or both. Specifically, we must concern ourselves with measurement in an absolute, quantificational sense ("how much," simpliciter, "of benefit/burden B"); in an interpersonal comparability-in-the-holding sense ("how much B held by person P<sub>1</sub>, in comparison to how much held by person P<sub>2</sub>"); and in what, for reasons that will become clear in a moment, we might call an "interdistribuendal" commensurability sense ("how much 'total benefit/burden' in case of this much B<sub>1</sub>, that much B<sub>2</sub>, and so on").

I call the relevant benefit/burden question the question of the proper *distribuendum* (plural, *-enda*). That of the proper characterization of justice's beneficiaries I call the question of the *distribuees*. And the question of a distribution's propriety I call the question of the appropriate *distribution rule*, or *formula*. I call the collateral measurement questions the quantificational, interpersonal comparability, and commensurability questions.<sup>4</sup>

2.3. The most plausible account of distribuees is that which construes them as boundedly responsible agents, capable of effecting or affecting their own well-being while constrained in so doing by features of the environments into which they are born. Their capacities—themselves features of those environments—only permit them limited latitude in altering or exiting from the same. To view a person as a responsible agent is to view her as, at least in part, self-regulating per a disposition to value outcomes and to choose from among alternative courses of action, as well as per a capacity to recognize and respect this same autonomy in others.

<sup>4</sup> I have argued elsewhere (Hockett 2004a) that we must answer each justice-constitutive and collateral question with a view to the others. Here I simply sketch that account of justice which it seems to me flows most "directly"—isomorphically, so to speak—from the most intuitively plausible fillings-in of each of the aforementioned variables. A further advantage of my fillings-in, I believe—beyond their seeming more intuitively "direct" in their variable filling—is that they readily suggest a simple institutional embodiment.

This view of distributees suggests a view of justice-relevant distribuenda as anything which, consistent with respect for others' autonomy as just noted, distributees themselves value or disvalue, anything which they would wish to obtain or attain or avoid.<sup>5</sup> If "benefits" are good and "burdens" ill, and if distributees are environment-responsive, responsible agents whose autonomy in forming conceptions of the good and the ill is to be respected, then the distribuenda that are of concern to justice will be more or less whatever distributable items are of concern to justice's beneficiaries—its distributees.<sup>6</sup>

These conceptions of distributees and distribuenda appear to recommend the following formulation of the appropriate distribution rule, sometimes styled the "luck-egalitarian," but what I shall call the "endowment-egalitarian," principle: Allow distributees' holdings of distribuenda or quantities thereof the holding of which tends to vary foreseeably in response to their responsible actions or attitudes to *vary* with those responsible actions or attitudes; and *equalize* holdings of all *other* distribuenda or quantities thereof. I call that first component of anyone's holdings the "ethically endogenous" component. It is that component for the holding of which the distributee, conceived as a responsible agent, is appropriately held ethically accountable.

I call the second component of the agent's holdings the "ethically exogenous" component, or the "residuum." It is, as it were by definition, that portion for which she is not responsible—that portion over the holding of which there is good reason to suppose she bore no choice.

2.4. These characterizations of the distributee, distribuendum, and distribution formula variables operate in conjunction with both conceptual and operational measurement constraints in a number of complex and practically critical ways.

First, the matter of simple quantifiability has stood in the way of settlement upon mutually agreeable distribuenda and distribution formulae in the following way: On the one hand, luck, resource, opportunity, access, goods, and benefits are not intelligible *as* such—and thus are not appreciable as ethically significant—apart from some person's (actual or idealized) *preference* for or *valuation* of these items, hence, apart from

<sup>5</sup> I trust that I need not tarry here over endogenous, "external" or otherwise objectionable preferences, about which of course any liberal theory of justice must ultimately speak. See, e.g., Stigler and Becker 1977; Dworkin 1977, 234f.; Sen 1979. The matter is too complex to dispose in this brief account, but I do not in passing over it intend to be taken for dismissing it.

<sup>6</sup> Again, with the caveat mentioned in the previous footnote.

their yielding some manner of “satisfaction,” “value,” “happiness,” “utility,” “welfare,” or “well-being,” conceived in some suitable manner.

On the other hand, these latter states—welfare, “utility,” and so forth—do not lend themselves to cardinal measurement. Relatedly, they cannot be directly distributed to anyone. They are experienced only as “outputs” of utility functions the inputs to which must be some objective item or items, rather than some subjective state or states. And while these objective inputs are, by and large, cardinally quantifiable, so long as the outputs that render them ethically significant are not it is difficult to determine how much of any of them anyone ethically ought to have.

What is more, *bounded* agents are in part *responsible* for, and in part *not* responsible for, their own utility functions. One can be innately more difficult to satisfy than others, and one can in a manner *choose* to be more difficult—or expensive—to satisfy than others (see Arrow 1973; Dworkin 2000). And the difficulty of cardinally measuring happiness intractably afflicts the already difficult task of separately tracing the ethically endogenous (responsible) and the ethically exogenous (nonresponsible) grounds of one’s utility function—of one’s translating objective inputs into subjective outputs.

Second, even were welfare cardinally measurable as a state of any given person, it is unclear whether it would be *interpersonally comparable* as a state *type* enjoyed among *multiple* persons. For there can appear to be, intuitively, something radically distinct as between  $P_1$ ’s happiness and  $P_2$ ’s happiness, presumably owing in some manner to there seeming to be something radically unique about every sentient being’s subjectivity, or consciousness, itself (see, e.g., Chalmers 1998; Nagel 1999, 1991).

Third, the fact that there are *multiple* inputs—benefits and burdens—that appear differentially to affect utility and disutility, coupled with the difficulty attending cardinally measuring the utility and disutility afforded by such benefits and burdens, would render it difficult, even were interpersonal comparability somehow unproblematic, to determine how much of benefit  $B_1$  would compensate  $P_1$  for a shortage of, say,  $B_2$  relative to person  $P_2$ . Unless the appropriate distribution formula were to mandate a distinct distribution of each good and ill over all distributees independent of the distribution of the other goods and ills—a seemingly implausible suggestion—we require “rates of exchange” between goods and ills themselves in order to derive a numéraire or index suitable to determining how much “good-or-ill-stuff in total” any distributee holds. But since utility is the touchstone of some objective item’s beneficial or burdensome status to an agent, and since said utility is problematic in the

measurement, it is not clear how we are to commensurate disparate benefits and burdens in a manner pertinent to justice. Our would-be numéraire is itself cardinally nonquantifiable.

2.5. Happily, there appears to be one mechanism, readily constructible in theory and seemingly approximable in practice, by which we might simultaneously *circumvent* all three *measurement* problems, *while* doing justice to the three values assigned the *constitutive* justice-theoretic variables (responsible agents, all benefits and burdens adjudged such by such agents, endowment-egalitarian distribution). The same mechanism enables us to address, at least in part, the problem posed by bounded agents' being responsible in part, while not in whole, for their own utility functions. To the degree that we can practically realize this mechanism, then, we can simultaneously render the world more practically just and resolve, or unobjectionably sidestep, the principal measure-theoretic problems.

Here, in schematic form, is the mechanism: Assume a "complete" market—a forum in which all and only desired voluntary trading occurs—in (a) all goods and services that can practically be made available and that anyone values (hence, that are cognizable in justice as ethically relevant distribuenda), and (b) contingent claims to compensation upon the occurrence of any eventuality that anyone disvalues, payable by anyone willing to take the opposite sides of these (what amount to) "bets," on the disvalued contingencies. Assume further that this market is "neutral" in the following sense: First, each participant enters it with an initial endowment of (in the nature of property rights to) desired assets equal to that with which everyone else enters it. And, second, regulatory norms effectively prevent such collusively, strategically, or expropriatively opportunistic behaviors as would effectively result in some participants' coming to possess greater or lesser holdings or "price-affecting effective demand powers" than would be traceable to their initial (ethically exogenous) endowments and independent (ethically endogenous) transaction histories alone.<sup>7</sup> This mechanism, I claim, straightforwardly instantiates the justice account sketched above.

2.6. Before turning to the ultimate realizability of the mechanism in its entirety or the question of a "second best" absent full realizability, let us note, first, how it satisfies the prescriptions entailed by the three above-

<sup>7</sup> I shall here set aside the question of the means by which endowment equalization would be effected, and the "problem of future generations."

offered fillings-in of the constitutive justice variables. Let us also note, second, how it addresses the critical measurement concerns. And let us note, third, how its realization both would seem to require and would seem to be straightforwardly brought about by equal treatment and market completion in the three Bretton Woods–associated realms noted at the very outset of this article.

2.6.1. The mechanism straightforwardly honors distributees as responsible agents, who transact voluntarily pursuant to their own, autonomous relative valuations of items and contingencies that they prefer and disprefer. The mechanism straightforwardly treats as *distribuenda* whatever goods and ills the distributees themselves value or disvalue—whatever goods and ills they seek to obtain, attain or avoid, from which goods and ills their “utilities” derive. And the mechanism, via the neutrality imposed upon it at the outset and retained throughout, equalizes all that is ethically exogenous—all that is not traceable in the holding directly to a choice—while allowing holdings over time nonetheless to vary with ethically endogenous transactional decisions. All holdings at time  $T_n$ , that is to say, are traceable to equalized holdings at  $T_0$  and voluntary choices.

2.6.2. The mechanism sidesteps, in an ethically satisfactory way, the problem of cardinal utility measurement by allowing distributees, via their voluntary trading activity, presumptively—by dint of the “first fundamental theorem of welfare economics” (see, e.g., Arrow 1951)—to “maximize” utility. And that maximization occurs in a manner that is consistent with (a) ethically exogenous endowment equality among all market participants, and (b) consequently equally shared scarcity of the resources from which distributees “produce” their own utility. (In the jargon, the mechanism fosters regular *tâtonnement* toward Equal Division Walrasian Equilibria, which, it is well established, are fair, envy free, and Pareto efficient (see Baumol 1986; Foley 1967; Hockett 2004a, 2004b, 2004c; Kolm 1972; Pazner and Schmeidler 1974; Varian 1974; Walras 1954). It doesn’t matter for justice purposes, that is to say, what sort of number—cardinal *or* ordinal—that we might assign to distributees’ utilities, or how we manage to scale such numbers, so long as we know that the utilities are the “highest” possible consistent with the correct distribution rule and the (consequently equally shouldered) constraints posed by the environment.

Similarly, the mechanism—again unobjectionably—sidesteps the problem of interpersonal utility comparison. For we have stipulated that the resource “inputs” (that is, the ethically exogenous inputs, sometimes

called “internal resources,” e.g., Dworkin 2000) that go into “utility production” are themselves counted—in the form of drugs, supplements, or contingent claims to compensation—among the exogenous endowments that must be equalized over participants. And in such cases whatever the absolute or comparative “quanta” of “utility” enjoyed by distributees, we shall know that these are the “highest” that they can be consistent with the appropriate distribution rule and the consequently equally shouldered constraints posed by the resource environment.

Finally, the mechanism “automatically,” as it were, commensurates distribuenda in the only way that ethically matters, via the autonomous implicit comparative valuations of autonomously transacting distributees (see Hockett 2004a; Hockett and Risse 2004.) We need not worry ourselves over how much of  $B_2$  “would” or will compensate  $P_1$  for a deficit of  $B_1$ , let alone construct a “perfectionist” index of all goods and ills (on which see Arneson 1990; idem). Our distributees themselves will, in effect, autonomously and with equal voice construct the relevant index—a spontaneously emergent *price* index. That index amounts to an aggregated comparative “social” valuation of goods and ills, in the construction of which each participant has had an equal “vote” (idem). (Again, provided that there exist market completeness and neutrality in the senses explicated above.) And so yet again, in a manner that reflects the constraints both of relative environmental scarcities and of the appropriate distribution rule, we find the mechanism allowing the measurement question to “take care of itself” to precisely the degree that justice itself demands care be taken at all.

2.6.3. Now recall that the two critical provisos to the mechanism’s being capable of affording full justice were that the envisaged market be “complete” and “neutral.” “Completeness” means, roughly, that all goods and ills that should count as ethically significant for justice purposes—namely, all items and contingencies that justice’s distributees themselves can acquire, provide or produce and that they value or disvalue—can be transferred from relatively less desiring holders to more desiring nonholders via voluntary transaction on that idealized market.<sup>8</sup> Familiar goods and services markets in “advanced” and even many barter economies are largely—or at any rate potentially—complete in this sense, at least within their jurisdictional walls. But gross disparities in ethically exogenous endowments, as well as certain artificial barriers

<sup>8</sup> This is my justice-theoretic modification of a concept more familiar to welfare and financial economists. See, e.g., Allais 1953; Arrow 1953; generally Magill and Quinzii 1996.

found between jurisdictionally separated markets, tend to diminish the *fuller* completeness that those markets would enjoy were they both endowment egalitarian and unsegmented.

What is less immediately obvious is how very *incomplete* the “*ills* markets”—that is, the contingent-claims markets—currently remain. We are only just beginning to appreciate—and take measures in light of—how much more in the way of risk could, even with current (largely new) technologies, be traded than currently are traded (see, e.g., Hockett 2004c; Shiller 2003; 1993; Allen and Gale 1994).<sup>9</sup> This is particularly so as we begin to remove barriers that segment the financial markets, in effect bringing changes that are greatly enriching the variety of risks that can be traded from less to more desiring bearers worldwide. Turning from completeness to neutrality, “neutrality” means, roughly, that each *participant* in the “complete” market should “count” for one and only one identically social-valuationally empowered, comparatively goods-and ills-valuing agent. Participants, that is to say, must enter and leave the market, no matter what the time, with holdings traceable only to equal exogenous endowments and whatever endogenous decisions they have made (such as gratuitously to transfer, trade, expend labor, waste, and so on). This is not only a straightforward requirement of the justice conception; it also, as suggested above, would appear to be required by the mechanism-requisite of “completeness” itself.

<sup>9</sup> An example or two might be helpful here: Financial derivatives, as has been widely observed, in recent decades have enabled relatively wealthy market participants—in particular, large financial institutions—to trade formerly untradable risks and thereby improve the aggregate efficiency of risk-bearing arrangements worldwide. See, e.g., Allen and Gale 1994. Hence, for example, two large lending institutions, one with its payments receivable denominated in terms of fixed interest rates and the other with receivables denominated in terms of variable interest rates, might enter into a “swap” contract pursuant to which each literally trades payment streams with the other for some term of time. They will do so, presumably, because they differentially assess or value the risk attendant upon the variable-denominated stream and the certainty attending the fixed-denominated stream. Options, warrants, futures, “swaptions,” and a host of other derivative contracts similarly permit large market players to parcel out and trade classes of risk previously untradable. But no such contracts, as yet, permit smaller players to diversify away the risks that they bear. And the latter risks, when they eventuate, can be rather more devastating to their “small-player” bearers than are risks currently traded by large players. New data-gathering, -accounting, and -parceling technologies, however, accompanied by the “globalization” of the financial markets, hold promise for smaller players. Thus, for example, derivative securities whose values countervary with macroeconomic aggregates, which in turn vary with individuals’ incomes—e.g., “GDP-consols,” “local real-estate collars,” and “average occupational income collars”—will enable individuals in effect to surrender some “upside” gains represented by rises above some stipulated average on the parts of aggregates with which their incomes are positively correlated, in return for compensation of “downside” losses represented by drops below the stipulated average on the parts of aggregates with which their incomes are positively correlated. Please see Hockett 2004c, 212–25.

Now completeness and neutrality, in the senses just sketched, jointly require equal treatment of all market participants in the product and services (including labor) markets, in the investment/financial markets, and in the allocation of initial and continuing participation opportunity. What is more, equal treatment in these three realms appears to *suffice* to afford completeness and neutrality in the senses elaborated to the fullest extent practicable.

Begin with the necessity of equal treatment to the neutrality and completeness of the products and services markets: If the class of distributees properly of concern to justice is the universe of *all* human agents, then the mechanism that is fully to *effect* justice must *reach* all human agents. *All* agents' valuations of the goods and ills potentially available to or threatening anyone, that is to say, which valuations are *carried out*—in trading behavior—relative to holdings traceable to equal endowments of all valuables and disvaluables, must *enter into* the aggregated transactional, and hence the aggregated implicit valuational, decisions that determine the uses, relative prices, and distributions of those goods and ills among all human agents. But to treat actual or would-be market participants *unequally*—that is, to prohibit their entry into the markets altogether or to tax their participation differentially according to their ethically irrelevant identities, attributes, or affiliations rather than simply to allow the circulation of their offerings and their desired goods and services to be determined by the distribution of wants over the full universe of agents—would in effect be both to disequalize their initial ethically exogenous endowments and partly to segment (render incomplete) the market. It would therefore be to fall short of both neutrality and completeness in the senses elaborated.

Let us turn next to the necessity of equal treatment, neutrality, and completeness of the investment/financial markets. The argument here is structurally identical to that offered in connection with the products and services markets. These markets are worth separate classification and consideration, however, for at least three reasons. First, these markets currently are radically—and now unnecessarily—less complete than are the goods and (other) services markets.<sup>10</sup> Second, they are the principal realm in which what I have called “ills trading” (via risk trading), as distinguished from “goods trading,” is effected; and *both* goods and ills must be traded in order for justice to be effected via the mechanism that I have sketched. And, third, the investment/financial markets also are the means by which we trade *time*-indexed goods and services with others, in

<sup>10</sup> Please see the previous footnote.

view of our differential valuations of goods and services according as they are consumed or provided at different times. They can be viewed as diachronic extensions of the synchronic goods and services markets, to some extent bridging the justice mechanism across time and generations.

Turn finally to the participation-opportunity allocation. By this I mean both the formal and the substantive capacity of every agent to participate in the “neutral” and “complete” markets schematically described above. Now an equal “formal” capacity to participate is, in essence, the legal right to take part on equal terms with others—that is, a right not to be excluded or taxed by dint of one’s ethically irrelevant identity, attributes, or affiliations. Hence it already is guaranteed by the right to equal treatment in the products, services, and investment/financial markets. The “substantive” capacity to participate, however, is, in essence, the ethically exogenous endowment discussed previously. It is what each participant “brings to the market” at any given time in anticipation of participating. Market neutrality requires equal treatment with respect to this allocation, then, quite trivially: “Neutrality” has been *defined*, in part, *by reference* to equality of this sort. (The ethical significance and compellingness of the definition was, I trust, sufficiently elaborated above.)

But market *completeness also, less* trivially, requires equal treatment in respect of the participation-opportunity allocation. Here the reasoning again follows the lines of the reasoning offered in connection with the products and services markets: Practical completeness requires that total trading opportunity—the total number of transactions in which one might engage—be maximized within the constraints imposed (a) by others’ wishes to trade or not to trade, (b) by technology, and (c) by the aggregate resource endowment. And that maximization is effected only when every agent capable and desirous of trading is a participant in the market on equal terms with everybody else.

Once it is established that each form of equal treatment is necessary to affording market completeness and neutrality, establishing at least a *prima facie* case that all three forms jointly *suffice* to affording such completeness and neutrality is straightforward. We simply note that affording every agent equal formal and substantive capacity to transact in the market and affect (that is, equally “vote” upon) the relative valuations and distributions of all things that are adjudged good or ill, and that are transferable, yields precisely that neutrality (traceability to equal ethically exogenous endowments supplemented or deducted from by ethically endogenous choices) and completeness (participation of all potential participants, on equal terms) defined above—the fullest forms

of neutrality and completeness apparently possible. What has been left out? What practically satisfiable additional requirement will yield a greater or more satisfactory degree of neutrality or completeness? Affording global equal treatment to all human persons, that is, all responsible agents in the three realms noted, then, would appear to be extensionally equivalent to affording that market completeness and neutrality which jointly constitute the mechanism that is the most compelling justice conception's most straightforward embodiment.

### **3. Global Institutions, Best and “Second Best”**

3.1. I turn now to what it would be institutionally to guarantee (a) equal treatment of all human agents and (b) practical market completeness in the three realms just elaborated. Remarkably, there is one global institution in each realm that can be viewed ideally yet plausibly as charged with guaranteeing, or at the very least furthering, equal treatment and market completion of precisely the kinds just elaborated for that realm. Were each fully to carry out its appointed or idealized task, it would provide a reasonable approximation of the mechanism schematized above.

3.2. Begin with the products and services (including labor) markets, where the case for the existence, already, of a global equal-treatment and market-completion norm policed by one of the Bretton Woods institutions is most easily laid out. Global equal treatment in and completion of these markets would entail, at a minimum, that goods and services trade for one another at rates of exchange determined solely by the untrammelled trading activities of those who trade them—hence by the relative valuations of the goods and services by agents implicit in the trades. What would be prohibited by an equal-treatment and market-completing norm in these markets would be any change to the relative exchange rates or valuations of goods and services worked by an organized imposition of a supply quota or surcharge, or by supply of a subsidy, to the availability, purchase, or provision of the goods or services in question on the basis of the ethically irrelevant (exogenous) identities, attributes, or affiliations of the purchasers or sellers. Yet such a prohibition is, in effect, precisely what is mandated—as an end state to which the governments of the world are expected gradually to move the global trading regime—by the GATT/WTO system.

Here is how: The GATT/WTO is commonly observed to operate via four foundational legal commitments, or “pillars” (see, e.g., Bhala and

Kennedy 1998, 59–115; Das 1999, 11–45, 55–72; Jackson 1999, 139–73, 213–28; Krueger 2000). The first is the so-called unconditional most-favored-nation obligation. This norm prohibits any signatory or member from discriminating against or affording preferences to sellers of goods (or eventually services—see below) hailing from any other signatory or member (other than itself) relative to sellers hailing from the other signatories or members (see GATT Art. I; Bhala and Kennedy 1998, 60–78). The idea here is that citizens of all member states with whom citizens of a given member state trade should be treated identically.

The second foundational GATT/WTO commitment is the so-called national treatment obligation. This norm requires that all imports into a member country be treated identically to *domestically* supplied products (and eventually services, more on which, again, below) so far as “internal” taxes and regulations are concerned (see GATT Art. III; Bhala and Kennedy 1998, 90–105). The idea here is that, once goods (or eventually services) have entered a member country’s borders and all entry duties (tariffs), if any, have been paid, those goods will circulate per the same terms as goods supplied domestically.

The third foundational GATT/WTO commitment is the so-called tariff-binding commitment. Pursuant to this obligation, member countries commit (a) to discriminate as between domestically supplied and nondomestically supplied products (and eventually services) in at most one way—namely, via the administration of customs duties (tariffs) laid upon entry into the member country’s borders—and (b) over time, via negotiations among all member countries progressively to *reduce* those duties ultimately to the vanishing point (see GATT Art. II; Bhala and Kennedy 1998, 78–90). The idea here is to isolate unequal treatment by member states as between their own and other member states’ citizens in one, particularly transparent, form and ultimately to minimize, then eliminate, that remaining form of unequal treatment itself.

The fourth foundational GATT/WTO commitment, rather like the second, actually amounts to a tautologous complement of the third: The so-called quantitative restrictions-elimination commitment (see GATT Art. XI; Bhala and Kennedy 1998, 105–14) is designed to end immediately—rather than merely gradually to phase out—the principal tariff substitute employed by member states to favor their own or some other members’ suppliers over others through the imposition of import quotas.

Now, the GATT/WTO system remains, in more ways than are immediately apparent from the foregoing, incomplete and imperfect in its effectuation of equal treatment and market completion in the global products and services markets. There are numerous exceptions to the

general rules that are the four foundational commitments related above—most of them exceptions invocable only temporarily and under conditions of acute domestic distress (so-called safeguard or Escape Clause provisions—see, e.g., GATT Art. XIX; Bhala and Kennedy 1998, 897–938), some invocable on behalf of the citizens of particularly poor member countries (see, e.g., GATT Arts. XVIII, XXXVI–XXXVIII; Bhala and Kennedy 1998, 399–488; Jackson 1999, 319–37). And member countries often prove quite clever, if in general only for brief periods, in evading GATT norms by, for example, exploiting the general health, public morals, and other exceptions to GATT obligations permitted under GATT Art. XX (see Jackson 1999, 229–45), or by maintaining that goods which consumers (our “distribuees”) regard as substitutes nonetheless are not “like products” per GATT stipulation (see GATT Arts. II, III, VI, IX, XIII, XVI, XIX; Das 1999, 18–20). There also are markets—notably those in services (including financial services), intellectual property, telecommunications, trade-related investment measures, and government procurement—that have only recently—again, since 1994—gradually come to be reached by GATT norms (see GATS; TRIMS; TRIPS; Bhala and Kennedy 1998, 1241–333; Das 1999, 325–93; Jackson 1999, 305–17.) Finally, equal treatment in and completion of the *labor* markets as such—rather than via the goods and services markets—is not directly afforded by the GATT/WTO system at all—or, in any way effectively, by that international institution specifically charged with solicitude for labor, the International Labor Organization (ILO). (See, e.g., Basu et al. 2003, 271–325; Elliott and Freeman 2003, 93–110).<sup>11</sup>

But the ideal toward which the system is moving, and moving both more rapidly and effectively than ever before, should not be obscured by the afore-noted imperfections. We are headed toward a world in which there simply is no organized discrimination whatever among goods or services on the basis of the identities of their suppliers. In that world, suppliers of labor, too—a form of service—will be treated equally, at least insofar as treatment in the investment/financial markets and participation-opportunity endowments (discussed below) are also equalized. And, in light of the link between equality and completeness highlighted above, it will be a world in which products, services, and labor markets will be practically complete.

Now the *rationale* commonly proffered for the GATT/WTO system appeals to the comparative-advantage exploitation, hence the

<sup>11</sup> Rather remarkably, the most recent comprehensive treatise on international economic law and institutions—Lowenfeld 2002—does not even include so much as a citation of the ILO, let alone a discussion of its efficacy.

specialization, scale economies, and aggregate productivity gains, offered by global market integration. That rationale of course is fair enough in the proffering—the putative advantages would indeed tend to follow upon integration—insofar as we legitimately can be concerned with aggregate wealth apart from its distribution.<sup>12</sup> But what is seldom noted is that there is a *much—indeed, infinitely—more ethically compelling, justice-grounded* rationale for the equal treatment and ultimate market-completion norms promoted by the GATT/WTO system, at least when that system is complemented by the next two Bretton Woods subregimes that I shall discuss: It is that equal treatment in the products and services markets is necessary to effect that market completion and neutrality requisite to a just distribution of what responsible agents regard as benefits and burdens; and that, in conjunction with its two complements to which I next turn attention, it will *suffice* to effect that just distribution.

3.3. Turn now to the investment/financial markets. Here the case for equal treatment and market completion as jointly constitutive of a Bretton Woods institution's—in this case, the IMF's—raison d'être is only slightly more complicated in the making than was the case made in connection with the GATT/WTO. It is *somewhat* more complicated essentially because the Fund exists for rather *more* than equal-treatment and market-completion purposes.<sup>13</sup>

Let us consider the more transparently egalitarian aspects of the Fund's mandate.

First, as in the case of the products and services markets, global equal treatment and market completion in the investment/financial markets would require at a minimum (a) the elimination, in connection with financial flows, of obstacles predicated upon the ethically irrelevant (“exogenous”) identities, attributes, or affiliations of the originators or recipients of such flows, rather as in the case of the GATT/WTO's “foundational commitments” in the products and services markets; and, perhaps more ambitiously, (b) the active facilitation of both (i) new

<sup>12</sup> Such concern is, of course, problematic, if not indeed ethically unintelligible. See, e.g., Dworkin 1980; Hockett 2004b.

<sup>13</sup> It is, for example, viewed both by its leading living legal commentator and by its most distinguished historian as above all else a forum for ongoing monetary cooperation between national authorities, the latter thought important owing to the dangers posed by global monetary instability (see Edwards 1985, 569, 655–57; James 1996, 586). However, this function itself can be viewed as providing a form of progressively financed global social insurance, the “premia” for which—in the form of member-country subscriptions—rise as the payer's wealth rises (see Fund Art. I (i); I (iii); I (v); I (vi); III, Schedule A (Quotas); Edwards 1985, 12–17, 167–298).

financial markets in new forms of investment and risk trading and (ii) broader participation both in such new markets and in established financial markets.

Now note that precisely these desiderata are among the principal projects with which the Fund is engaged. Begin with the “constitutionally” easiest limb—the elimination of obstacles. The Fund’s constitutive Articles of Agreement expressly prohibit member countries from slowing cross-border financial flows in one principal, “time-honored” manner in which such slowings have typically been imposed—namely, via discriminatory currency (exchange-rate) practices (see Fund Art. VIII, 3; Edwards 1985, 380–422). (It should be noted that this equal-treatment norm also complements those norms mandated by the GATT/WTO: One means, beyond tariffs and quotas, by which national governments traditionally have favored their own sellers is by manipulating the rates at which their currencies trade with other nations’ currencies.)

The Fund also, in a rather more nuanced way, operates to lessen or eliminate member countries’ slowings of capital flows in the *other* principal, “time-honored” manner commonly employed in the past—namely, via the imposition of capital-transfer controls.<sup>14</sup> The Fund’s Articles of Agreement tend to be “dynamically” and “teleologically” interpreted (see Hockett 2002, 178–80). And while capital controls were seen among the institution’s 1944 founders—Keynes in particular—as at that time necessary evils, the prevailing norm since the 1980s has been to view the necessity as having receded, and the evil now strictly to be avoided (*idem*; also Edwards 1985, 449–90). So the Fund tends, in its consultative, “surveillance,” and conditional lending capacities strongly and effectively to discourage the imposition of capital controls (see Fund Arts. IV, 3; V, 3; Hockett 2002, 180–89; Hockett 2004b). The upshot is that there truly does appear now to be quite nearly one, integrated global financial market (see Hockett 2002, 170–77). That’s one step in the direction of “completeness,” via the imposition of an equal-treatment norm.

The next steps in the direction of “completeness” are recent and thus far tentative. First, commencing with the breakup of the Soviet bloc in the later 1980s, the Fund began to offer support to former bloc members in the development of market-facilitative and market-expansive legal norms and institutions (Hockett 2002, 154–57). Second, in the wake of the “Asian Financial Crisis” (AFC), the Fund turned to the offering of expert

<sup>14</sup> Fund operations here are “more nuanced” in the following sense: On the one hand, the Fund’s Articles expressly permit such controls (see Fund Art. VI, 3). On the other hand, the Fund exists in part to eliminate the need of, or the temptation to employ, such controls.

support in the way of bankruptcy law, corporate governance, and financial regulation to actually and potentially affected member countries (*idem*). Finally, the Fund has recently begun to show interest in proposals for the creation of new markets in new forms of contingent-claims contract (see Hockett 2004b).

All of these activities are geared toward broadening, hence rendering more complete, investment and financial markets (indeed, in the case of the former Soviet-bloc countries, product and services markets as well). The case is clearest in the post-AFC period: The interest in bankruptcy law, corporate governance, and financial regulation is prompted by an interest in promoting the broadest possible participation in the markets for ownership of and lending to value-productive firms (see Hockett 2002, 154–57, 174–77). Note also that the principal Fund corporate-governance interest—insider trading—is *eo ipso* an interest in equal access to information pertinent to securities prices. The interest in new risk markets is, of course, by definition an interest in the greater completion of what I have above called the “ills market”—a critical piece of the justice mechanism.

The upshot of the fuller argument is, I believe, threefold: The Fund began with a mission to complement the equal-treatment and market-completion missions of the GATT/WTO in the products (and later services) markets, essentially by facilitating, and to a half-degree requiring, equal treatment and market enhancement in the financial markets. Over time, the Fund grew more robust and more comprehensive in its treatment-equalizing and market-expanding roles *vis-à-vis* the global investment and financial markets, as those markets themselves grew markedly in extent (and partly, indeed, in response) (Hockett 2002, 154–57, 174–77). And the Fund both may and ought to *continue* its development—again in keeping with its properly viewed mandate—along these lines. Such is the best understanding of what the Fund is *for* (see Hockett 2004b).

3.4. Turn finally to the global preparticipation opportunity allocation. Here the case for full equal treatment and ultimate market completion as constitutive of a Bretton Woods institution’s—now the Bank’s—fundamental mandate is most difficult to make, in part because the Bank falls so far short of realizing any such ideal. I shall argue, nonetheless, that (perhaps gradual) realization of such an ideal is precisely what the Bank should be viewed as existing for; and that its falling short of that goal owes quite simply, to injustice on the part of certain influential state actors upon the Bank’s founding and, indeed, ever since.

Consider first what would be required by equal treatment in the global preparticipation opportunity allocation. I take it that what would be ideally required is, at a minimum, precisely that “ethically exogenous endowment equality” discussed above. All persons—all human agents, who are justice’s proper distributees—would begin life with an equal claim upon the world’s ethically exogenous resources and risk-trading opportunities, and all would retain an equal claim upon all new such resources and opportunities as might become available over time. The basic idea would be to ensure market neutrality and completion in the fullest practicable sense by ensuring that all persons enter the iterated market at any given time with equal ethically exogenous capacity to effect the ongoing relative social (now global) valuation and disposition of agent-adjudged benefits and burdens.

Now the Bank, on the one hand, cannot be said to have been instituted with so *fulsome* an egalitarian mission *clearly* in view. It was, after all, originally envisaged as an institution charged simply with facilitating the reconstruction of war-ravaged European infrastructures (Hockett 2002, 162–64). And it remains to this day a *lending* institution, charged with assisting member countries in the borrowing, not the outright acquiring, of funds to improve the capacities of their citizens to participate in the global economy (see Bank Art. I; Edwards 1985, 44–48). On the other hand, the Bank’s very existence as an institution apart from the Fund is predicated upon the need for a publicly funded (via large-country subscriptions) supplement to—in the form either of facilitator or guarantor to—lending markets insufficiently peopled by private parties willing to lend absent such supplementation (see, e.g., Kaul et al. 1998, 2000.) And the Bank’s mission, like that of the Fund, has *evolved* since its inception—in the direction of greater compensation to the world’s poor (or at least those who do not inhabit aggregately wealthy nation-states).

The evolution of the Bank into a more forthrightly compensatory institution has proceeded along two principal fronts. First, with the implementation of the U.S. Marshall Plan in the later 1940s and the rapid recovery of the European economies through the 1950s, the Bank’s constituency came increasingly to be viewed as the more intractably “underdeveloped countries” (see, e.g., Pincus and Winters 2002, 1–15). This change can be seen in the Bank’s recent shift of focus from traditional project investment in “big,” material infrastructural projects—dams, roads, hydroelectric plants, and the like—to so-called human-capital investment projects—education, health care, population control, and so on (see, e.g., Fine 2002, 203–21; Lowenfeld 2002, 618).

Further, since 1960 the World Bank Group has included a subsidiary organization—the International Development Association (IDA)—specifically charged with the task of affording so-called soft loans to particularly impoverished nations. The loans are labeled “soft” in view of their long repayment terms (often up to fifty years) and low rates of interest (often as low as .75% per annum) (Lowenfeld 2002, 620). Unlike the IBRD proper, moreover, the IDA is financed by the revenues that IBRD investments throw off and by actual cash contributions—cheerfully termed “replenishments”—made by wealthier industrial countries every three years in proportion to their Bank subscriptions and voting power (*idem*). In that sense, the IDA is of course “progressively” financed. The ideal pursuant to which the Bank appears to be operating, then, is one according to which, at minimum, the least advantaged (in aggregately poor nation-states) are deserving of special solicitude.

3.5. Now it is clear that it is the Bank which is furthest—both in written mandate and, less fully, in its actual operations—from what I have argued would best be viewed as its actuating ideal. And it is not terribly mysterious why that should be: The mission that I have allotted to the Bank—equalization of the global preparticipation opportunity allocation—is that mission which would require that those persons holding unjustifiably large aggregations of ethically exogenous wealth compensate those holding unjustifiably meager portions of such wealth. And those persons who hold the unjustifiably large aggregations, of course, tend to populate and determine the active policies of the wealthiest, best armed, most influential state actors in the global polity. These states in turn largely constrain the design and conduct of international institutions. Quite simply, then, the principal beneficiaries of past and continuing injustice prevent the adoption of the principal measures that must yet be taken. What, then, is to be done?

I shall now propose two directions of policy and advocacy that I think all of those concerned with global justice ought to take.

3.6. First, we ought certainly to focus our attentions, and probably to concentrate our advocacy efforts, more with a view to the *failure* of the *Bank* to live up to *its* ideal mission than to the *successes* of the *GATT/WTO and IMF* in discharging *their* appointed missions. Specifically, we should push for the Bank to be empowered, presumably incrementally and first via the IDA, overtly to effect a gradual corrective channeling of ethically exogenous wealth, for the purpose of developing human market-participating capabilities, from those accidentally bearing greater access

to the world's ethically exogenous stock of resources to those accidentally bearing less such access. An excellent start in this direction would be to advocate, for example, that the Bank be authorized to administer the collection and distribution of a Poggian global-resources dividend or its functional equivalent (see, e.g., Pogge 1994). One would hope, however, to see such an effort only *begin* “moderately” in the manner that Pogge suggests (1994, 204–08.) Over time, as it and its rationale grow more familiar, the effort should grow more ambitious. And its beneficiaries, of course, should be sought—as certainly they will be found—not merely in the aggregately “underdeveloped” countries but in *all* countries.

While at first, of course, such advocacy can be expected to be met with the familiar Reaganesque charge of “handouts to the Cadillac-driving [now global] welfare queens” from the unjustly overendowed, our expressly and specifically *tying* all proposals to the *market-preparing and market-facilitating* rationale offered above—and, thus, to the *responsibility-tracing* while exogenous *opportunity-equalizing* conception of *justice* offered above—should significantly undercut, if not indeed obliterate, the persuasiveness of such rhetorical stratagems. Those concerned with justice will be enabled to claim in response to the unjust, quite plausibly, “We simply call for a fuller, more extensive—more complete as well as more fair—global market even than you do. Why do you stand in the way of this extensive market? Why do you refuse to honor responsibility and equal opportunity worldwide?”

The reasons militating in favor of this first policy direction, I think, are plain: Attacks upon the GATT/WTO and the IMF, or upon global trade or global investment *as such*, are misdirected. Worse, they siphon off valuable advocative resources while offering little if any hope of any significant benefit. Keeping the “real” problem—that the Bank lacks the resources to fulfill its proper mandate—clearly in view is absolutely critical even if, for strategic reasons, we nonetheless decide to call for some restrictions—in the form of conditions—upon the operations of the GATT/WTO and the IMF.

3.7. The second policy direction that critics of the Bretton Woods system and others concerned with global justice ought to take is strategically, and with a clear view of the end state ultimately sought, to impose a sort of “conditionality” of their own in assenting to the operations of the GATT/WTO and the IMF. (A fittingly ironical demand!) It should be argued—with sophistication, not just slogans—that “free trade” and “free finance” *are* to be tolerated and indeed to be *sought*, but only insofar as they promote (or at any rate do not

retard) justice. And it should be explicitly *acknowledged* that they *can* indeed promote full justice if and insofar as actual and would-be *participants* in the global goods-trading and financial markets gradually are rendered *equally* “free,” that is, equally ethically exogenously endowed throughout their lives.

Insofar as such would-be global market participants are *not* equally free in the requisite sense—that is, insofar as the Bank is not empowered to effect the mission here envisaged for it—the global polity in general, and those concerned with global justice in particular, must address a thorny “problem of the second best” in evaluating the operations of GATT/WTO and IMF regimes and in determining what precisely to advocate. This problem cannot be dispatched by sloganeering. The critical questions, which must be carefully addressed, become (a) to what extent (if any) does a partial, rather than a full, movement in the direction of filling justice’s earlier-elaborated *requisites* result in some *actual justice improvement* in the distribution of benefits and burdens and (b) if the answer to the first question is “not at all,” “it’s ambiguous,” “it’s indeterminate,” or, worse, “it actually worsens things,” what is to be done? Those two questions are difficult to answer absent some specific description of the particular “partial” movement in the direction of filling justice’s requisites that is contemplated. But it happens that we do have a fairly specific, if necessarily rough, description of the requisite sort available to us. And it looks as though we can fairly make some general observations of the distributive outcomes that tend to be wrought in the world so described. We can also, only somewhat more tentatively, fashion recommendations in light of those likely outcomes. So we have at least some rough, schematic answers to questions (a) and (b) as just formulated—answers that can be fleshed out with further empirical, including econometric, work to be prescribed below.

3.7.1. First, note a familiarly observed effect likely to be wrought by equal treatment and market completion in the products and services markets absent equal treatment in the preparticipation opportunity allocation—that is, by success on the part of the GATT/WTO system absent success on the part of the Bank Group as I have idealized it: At time  $T_2$ , persons in some jurisdictions—for example, laborers in relatively wealthy countries—are unjustly underendowed but are less so than were many of their occupational (and, indeed, generally biologic) forebears at  $T_0$ . They are less unjustly underendowed than the aforementioned forebears in consequence of certain institutionalized justice concessions that intervening forebears during period  $T_1$  were able to extract, in the

forms of governmentally sanctioned collective bargaining and progressive taxation-financed social-insurance regimes, from earlier persons, such as holders of large landed estates or large equity stakes in productive enterprises—generally, indeed, the biologic forebears of our present holders of large land and equity shares—who were unjustly overendowed. Now at  $T_3$ , owing to the success of a global effort to equalize treatment and effect greater market completion in the products and services markets—an effort that has not as yet been matched by any global effort, analogous to earlier domestic efforts, to compensate for unjustly unequal endowments—these relatively better endowed but still unjustly underendowed persons find themselves “backsliding” in the direction of unjustly yet further underendowed status once again, as others who are unjustly even more underendowed than they are—generally the poor in lesser developed countries—suddenly are enabled to compete with them in selling, yet more cheaply, what labor—the underendowed’s only legally protected asset—they can offer.

The backsliders, quite naturally, complain. They see, in effect, a rolling back of the underendowment-compensation provisions that their forebears were able to effect at  $T_1$ . The unjustly overendowed, for their part, predictably now posture as if they were ethically or progress minded, censoriously intoning (a) that the backsliders are unconcerned for the global poor struggling valiantly to work their way out of poverty, (b) that the backsliders stand in the way of progressive specialization and the consequent realization of fabulous economies of scale and ultimate aggregate growth that “benefits everybody,” or both. That, of course, amounts to a “divide and conquer [the unjustly underendowed]” political-economic and rhetorical strategy taken by the unjustly overendowed, effected by means of a surprisingly successful, since not all that clever, sleight of hand: Attention is cynically diverted from the injustice of the endowment distribution as between the over- and the underendowed generally, to a putatively self-serving, productivity-antagonistic, uncharitable grouching on the part of the less underendowed over the marvelous opportunities now being extended to consumers as a class and the more desperately underendowed as potential producers. Any effort to redirect attention to where it belongs is, again cynically—and now quite ironically—met with the pejorative charge of “class warfare.” (As if the protest, rather than the expropriation, were the “war.”)

The backsliders and their supporters, regrettably, have in many cases fallen into the trap to which the aforementioned strategy amounts. They have protested often without proposing an end state, effectively lending credence to the aggregationist and ad hominem attacks of free-trade

apologists. Their answers to those attacks, in turn, when offered at all, often take the form, more or less, of a claim that “trade should be free, but it also should be fair.” That proposition is, of course, fair enough. But what would *count* as “fair” too often is left obscure.

The obscurity appears to be a result of several factors. First, no comprehensive conception of justice like that offered above is borne in mind. Second, attention consequently is not fixed so much upon the distribution between the unjustly overendowed and (all of) the unjustly underendowed as upon that between the unjustly underendowed and the unjustly yet more underendowed. And, third, as between two classes, each of which is unjustly treated but one of which is yet more unjustly treated than the other, it is not clear what distribution justice, even were one possessed of a justice conception, could require—particularly when, as a practical matter, effectively treating the two classes jointly as exhausting the universe of appropriate distributees diverts attention from another class of persons who owe *both* of the unjustly treated classes compensation.

In light of the discussion in part 2, however, it now should be clear what global fairness would ideally entail, and what those concerned for both the backsliders and the unjustly yet more underendowed should bear in mind as a benchmark: Calculate at least the rough value of the aggregate global ethically exogenous endowment—something like Steiner’s “global fund” (Steiner 1998, 99–100; 1994, 270–80)—and at least roughly determine, on the basis of the global population, each person’s rightful share. Then calculate some functional equivalent of an ideal global taxation and redistribution schedule that would determine appropriate transfers from those possessed of more than their shares to those possessed of less. In light of statistically well-documented disparities in wealth within domestic economies and worldwide—small numbers with huge aggregations, vast numbers with very little—chances are (a) that those schedules would recommend transfers directly from the financial-capital-owning overendowed to *both* the backsliders *and* the currently yet more underendowed; and (b) that the backsliders, were they to act collectively—and particularly were they to cooperate with the yet more desperate—could successfully condition agreement to untrammelled trade upon some degree of conformity on the part of the overendowed to the schedules, or upon acceptance of some set of conditions that would amount to the functional equivalent of such a degree of conformity. (Were the form that compensation takes to include some manner of subsidized, market-facilitative “human-capital” development, [b] would be even more likely.) If that hypothesis is borne out, the question then

becomes, in justice, *should* the backsliders so condition their assent to untrammelled trade? I believe that they should. Here is why, and more precisely how.

First, there would be a practical infinity of sets of conditions that would, if properly tailored, amount in their impositions to the imposition of rough “functional equivalents” of the ideal taxation and redistribution schedules in the aforementioned sense. One, for example, would be simply to condition the extension of the GATT/WTO most-favored-nation principle to any nation upon that nation’s extending more or less the same compensatory collective bargaining and/or redistributive taxation benefits to its citizens as the backsliders’ nations historically have done to them.<sup>15</sup> Another would be simply to calculate the additional profits gleaned by the overendowed in any given nation by dint of their effectively hiring cheaper, extranational labor, then guarantee that some appropriate portion of those profits be directed to consequently “backsliding” intranational labor, perhaps partly in the form of guaranteed “human-capital”-development rights. Still another rough functional equivalent would be to require that all persons disemployed or rendered less employed by firms in consequence of expanded global competition in the labor markets be compensated with dividend-yielding ownership shares in the firms that employ such cheaper laborers as do not avail themselves of collective-bargaining rights—a form of *financial* capital-development right extended to the backsliders (see Hockett 2005).

Second, note that any of these rough “functional equivalents” can be calibrated, such that gains realized through the hiring of desperate labor go not *entirely* to the less desperate labor but partly to the overendowed as well. Allowance for some portion of the latter sort presumably would afford continued incentives to the overendowed to continue to hire—and presumptively to benefit—the desperately poor, even while compensating the less desperately poor sufficiently to prevent or substantially slow their backsliding. Why this manner of “incentivization” of the overendowed might be desirable is considered next.

Third, note that the historical tendency is for the desperately poor, as they are increasingly drawn into the industrial economy, to organize themselves and demand more in the way of compensation, at accelerating rates, from the unjustly overendowed (see, e.g., Beaud 2001, 144–50; Bernstein 2004, 333–34). A long-to-medium-term effect, then, of continued integration of the global labor market, provided that the no longer

<sup>15</sup> The taxation benefits might be preferable, insofar—though only insofar—as the most underendowed among the divided and conquered might, as a practical matter, actually refrain from taking recourse to the collective-bargaining rights.

desperate are not thrown back into debilitating desperation, would appear likely to be a more consolidated effort on the part of the unjustly underendowed *as a whole* more effectually to bring about a gradual corrective global exogenous endowment redistribution from the unjustly overendowed.

Fourth, note again, as observed earlier, that it appears to be inherently problematic, if not indeed theoretically indeterminate, how we ought to regard the comparative distributions of two differentially unjustly underendowed classes alone, with no view to the remainder of the universe of distributees—the unjustly overendowed. This problem becomes particularly acute when the effort so to evaluate those distributions is apt to distract, as a practical matter, the would-be evaluator from attending to the unjustly overendowed class's endowment in a manner reasonably likely to entail redistributions of their endowment that would result *unambiguously*, because completely as regards the universe of distributees, in an improvement in justice.

Fifth, in light of the fourth observation, it is not only the case that the “prize” upon which we should train our eyes is the overage held by the unjustly overendowed. It is also the case that (at least) *marginal* differences in such portions of an aggregate *gain* wrought by global market integration as would go to an unjustly underendowed class and an unjustly yet more underendowed class ought not to *concern* us overmuch. The unjustly underendowed *might* reasonably even tolerate a *minimal* degree of “backsliding” but *certainly* could reasonably tolerate a somewhat *slowed* rate of *forward* movement in the short term, if there were good reason to suppose that *both* classes will be enabled to move forward *together* in the direction of receipt of *full compensation* from the unjustly overendowed fairly quickly in consequence of the toleration. (I appeal here to the third point raised above.)

I conclude, in light of these five observations, that advocates of global justice ought to condition assent to free trade upon “fair” trade in—and possibly only in—something like the sense elaborated above. They should require that a sizable share of such aggregate gains generated by the GATT/WTO regime as currently accrue to the unjustly overendowed be diverted to the “backsliders.” But probably they should not demand so large a share as would remove the incentive of the unjustly overendowed to employ the currently unjustly yet more underendowed in the first instance. (Note that the dividend-yielding stock option proposed above would afford the backsliders themselves incentives in effect to do the desired hiring—through the management of the firms that they come partly to own, of course.)

This strategy can be summarized, I think, in the following maxim: Raise the condition of the most unjustly done by, in order to swell the ranks of the politically more influential next-most unjustly done by. Do so by capturing most of the aggregate gains wrought by free global trade and channeling them largely or principally to the most unjustly done by. But channel enough to the next-most unjustly done by to prevent their sinking back into desperation themselves, and allow enough to go to the unjustly *prospering* to “incentivize” their continuing to raise the material living standards (and thus eventual political influence) of the most unjustly done by. *Condition* assent to the *GATT/WTO* regime upon this distribution of the gains, since the unjustly prospering will be “incentivized” to *accept* the condition, and their accepting it will result, in the not-so-distant future, in sufficient strengthening of the unjustly done by as a whole to maximize the prospect ultimately of *full* compensation afforded them all—that is, of ongoing full justice’s being institutionalized, for example, via the afore- envisaged strengthening of the Bank.

Framing the advice in this manner reduces our problem of the second best to a manner of at least theoretically tractable “accounting” problem. It becomes a matter of tracing the flows of benefits wrought by successful implementation of the *GATT/WTO* regime, calculating their amounts and rates of growth and estimating their effects upon the incentives of the unjustly overendowed. I have been assuming, of course, that implementation of the *GATT/WTO* regime does in fact result in sufficient aggregate gain to permit the channeling of benefits in significant measure in all three of the directions that I have advocated. The realism of that assumption, as well as of the assumption that there are institutional means of imposing and fulfilling the conditions, of course must be examined empirically and in adequate detail.

3.7.2. The second general tendency likely to be wrought in a world shorn of any institution discharging the Bank’s ideal function stems from the operations of the Fund, rather as the first such tendency stems from those of the *GATT/WTO*. Here the normative limb of the second-best analysis is somewhat more simply mapped than it was in the previous section.

Consider a class of unjustly underendowed persons, distributed throughout the world but found disproportionately in aggregately poorer nations lacking both in the finance-regulatory infrastructures and in the social insurance “safety nets” commonly found in most of the wealthier nations. This class of distributees, precisely because its members are underendowed, comprises persons who are less able to diversify their

assets and bear risks to their livelihoods than are better-endowed persons. These very same people, as a class, also tend to be *more frequently subject*, as a matter of actual occurrence, to those forms of economic volatility that place their livelihoods—which tend to accrue solely to their principal if not their only asset, their labor—at risk. For those forms of volatility are, above all else, *financial* in origin. They are consequent both upon the free mobility of investment capital, during market panic, out of the firms that employ the underendowed persons and upon the lack of such adequate finance- and firm-regulatory architectures as tend to inspire sufficient global investor *confidence* as is required to induce investors to *leave* their investments stably in place for uninterrupted durations. Moreover, the same instrumentality that has most authoritatively presided over the freeing of global financial flows as just described—the IMF—commonly counsels, and indeed often requires via its conditional lending, that affected nations both (a) scale back on whatever social insurance programs they have and (b) adopt restrictive, hence employment discouraging, monetary and fiscal policies more generally as a means of strengthening global investors' confidence in the prospects presented by investment in those countries. This of course tends, at least in the short term, to worsen the prospects of the disemployed destitute yet further.

On the other hand, these vulnerabilities in large measure constitute, in effect, the flipside of a free-finance-wrought "*advantage*" which our most underendowed persons have lately enjoyed relative to certain somewhat less underendowed persons more commonly found in wealthier nations: They have, precisely *because* less endowed, been attracting investment and consequent employment by the unjustly overendowed, as described above in connection with the success of the GATT/WTO regime in discharging its function. And the freeing of financial flows effected by the IMF regime has, of course, been instrumental in *bringing* this "*advantage*" to the unjustly desperate. The unjustly overendowed thus taketh away, so to speak, but they do so in considerable measure by the same means through which they giveth—the means of untrammelled global finance and investment.

The consequences for our normative second-best analysis of the free global finance and investment regime are twofold. First, with respect to the unjustly most underendowed, the justicial effects of the IMF's successful operations absent similar success on the part of the Bank in discharging its own ideal function as laid out above are *ambiguous*. The success results simultaneously in affording (at least a modicum of) greater opportunity to these distributees, while also subjecting them to greater

risk. It is not immediately clear, then, what precisely to propose by way of advocacy, at least in the form of an “all-or-nothing” admonition. One is tempted, first, to allow those who are simultaneously beneficiaries and victims of the regime to decide for themselves how comparatively to weigh the risks and rewards that it affords and thus whether they wish to continue with it or to terminate it. But one also is tempted, second, to seek means of retaining the benefits while lessening or mitigating the risks posed by continuation of the system, and perhaps to condition continuation in turn upon acceptance of such risk-reducing, mitigating measures.

As it happens, much useful thinking and advocating—by justice advocates and regulators alike—have begun to yield salutary results along the lines of that second “temptation.” The IMF itself has begun both recommending, and assisting in the effectuation of, more effective market-facilitative finance-regulatory programs in less developed constituency nations since the time of the Asian Financial Crisis. By protecting investors and inspiring investor confidence, these programs can reasonably be expected in the long run to lessen financial volatility. Further, the IMF (along with the Bank) also has begun, in response to vigorous criticisms raised since the AFC and especially since the Argentine meltdown in the early twenty-first century, to recognize (or perhaps rediscover) the importance—for political and, indeed, economic stability if not forthrightly for reasons of justice—of effective social-insurance programs (see, e.g., Hockett 2004b; Fox 2003; Subbarao 2003). Finally, many influential (and not in all cases unorthodox) financial economists, and now policy makers as well, have begun to recognize the potential benefits of collectively imposing some degree of friction, in the form of transaction excises (“Tobin taxes”), upon financial flows themselves (see, e.g., ul Haq et al. 1996).

I provisionally conclude, then, that, at least so far as the worst off in the developing countries are concerned, advocacy along many lines already familiar has been successful and both ought to and will continue. There is not a strong justicial reason, then, so far as this constituency of distributees is concerned, to condition continued tolerance of the IMF regime tout court upon a movement of the Bank more rapidly toward fulfillment of the ideal mission that I have designated for it—unless, of course, as an empirical matter it can be shown that imposing such a condition would render such movement of the Bank substantially more likely or more rapid, in which case there would of course be plausible *strategic* reasons fundamentally to change the discourse on the IMF.

The second consequence of the above-discussed IMF and free-finance empirics for our normative second-best analysis is a bit less cheery than

that just laid out. But it also has, in effect, been laid out already: Recall that, in connection with the second-best discussion of the GATT/WTO's effects above in section 3.7.1, we observed that while the worst off among the unjustly done by appear, even notwithstanding the Bank's falling short of its ideal mission, to be rendered arguably better off, under the *same* circumstances the somewhat *less* badly off among the unjustly done by—the backsliders—tend to fare *worse*. Now this faring worse is not simply wrought by the success of the *GATT/WTO* regime. It is critically *facilitated* by the operation of the *IMF* regime, by dint of the critical linkages between the trade and investment regimes adumbrated above. The second-best question here accordingly becomes, Should the analysis offered above, from which we concluded that continued toleration of the GATT/WTO system ought to be conditioned, carry over to the IMF context?

Perhaps counterintuitively, I don't believe that there is an easy answer here. And I suspect that even a sensitive empirical assessment of likely tendencies is unlikely to prove capable of being sensitive *enough* to offer much help. Here, in essence, is why: In favor of conditionality here would be all of the arguments in favor of conditionality with respect to continued toleration of the GATT/WTO's operations, above. Against conditionality, on the other hand, might be the fact that conditionality in respect of the *GATT/WTO* system might well suffice to accomplish the stated end, while allowing the IMF system to chug ahead with the aforementioned reforms gradually being taken on will facilitate both a continued—and presumably now more continuous—lifting up of the living standards of the worst off and the continued development of a rapidly crystallizing global finance-regulatory *governance* system, which benefits everybody.

I provisionally conclude, then, that justice advocates ought definitely to pursue the conditions-imposing advocative posture recommended above in connection with the GATT/WTO regime, and perhaps—but only perhaps—ought to extend that posture to their treatment of the Bretton Woods system as a whole. They should first call forcefully for an enabling of the Bank as described above. They should, further, condition their continued acceptance of the GATT/WTO regime until the Bank is so empowered, in the manner described above. And they should, moreover, condition acceptance of the IMF regime upon continued progress of the sort observed above being under way (regulatory improvement, social-insurance acceptance, transaction taxation, and so forth). But they should table, for the moment, the question of whether also to condition acceptance of the IMF regime upon some specifically instituted agree-

gate-gain-apportionment system analogous to that required in connection with the GATT/WTO.

#### 4. Conclusion

I have sketched what I take to be a metatheoretically and practically compelling theoretic and institutional ideal toward which those interested in global justice might coherently and realistically strive, as well as a plausible menu of advocative strategies, sensitive to institutional and power-distributional “facts on the ground,” from which the same persons might choose in pressing ahead. There are of course many junctures along the argumentative path that I have followed at which I might be taken to task, and which therefore I should have to buttress more fully in a more complete argument. It nonetheless strikes me as both remarkable and encouraging that we have before us three institutions that stand so close, in theory and, indeed, in mandate, jointly to constituting a workable infrastructure of global justice. We stand so near to—and yet, until we get there, so agonizingly far from—where we now must go.

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