

Three Thoughts Concerning “Just Linkage”

Daniel Markovits†

Comment on Sanjay Reddy and Christian Barry’s *International Trade and Labor Standards: A Proposal for Linkage*

Thanks very much to the organizers for arranging this conference, and thanks to all of you for giving up your Saturday afternoon to participate. Let me start by saying straightforwardly that I have no settled view about whether linking international trade and domestic labor standards is a good idea or not, all-things-considered, or indeed about whether it is practically feasible or not. Instead of making an argument for or against the Barry-Reddy proposal for just linkage, I confine myself to identifying what I take to be three important respects in which the proposal invites further thought, some of which have been identified earlier and some of which have not. I will also try to draw out some connections between this proposal and what has been said earlier today, especially by Richard Miller in his remarks concerning global institutional reform.

The first feature of just linkage that I want to take up is that it privileges work as a site of general distributive claims. It is not obvious that this is the right way to proceed.

To be sure, there exist certain kinds of distributive claims that are naturally and even necessarily associated with work conditions. An example is the claim not to be enslaved: it is difficult to imagine how one could respect someone’s right not to be a slave except by restricting the way in which those for whom she works may treat her. Moreover, other (less dramatic) distributive claims may also be inextricably tied to work. I am thinking, in particular, of rights to organize in conjunction with other workers, especially insofar as these rights importantly include rights to engage in collective bargaining with capital, rather than simply to band together in workers’ political parties. These types of claims, to the extent that they are appealing, will naturally and necessarily privilege work as a site of distributive justice for the worst off, or at least for some of the worst off.

But there are all sorts of other ways in which the Barry-Reddy proposal for just linkage privileges work as a site of distributive justice—including, in particular, by insisting on minimum wages (perhaps including fringe benefits) and maximum hours. And the basic distributive claims that these pro-

† Associate Professor of Law, Yale Law School.

posals answer - claims to a certain material standard of living and to a life outside of work (including, but not limited to, adequate opportunities for leisure) - may also be addressed in ways that are unconnected to the employment relationship. A simple alternative, which I offer not as the best policy but just as an example to help fix ideas, is to provide for the worst off through entitlement programs, or even cash disbursements, which apply even to those who cannot get work. This alternative supplements wages rather than mandating higher wages; it allows the terms of employment to be fixed by market mechanisms (although these now operate against a backdrop of greater security for workers). There are, of course, many variations on this proposal, which differ along principled and not just practical lines. Once again, the little that I've said here is by way of illustration only.

Such possibilities make it natural to ask whether it is for the best, all-things-considered, that distributive claims (at least, those that may be answered either in connection with or apart from work) should be addressed using policies that operate through the employment relation. (This question may, of course, be asked in a domestic as well as in an international context.) I have no fixed view about the answer to this question, which would surely distinguish among varieties of work-independent redistributive programs that I have lumped together. I raise the issue not to stake out a position, but only because Barry and Reddy's argument would benefit from taking up the question more extensively and above all more explicitly than it now does.

In particular, Barry and Reddy equivocate about whether the goal from which they set out is to improve the condition of the less advantaged *tout court* or, instead, to improve more narrowly the condition of less advantaged *workers*. This ambiguity in the way in which the manuscript currently frames its ambition threatens to disguise the choice between work-dependent and work-independent redistribution. In so doing, it may make the case for just linkage appear stronger than it perhaps is.

The former goal - of improving the lives of all the global poor - is more obviously compelling and therefore fits most naturally with Barry and Reddy's self-proclaimed desire to proceed from uncontroversial foundations. But this goal is not necessarily best served by Barry and Reddy's proposal for just linkage. To begin with, the emphasis on fair terms of work leaves out those who have and can get no work, and this may distort global distributive justice away from some of the most deserving. Moreover, just linkage introduces unnecessary economic inefficiencies into redistribution even in favor of those who can get work. The connection that it imposes between redistribution and working inefficiently distorts, in a way that work-independent redistribution might avoid, the choice between market labor on the one hand and subsistence production or leisure on the other. (Here it does not help that the Barry-Reddy proposal would condition access to international markets on fair labor practices in all sectors of the economy, including in production for domestic consumption, and not just for export. The distortion at issue is not between classes of market

production but rather between all types of market production and other activities.)

By contrast, the latter goal - of improving the lives specifically of the employed global poor - may more easily be connected to Barry and Reddy's emphasis on labor standards. But this goal is perhaps less uncontroversial than Barry and Reddy would wish it to be. Although a distributive preference for workers over non-workers may be defensible, either on the ground that the workers are, in principle, more deserving or on the ground that they are, in practice, easier to aid, that defense will inevitably be controversial. Barry and Reddy do not provide it and, moreover, wish to avoid the types of controversy that such a defense would necessarily involve. The connection that just linkage draws between work and distributive justice is, therefore, the first respect in which the Barry-Reddy proposal invites further argument.

The second feature of the Barry-Reddy proposal on which I want to comment is that it enforces work-related distributive claims through trade policy. This enforcement mechanism raises a host of familiar questions, many of which have been identified either in the paper or in today's discussion, but which seem worth briefly re-emphasizing, perhaps in order to encourage Barry and Reddy to address them somewhat more directly than they have done so far.

At some moments, Barry and Reddy seem to think it natural that labor standards should be enforced through market access, and even suggest that their proposal for just linkage proceeds by an analogy to domestic policies that use access to domestic markets as one of the ways of enforcing work-related distributive ideals. But it seems to me that direct command and control is a much more important enforcement mechanism in the domestic context. The principal sanction against abusive domestic employers is not that their goods are prevented from being sold, but rather that something else is done to them: they're fined; they're enjoined; they're subject to criminal prosecution.

Moreover, although enforcement mechanisms that do not go through trade obviously raise complications in the international context that have no domestic analogs, these mechanisms remain available, both in principle and (although perhaps to a lesser extent) in practice. Most extremely (and as a direct analogy to domestic command and control), individual states or international organizations might *force* other states to respect fair labor standards, including perhaps even by military intervention against states that, say, support or permit slavery. Moreover, there are much, much more modest alternatives to the trade-sanction-based regime that Barry and Reddy propose. One especially modest proposal, which lies at the opposite extreme from military intervention, would offer substantial direct development aid for states that do impose fair labor standards, perhaps even aid that directly subsidizes these standards.

I mention these alternatives not to defend them but only to emphasize that the "linkage" part of the Barry-Reddy proposal stands as much in need of a defense as the "justice" part and to point out that the domestic enforce-

ment of labor standards provides grounds for skepticism rather than enthusiasm about linkage. Barry and Reddy are, of course, aware of this, and their manuscript does address some alternatives to linkage, but it seems to me that there is again room for a more explicit argument here.

The third feature of the Barry-Reddy proposal on which I will comment is the suggestion that the labor standards and trade sanctions that constitute the substance of just linkage should be applied and administered specifically through a global institution rather than being promoted in some other way. The institutional solution that Barry and Reddy prefer is in many respects the most complicated feature of their proposal, and the complications that it involves are directly related to some themes in the paper that Richard Miller presented this morning.

To be sure, the most prominent (or at least the most powerful) skeptics concerning international institutions today are skeptical because they reject the egalitarian and internationalist aims that such institutions (at least on Barry and Reddy's model) pursue. That position is not interesting in the present context, however, because it opposes the Barry-Reddy proposal entirely, rather than just in its institutional component. But narrower objections focusing specifically on the institutional aspect of Barry and Reddy's proposal are also available: it is possible for someone who is sympathetic to Barry and Reddy's work-centered account of global distributive justice, and who accepts their contention that international trade mechanisms are the best way to promote distributive justice so understood, to be skeptical, nevertheless, of the idea that a global institution should make the connection. Most naturally, such a sympathetic skeptic may doubt whether the institutional approach that Barry and Reddy propose presents a feasible mechanism for achieving just linkage. Such a person might think just linkage is more effectively promoted by bilateral (or even multi-lateral) treaties, unilateral sanctions, or even social movements (such as consumer boycotts or the adoption by businesses of the Sullivan principles).

Barry and Reddy are, of course, aware of concerns about the feasibility of their institutional proposal for implementing just linkage, and they have taken up such concerns in some detail in their manuscript and in their presentation today. In particular, Barry and Reddy address two versions of the problem of feasibility: first, that institutional enforcement faces strategic obstacles that render it unstable even among nations that severally support just linkage; and second, that the existing international power structure enables nations that oppose just linkage to block or delay the creation of the institutions that they contemplate, or to raise the opportunity costs of establishing these institutions so high that reformist resources would be better devoted elsewhere. Both possibilities are important, but I have little to add to Barry and Reddy's arguments in this connection and so do not pursue them here.

Instead, I'll conclude my remarks by taking up another sense in which Barry and Reddy's institutional approach to enforcing just linkage might be infeasible. This is the concern that, even if the global institution that

Barry and Reddy contemplate can be created, it will inevitably be distorted and manipulated by powerful nations whose self-interest is opposed to just linkage, frustrating its original objectives. This is just an application of the broader skepticism concerning international institutions that Richard Miller expressed in his paper this morning; namely, that in the context of the extreme concentration of economic and military power in the world today, international institutions are unable to control exploitation by the rich and powerful and inevitably become tools of such exploitation. These institutions don't simply fail to promote justice but rather actively encourage injustice.

Barry and Reddy, moreover, are clearly aware of the possibility that the institution through which they propose to enforce just linkage may be hijacked for non-egalitarian purposes, specifically in the service of protectionism among the developed nations, but they remain, nevertheless, attracted to an institutional approach. The Barry-Reddy proposal, therefore, stands in sharp disagreement with Miller's argument, and the disagreement presents an opportunity for revisiting broader questions concerning the relationship between global justice and global institutions that constitute one of this conference's leading themes.

The tension between the Barry-Reddy proposal for institutionalizing just linkage and Miller's approach to international institutions can be elaborated in two very different ways. One has to do with the recent history of, and concrete reality regarding, labor standards and international trade. How much power does the American hegemon in fact possess just now? What are the American hegemon's domestic interests concerning labor standards in the developing world? And to what extent is the American hegemon inclined to use its power to manipulate institutions in the service of its interests specifically in this context? These are important questions, to be sure, but I have nothing particularly intelligent to say about them. Moreover, Miller's argument, at least, proceeds in a generalist modality that such narrow, case-specific considerations cannot capture. For both reasons, I'll set aside micro-level skepticism about institutionalizing just linkage and instead focus on an alternative systematic and structural account of the tension between Miller's skepticism about international institutions and the institutional approach to just linkage that Barry and Reddy prefer. This tension involves the general relationship between, on the one hand, institutional structures and the formal rules that they establish and, on the other hand, the substantive interests that are pursued and regulated through these institutions and under these rules.

Miller's paper takes an extremely skeptical, realist view of the ability of institutions and systems of institutional rules to constrain and cabin substantial interests of powerful parties. The thought that animates the paper, at least as I understand it, is that institutions, and the procedures that govern them, have no independent ability to constrain the exercise of power, except insofar as they are themselves independently endowed with power. Accordingly, because wealth and power are today concentrated (unequally) in nations, so that global institutions have no free-standing power of their

own, global institutions cannot constrain rich and powerful nations. Indeed, and to the contrary, global institutions provide frames in which to organize, focus, and magnify existing national power. Their existence, therefore, has the opposite consequence of allowing rich nations to pursue their purposes more completely and effectively than they could do in the absence of global institutions.

Although such realism has its merits, it is only part of the truth and must be balanced against an alternative and more optimistic conception of the way in which even powerless institutions and systems of rules function. This alternative conception emphasizes that good-faith and consistency (in the sense of deciding like cases alike) are naturally appealing to persons whose moral psychology inclines them to support efforts to apply general principles to particular cases in an orderly and uniform manner. (One has to be careful here about how naturalistic one wants the argument to be, although there is a long and deep vein of naturalism in the philosophical tradition on this point, culminating in Rawls's idea that one of the two basic powers of human moral personality is the capacity to cooperate reasonably with others to support fair practices.) And, speaking loosely, one might say that when this moral psychology is applied to an institutional context, it exerts a defeasible but nevertheless potent free-standing pressure against exceptionalism, which can even constrain the self-serving conduct of the powerful. Indeed, there is even reason to think that these institutional affinities are the principal grounds of such other-regarding inclinations as persons have or likely can develop, so that even the most idealistic social movements, if they are never crystallized into an institutional form, cannot over the long run provide much service to the poor and powerless.

One way in which international institutions can function to constrain conduct, even in the shadow of extreme inequalities in wealth and power and even without recourse to coercive power of their own, is by engaging these tendencies in human moral and practical personality and crystallizing them into particular forms. Institutions require even the powerful to frame the pursuit of their interests in terms of the operation of general rules. And these general rules (even when they are initially chosen to suit the powerful) take on lives of their own that - because even the powerful find it difficult barefacedly to reject rules that they have previously endorsed - constrain the powerful later in the course of these institutions' development. Moreover, the free-standing authority associated with the internal logic of institutional rule-making may also be given a much more concrete expression. It inheres, for example, in the professional ideology of the officials who administer institutions, who (whatever their initial motives) inevitably come to develop some measure of allegiance to the institutions that they occupy and to these institutions' rules, and not just to the constituencies on whose behalves they initially entered the institutions. Indeed, the professional ideology of institutional officials may even bleed out of the institutions that sustain it and into general practical life. A domestic example is the way in which procedural values associated with

the professional ideology of lawyers and judges have come to influence political morality more broadly. And an international example, highly relevant to the proposal for institutionalizing just linkage that is currently on the table, is the way in which the ideology of the international civil service establishes itself in domestic politics, either through the formal domestic adoption of international legal norms or simply through the overlap and interchange among international and domestic elites. The Barry-Reddy proposal would, to my mind at least, benefit from engaging these arguments and elaborating their application specifically to just linkage, in order to defuse skepticism concerning institutions of the sort that Miller articulated earlier today.

Indeed, Barry and Reddy might go further still in promoting their institutional approach to just linkage, to argue not just that international institutions are compatible in practice with achieving a more just distribution of resources, but that they are in some deeper theoretical sense necessary in order for claims of international distributive justice (including those concerning just linkage) to take hold. On the one hand, the opening that our practical personalities give to rule-governed conduct and institutional authority may be the best hope for triggering a willingness, among the inhabitants of rich and powerful nations, to sacrifice their narrow national interests in the service of global justice. (Certainly, familiar theories concerning the morally educative function of markets, for example, or of the common law, suggest that people are drawn into concerns for domestic justice in precisely this way.) And on the other hand, a powerful line of thought (again associated with Rawls) proposes that, in contradistinction to humanitarian claims, claims of justice apply only in the shadow of the authority-relations associated with rule-governed, institutional social organization (and, in particular, in the domestic context, with the state). Insofar as this is right, the creation of international institutions may serve not just to promote a more just international distribution of resources but also to underwrite the claims of justice that this distribution answers. These possibilities suggest a final reason for which Barry and Reddy might profitably connect the expressly institutional character of their proposal for just linkage to the underlying philosophical questions concerning international justice that their proposal sets out to address.

Just Warfare Theory and Noncombatant Immunity

Richard J. Arneson†

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Introduction

According to just war theory, a just war is a war against military aggression or the serious intentional threat of military aggression or a war of intervention to protect fundamental human rights. A just war must also satisfy a proportionality norm: the reasonably expected moral gains of commencing and sustaining military intervention must exceed the reasonably expected moral costs.¹ In this tradition, the justice of the war is

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1. This statement requires interpretation. Just as one may use lethal self-defense, if necessary, to defend against a serious but non-lethal attack, a nation may respond to an aggressor with greater force than was employed against it. Injuries suffered by the aggressor will be discounted in the just war calculation.