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THE ROLE OF APPARENT CONSTRAINTS IN NORMATIVE
REASONING: A METHODOLOGICAL STATEMENT AND
APPLICATION TO GLOBAL JUSTICE[★]

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ABSTRACT. The assumptions that are made about the features of the world that are relatively changeable by agents and those that are not (constraints) play a central role in determining normative conclusions. In this way, normative reasoning is deeply dependent on accounts of the empirical world. Successful normative reasoning must avoid the naturalization of constraints and seek to attribute correctly to agents what is and is not in their power to change. Recent discourse on global justice has often come to unjustified conclusions about agents' obligations due to a narrow view of what is changeable and by whom.

KEY WORDS: causes, constraints, facts, global justice, institutions, obligations

This essay is concerned with a central feature of normative reasoning and its relevance to problems of global distributive justice; in particular, the role played by judgments concerning constraints in normative reasoning.

The identification of apparent constraints plays a crucial role in our ascription of obligations to different actors and in our understanding of the content of those obligations. The phrase "*apparent* constraints" is a useful one because constraints that are deemed to exist are often in fact not present. The misrecognition of constraints can lead to insufficient attention to feasible revisions in the existing social order (and in particular in institutional arrangements) and a resulting failure to identify the actions that would best advance normative ends (of social justice and individual morality). It can also lead to an inappropriate attribution of responsibilities to different agents. I shall argue that it is crucially necessary in normative reasoning to combat the tendency to misidentify apparent constraints.

The argument is a species of a more general one. It is necessary to identify relevant facts about the situation faced by moral agents if they

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are to form normative judgments that are usable by these agents. What the facts are is of course often a matter of dispute. This is especially true of the facts concerning causal relations, which are deeply relevant to the identification of obligations. Because propositions concerning causal relations are of an inextricably counterfactual character they are often quite reasonably disputed. It is of great importance that we seek to identify relevant facts (despite the difficulties involved) as otherwise we will be unable to give practical application to normative principles. However, it does not follow that we should act on the basis of the single theory we take to be most likely to be true. Rather, moral decision-making and evaluation must be appropriately informed by the fact we are uncertain about the facts.

1. THE NATURE AND ROLE OF CONSTRAINTS

All normative reasoning takes place against a factual background. An aspect of our accustomed descriptions of such a factual background is the identification of constraints, understood as fixed features of the natural or the social world. I shall argue, however, that our understanding of certain features of the world as constraints is often not ultimately sustainable. Rather, apparent constraints must often be viewed as changeable through the appropriate actions of agents (individuals and collectivities).

We may, of course, reject the concept of constraint in favor of that of costly actions. From such a standpoint, very few constraints would exist. Rather, there would exist many features of the world that may be changed only at a cost to the agent that is high (and perhaps prohibitive). This is a coherent standpoint, which is indeed the one to which I subscribe. However, it is customary to refer to circumstances that are very (and perhaps prohibitively) costly to change as constraints. This accustomed usage is the one that I adopt here. Constraints, understood in this sense, are a feature of any plausible description of a problem of normative evaluation, as in their absence the evaluator's problem would bear no relationship to any real evaluative context encountered in the world.¹

¹ In other words, I am setting aside here the suggestion of Rudiger Bittner that what I refer to as constraints can be described merely as facts about the world concerning features of the world that are difficult or costly to change, from the standpoint of a particular decision-making actor and for purposes of a particular decision-making problem.

I propose the following definition of a constraint:

A constraint faced by an agent is a feature of the world that can reasonably be judged to have the property that the agent cannot change it without substantial cost or difficulty, if at all.

Pragmatic judgments play a critical role in the identification of constraints as just defined. Constraints are identified through pragmatic judgments concerning what it is that is reasonable to judge that an agent cannot readily change. It is evident that a constraint arises as a consequence of the *relation* between an agent and her context. The features of a context that may be described as constraints vary with the pair {agent, context}. It may be in the power of a particular (individual or collective) agent to change certain features of her environment, and not in her power to change other features of her environment and this judgment is agent-relative. It is also clear from this definition that many features of the world that are constraints from the point of view of individual agents are not constraints from the point of view of those agents when they are considered collectively (or indeed, when considered as members of a coalition sufficient to generate change). A full description of a choice situation must specify constraints, but it must also note that these constraints are potentially changeable. As a consequence, there are always two morally relevant forms of action that are feasible – actions that respect constraints and actions that change them. This idea is given mathematical form in the Kuhn–Tucker theorem, which shows that a maximand can always be achieved to a greater extent if a binding constraint is relaxed.²

2. APPLICATION TO GLOBAL DISTRIBUTIVE JUSTICE

The identification of certain features of the world as constraints, and others as changeable, is a task that is central to debates on global distributive justice. Such identification plays a critical role in the determination of the content and the distribution of obligations.

² See for example A. Mas-Colell, M. Whinston and J. Green, *Microeconomic Theory* (Oxford: Oxford University Press, 1995), Theorem M.K.2. The “complementary slackness” condition of the Kuhn-Tucker Theorem ensures that in problems involving constrained maximization the relaxation of a binding constraint (i.e., one that is relevant to the problem) necessarily increases the level of achievement of the maximand.

For example, the innumerable ghoulish debates that have occurred as to where the marginal dollar should flow – to the United States poor or the Kenyan poor, to the handicapped Chinese or to the able-bodied Sudanese – presuppose the existence of a constraint which prevents both of these goals from being fulfilled simultaneously. It is not unreasonable to question this frame work and to ask, why not fulfill both goals? We live in a world of unprecedented plenty. As a result, the presupposition that there exists a constraint requires justification. Moreover, this justification must be itself a moral justification, and cannot take as given merely on the basis of empirical facts.³

An important current debate concerns the reasons that poor countries are poor. Did they come to be poor (or do they continue to be poor) because of choices that they have themselves made, or rather because of the features of the world order in which they find themselves, and because of the actions of other agents? The answer to this question will properly influence our judgments concerning the distribution of responsibilities for the alleviation of poverty. For instance, as Mathias Risse points out in this issue of *The Journal of Ethics*, a debate has occurred recently on the question of whether the most important determinant of economic growth in poor countries is their geographical location or the institutions that they possess (including those that influence the degree of their integration with the world economy). What is the correct description of the situation faced by poor countries? Is it that they are constrained from raising their incomes by their poor geographical circumstances or other such factors beyond their control or rather are they constrained from raising their incomes by their poor institutions, which may be modified through actions that they can take? As Risse points out, our judgments and ascriptions of responsibility may depend on which of these empirical characterizations we accept.

It is important to note three points here. First, the determinants of cross-country differences in income (and in economic growth) continue to be controversial. Given that this important empirical issue on which moral judgments crucially depend is not settled, it is necessary to adopt an approach to moral decision-making and judgment that takes note of this uncertainty.

Such an approach must recommend actions after assessing the moral desirability of all possible outcomes that may arise as a result

³ See, for example, the essays in Deen Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 2004).

of those actions, including those that will arise if the theory of empirical causation on which the choice of action is predicated happens to be false. It may be morally greatly important to avoid having been responsible for worsening the severe disadvantages of others, or allowing them to languish in those disadvantages, if one was bound to assist them as a requirement of justice. Yet it is precisely such an outcome that may arise if an incorrect causal theory leads one to the false conclusion that one has no duty to benefit others. To the extent that our judgments as to whether the present world is just are grounded in fallible empirical judgments, we must exercise caution when acting (or failing to act) on the basis of these judgments.

Second, the assumption that a population is causally responsible for the features of its domestic institutions and the outcomes that result in the presence of these institutions may not be correct. For example, a country's domestic institutions may have been shaped profoundly by events or circumstances for which other countries were, or are, directly responsible. We can consider here the impact (for example) of European colonialism and the cold war on presently poor countries, as well as features of the international order such as the willingness of other countries to recognize a "resource and borrowing privilege" through which corrupt elites benefit from illegitimate rule.⁴ Indeed, that institutions are deeply shaped by external forces is the supposition of the economists that Risse quotes in support of the view that "institutions matter."⁵ The point is not that institutions are not an important determinant of subsequent development trajectories. On the contrary, we have every reason to think that they are, *inter alia*. The point is rather that a population cannot rigidly be held *morally* responsible for the nature of its institutions, which reflect many historical factors, including external imposition and the accretion of institutional structures and norms over genera-

⁴ On this see Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002).

⁵ See e.g., D. Rodrik, A. Subramanian and F. Trebbi, "Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development," 2002 (<http://ksghome.harvard.edu/~drodrik.academic.ksg/institutionsrule,%205.0.pdf>) and Daron Acemoglu, James A. Robinson and Simon Johnson, "The Colonial Origins of Comparative Development: An Empirical Investigation," *American Economic Review* 91 (2001), pp. 1369–1401. This work argues that countries that were more thoroughly colonized and had institutions put in place by the colonizing countries are those that now possess ostensibly "superior" institutions.

tions. The current members of the population of a country may have inherited these institutions from their predecessors, and may now find it difficult or impossible to change them.

Another reason that the outcomes that result in the presence of specific domestic institutions may not be ones for which the population of that country may be held responsible is that these outcomes may in fact depend jointly on the nature of the world order in which the country finds itself situated (and which it has not played a significant role in shaping) and its domestic institutions. It is not difficult to think of ways in which this may be so. For example, a country that attempts as an integral part of its development strategy to undertake land reforms, significant taxation of capital, and other policies that are deemed unfriendly to holders of conventional private property rights is more likely to be punished with capital flight in a world in which other countries respect these conventional property rights (and may even actively seek to attract fleeing capital, through measures such as banking secrecy).

Third, there does not exist a one-to-one mapping from retrospective causal responsibility to moral responsibility.⁶ Even if institutions are thought of as plastic – radically transformable – it does not follow that a population can be held morally responsible for the outcomes produced by the poor institutions that they do in fact have. Although institutions are transformable, it requires imagination, courage and luck to transform them. What we know about institutions tells us that they contain a significant element of path-dependence. Institutional arrangements can settle into (low- or high- level) strategic equilibria that are difficult or impossible for individual agents, acting in isolation, to change. The collective action problems involved in reforming institutions may be exceedingly difficult to overcome. Nevertheless, foreigners may have the ability to act in ways that decrease the disadvantages realized by the population in a country, either through helping to reform domestic institutions within the developing or developed countries, by helping to reform global institutions, or by undertaking other measures, including resource transfers. The (prospective) causal capacity of foreigners to reduce the disadvantages suffered by the population of a poor country may by itself generate obligations, of justice and not merely of charity – irrespective of retrospective causal responsibility for the

⁶ See Joel Feinberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970).

institutions that exist. This would be true, for instance, in a theory of justice that responded in however moderate a way to the moral arbitrariness and consequent unacceptability of massive differences in life chances that have arisen through the accident of birth.

The arguments of Risse are unconvincing because they involve unjustified restrictions of at least three kinds. First, they focus solely on the special case in which moral responsibility is entirely derivative of retrospective causal responsibility. Second, they focus solely on retrospective causal responsibility for domestic institutions, neglecting retrospective causal responsibility for all of the other features of the world that act (conjointly) to produce a particular distributive outcome, within countries and globally. Third, they deny the retrospective causal responsibility of foreigners for the nature of domestic institutions in poor countries.

What is useful in Risse's work is that it reminds us of the parametric dependence of our moral judgments on the constraints that we believe to exist. However, it demonstrates equally that if we change our perception of these constraints our attribution of responsibilities to agents will change accordingly and indeed profoundly.

However, if we give more substantial attention to the potential for the transformation of apparent constraints we are drawn robustly into a territory of realistic utopian moral reasoning. Our attention is drawn to possible actions to transform institutional structures, practices, and rules of the domestic and world system so that they may better promote our normative ends. We are drawn away from problems of how to choose individual action while respecting existing institutional structures and toward problems of institutional design and transformation through collective action. The assessment of whether social institutions are just requires the identification of relevant counterfactuals. Similarly, the requirements of individual morality extend to the support that individuals do or do not extend to alternative institutional arrangements and not merely to the way in which they act within existing institutions.

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