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Book Review Essay

“Poverty and Justice: Competing Lenses on International Economic Law”

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Poverty and Justice: Competing Lenses on International Economic Law

Oisín Suttle

John Linarelli (ed.), *Research Handbook on Global Justice and International Economic Law* (Edward Elgar, 2013)

Krista Nadakavukaren Schefer (ed.), *Poverty and the International Economic Legal System: Duties to the World's Poor* (Cambridge University Press, 2013)

I.

Posner and Sykes observe of international economic law (IEL) that it is the only area of international law in which law and economics, as a distinctive methodology, has played a significant role. Elsewhere, they lament, international law scholarship has been dominated by doctrinal, historical or philosophical approaches.¹ In fact, their point might be put more strongly; whereas economic analysis has had little impact in other areas of international law, in IEL its dominance has historically eclipsed all other theoretical approaches.² However, just as economic analysis has begun to spread to other areas of international law, in large part inspired by the work of political scientists, so its hegemony in IEL has recently been challenged by scholars applying insights from human rights, political theory and moral philosophy.³

Many explanations might be offered for the late arrival of political theorists, in particular, to the study of IEL. Most obviously, the hegemony of economic analysis, and in particular the power of comparative advantage in trade scholarship, left little space for alternative theoretical approaches; destabilizing the free trade consensus, in both theory and practice, was a necessary prerequisite for applying approaches that emphasize the distributive and conflictual nature of economic regulation.⁴

¹ Eric A. Posner and Alan O. Sykes *Economic Foundations of International Law* (Belknap Press 2013)
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² This story is well told in Robert Howse, 'From Politics to Technocracy - and Back Again: The Fate of the Multilateral Trading Regime' (2002) 96 *American Journal of International Law* 94-117

³ As well as the volumes under review, prominent book-length contributions include: T. Cottier *et al.* (eds) *Human Rights and International Trade* (Oxford University Press 2005); Frank Garcia *Trade, Inequality, and Justice : Towards a Liberal Theory of Just Trade* (Martinus Nijhoff 2003); Aaron James *Fairness in Practice : A Social Contract for a Global Economy* (Oxford University Press 2012); Chi Carmody, Frank Garcia and John Linarelli (eds), *Global Justice and International Economic Law* (Cambridge University Press 2012); Frank Garcia *Global Justice and International Economic Law : Three Takes* (Cambridge University Press 2013)

⁴ This point is well made, albeit to a different purpose, in Fernando R. Teson and Jonathan Klick, 'Global Justice and Trade' in C. Carmody, F. Garcia and J. Linarelli (eds), *Global Justice and International Economic Law* (Cambridge University Press 2012) 217-260

Dependency theorists and the movement for a New International Economic Order constituted a first generation of challengers; their retreat saw a reassertion of free trade dogmas that remained largely unchallenged until after the Uruguay Round.

Two further explanations, however, relate more closely to the project of international political theory. The first is the lack of consensus within this field of study. Domestically, our tradition of political theory goes back to Aristotle. We can draw on various full worked out theories of justice including, most prominently, liberal, libertarian or utilitarian. Disagreement persists, but it is substantially structured by localized consensus. By contrast international justice became a serious focus of political philosophy only in the last quarter of the twentieth century.⁵ Theories are less developed. Intuitions are less clear. There is simply no agreement amongst philosophers on what justice might demand beyond the state. Indeed, as Thomas Nagel observes, “it is not clear what the main questions are, let alone the main possible answers”.⁶ If expert consensus is a prerequisite for epistemic communities to influence policy debates, then it is little surprise that international political theory has remained on the sidelines.⁷

The second explanation reflects the extent to which the global justice debate has polarized around statist and cosmopolitan positions: the former emphasizing the distinctiveness of justice within political communities and denying any thick duties of justice beyond the state; while the latter denies that distinctiveness, emphasizing the common basis of duties towards compatriots and foreigners. Neither position has proved well suited to addressing the practical challenges of IEL: statism lacks the necessary critical purchase; while cosmopolitanism struggles to identify what elements are worth retaining from the present system.⁸ Thus, even if a true consensus developed on either position, it is unclear how far it could inform specifically legal scholarship.

These diagnoses, if accepted, suggest a number of challenges for further research to foster a more productive engagement between political philosophy and international economic law. The first lies in identifying those areas where genuine distributive

⁵ Political theory’s international turn is commonly dated to one of two publications, from 1972 and 1979 respectively: Peter Singer, ‘Famine, Affluence, and Morality’ (1972) 1 *Philosophy & Public Affairs* 229-243; Charles R. Beitz *Political Theory and International Relations* (Princeton University Press 1979)

⁶ Thomas Nagel, ‘The Problem of Global Justice’ (2005) 33 *Philosophy & Public Affairs* 113-147, p. 113

⁷ Peter M. Haas, ‘Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control’ (1989) 43 *International Organization* 377-403, p. 380

⁸ Similar points are developed in James, supra note 3, p. 9-15; Oisín Suttle, ‘Equality in Global Commerce: Towards a Political Theory of International Economic Law’ (2015) *European Journal of International Law* (forthcoming)

questions arise in economic regulation; this seems best left to economists.⁹ The second is the progressive development of international political theory. Philosophers enjoy some comparative advantage in this task; but theoretically minded lawyers can also make an important contribution, particularly in guiding theoretical work towards principles that can actually be applied to address concrete problems.¹⁰ The third, for which lawyers are uniquely suited, lies in working out the implications of existing theories for specific contested questions in IEL.

II.

The essays in John Linarelli's *Research Handbook on Global Justice and International Economic Law* range across these three areas. Only one is concerned primarily with the first, economic, challenge (Maneschi, 'International trade theory and comparative advantage'). Five address, to varying degrees, the second challenge, of elaborating and defending theoretical approaches tailored to critiquing IEL (Brock, 'Theories of global justice'; Petersmann, 'Human rights and international economic law in the 21st century'; Garcia and Ciko, 'Theories of justice and international economic law'; Chimni, 'Critical theory and international economic law: a third world approach to international law (TMAIL) perspective'; and Linarelli, 'Law rights and development'). The remaining five fall under the third heading, building bridges between theory and practice (Lim, 'Regional trade agreements and the poverty agenda'; Clements 'Multilateral development banks and the International Monetary Fund'; Lundan, 'Human rights issues in multinational value chains'; Correa, 'Intellectual property rights and international economic governance'; He and Murphy, 'Global social justice at the WTO? The role of NGOs in constructing global social contracts').

This is the second volume on global justice and IEL that Linarelli has edited in as many years. Thus a reasonable place to start in assessing it is to inquire what purpose this new volume is intended to serve. His previous volume, with Frank Garcia and Chi Carmody, was explicitly concerned to advance new perspectives, whether theoretical or applied, on questions of justice and IEL.¹¹ This Handbook, as its title suggests, has a more practical, and indeed pedagogical, goal. It is characterized as a "broad yet deep survey" of approaches that the editor suggests can serve variously to critique, guide and justify IEL. It aspires to "stimulate discussion and have some impact in legal and policy venues"; however in so far as it seeks to advance the understanding of justice in IEL scholarship, it does so by aggregation and dissemination, rather than significant progressive development. This is an important task, and one in which it is generally successful. It provides accessible introductions

⁹ This does not mean, of course, that we must be limited by mainstream or consensus views amongst economists. For a critical review of the economic evidence, Dani Rodrik, *The Global Governance of Trade as If Development Really Mattered* (United Nations Development Programme 2001)

¹⁰ Amongst lawyers, Frank Garcia has perhaps done most to bridge this gap.

¹¹ Carmody, Garcia and Linarelli, *supra* note 3.

to a number of theoretical perspectives, and illuminates emergent problems of justice in various IEL practices to which those perspectives might readily be applied. IEL scholars unfamiliar with the theoretical literature on global justice will find much here to stimulate thought, and to tempt them to further engagement. Scholars already familiar with perspectives represented are unlikely to find anything of great novelty; but given its consolidating goal, that is hardly a criticism, and indeed may be a positive feature. In a field as complicated and confusing as global justice and IEL, there is merit in clearly distinguishing consolidation from innovation.

Before addressing the individual contributions it is worth asking how far this volume as a whole exhibits the two key failings, of uncertainty and irrelevance, above ascribed to scholarship in this area.

On the count of relevance, it acquits itself well. Theory is linked to practice, particularly in the more theoretical contributions. A number of the theoretical approaches represented (human rights, 'internal' approaches to theorizing justice, TWAIL, law and development) are self-consciously practice oriented; while the chapter on more conventionally philosophical theories of global justice, which are most prone to this failing, includes discussion of thinkers who have sought to derive policy implications from their theories, and indeed is written by a scholar, Gillian Brock, who has in other work done much to advance a middle path between the statist and cosmopolitan poles discussed above.¹² Some of the more practical contributions are less satisfying in this regard; while invoking the language of justice at various points, it is sometimes unclear how far explicitly theoretical insights inform their analysis. The promise of theory is surely that it can bring some order to our bare intuition that there is something troubling about poverty, inequality and underdevelopment, clarifying which problems we have duties to solve, and how those duties should be prioritized. A greater emphasis on this role might have improved the more practically oriented contributions. That said, for teachers its absence offers a potentially fruitful pedagogical opportunity, as the various theoretical chapters might be applied to interrogate the conclusions in the more practical papers.

Turning to uncertainty, it is obviously unfair to expect this, or indeed any, text to resolve the pervasive uncertainty in thinking about global justice. Nor, given its consolidating and disseminating ambitions, would it be appropriate to seek to do so. However, by presenting a range of competing approaches, with little by way of editorial comment or direct engagement between contributors, there is a risk that this volume may further the impression amongst non-specialists that global justice theory is incurably indeterminate, and as such offers little prospect of a yardstick against which law and practice might sensibly be measured. The practical problems of IEL demand all-things-considered responses, which in turn require not only identifying justice-relevant values, but also adjudicating between those values. To the extent

¹² Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford University Press 2009)

competing theories place different weights on, for example, individual freedom, socioeconomic equality and national responsibility, they will suggest different answers to such questions as the appropriate goals of IFI conditionality, or the permissibility of various preferential trading arrangements. In these circumstances being introduced to each theory is of little value, unless we also have some tools for adjudicating between them. There may be academic value in seeing how different approaches prescribe different responses; but when prescriptions diverge, some criterion of choice is required. That said, while it is easy to diagnose this problem, it is harder to suggest a solution. Substantial uncertainty is a feature of this area of scholarship. A monograph can defend one approach against alternatives, but this is obviously not possible in a broader survey volume. I would, however, have welcomed a more detailed introduction, in which the editor might both recognize this challenge, and perhaps suggest some response to it.

A number of the individual contributions merit mention. Brock's chapter on 'Theories of Global Justice' provides an accessible introduction to the relevant debates in political theory. Lawyers will find much here that is new to them, and copious references to philosophers whose work has clear normative implications for international economic governance. The debates reviewed are debates amongst liberals, and as such will directly engage the commitments of many IEL scholars. Here, as elsewhere, the editor's concern to avoid the trap of radical (and hence sterile) critique means readers may find it more difficult to disregard the normative implications of the theories addressed.

This is followed by a paper by Petersmann, whose extensive work on constitutionalization, IEL and human rights will be familiar to many readers. Within the global justice approach, Petersmann stands out as a thinker who is more sympathetic than most to free trade, both for instrumental reasons and as reflecting an interest in protecting individual market freedoms. Here, he integrates insights from Rawls and Kant, and in particular a challenge to restrictive and anti-cosmopolitan conceptions of international public reason, to argue for an integrated role for IEL and human rights in judicially protecting both individual rights and international public goods.

Garcia and Ciko examine a number of approaches to engaging IEL and global justice theory, distinguishing between external approaches, of the kind most prominent in political theory, and internal approaches, which seek to derive evaluative principles from within the system or practice being addressed. Garcia has elsewhere developed one such internal approach, which understands justice in trade in terms of consent, "the essential characteristic which makes ... an economic exchange "trade" rather than theft, coercion, exploitation or the like"¹³. Internal approaches avoid the irrelevance challenge noted above by beginning from the specific practices with

¹³ Garcia, Three Takes, *supra* note 3, p. 219

which we are concerned, and identifying principles relevant to those practices. However, while avoiding irrelevance, a persistent concern with these approaches is that, by taking the relevant practices as a starting point, they lack critical purchase in circumstances where external approaches might lead us to reject, or at least fundamentally restructure, those practices as a whole.¹⁴

The following five contributions address specific issues in IEL: trade preferences and regional trade agreements; multilateral development banks; human rights in multinational business; international intellectual property governance; and the role of NGOs. In each case they introduce aspects of the relevant issue that, at least potentially, raise concerns about global justice. As noted above, these chapters are less engaged with the theoretical approaches than one might like, but they provide interesting case studies, and an opportunity to reflect on both the need for, and the challenges of, applying theories of justice to international economic governance. He and Murphy's chapter on NGOs stands out as an effort to more closely integrate theory and practice, analyzing the role of NGOs in IEL in terms of a global social contract, understood as a normative ideal expressing a global conception of social justice and democracy. NGOs are then seen as a mechanism for both constructing and embodying such contracts, enhancing accountability and legitimacy between international institutions and citizens.

Following these more practical chapters, Chimni examines IEL through third world approaches to international law (TWAIL). This critical approach contrasts with the predominantly liberal foundations of the other theoretical chapters. Its emphasis on the political and economic forces shaping IEL reflects its roots in Marxism, and to that extent may struggle for a hearing from what Chimni terms 'mainstream international economic law scholarship'. In particular, its skepticism of dominant economic approaches will lead many readers to dismiss it. However, as Chimni shows, many of its prescriptions reflect concerns also emerging from the (liberal) cosmopolitan global justice literature. As such, its presentation together with those approaches may stimulate further engagement between scholars in both traditions. By contrast Maneschi's chapter, on international trade theory and comparative advantage, offers little that will be unfamiliar to IEL scholars; although its presentation immediately after Chimni's serves to emphasize the extent to which critical and mainstream perspectives can diverge.

The final contribution, by Linarelli, offers an intellectual history of law and development as a discrete field of inquiry. While law and development has been traditionally understood as a study of the *domestic* institutions that affect states' development prospects, Linarelli links it to IEL, both through the impact IEL has on

¹⁴ Garcia discusses the merits of this approach in more detail in his recent monograph: *Ibid.*, pp. 209-215, 263-272. See also James, *supra* note 3, pp. 25-31. For a critical view: Laura Valentini, 'Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism' (2011) 19:4 *Journal of Political Philosophy* 399-418

development, and through a critique of law and development as an ideological project which seeks to integrate developing states in the international economic system. It questions the idea of a human right to development, whether as a legal or a moral claim, suggesting that even as a moral right, it requires further specification as to both subjects and content. This is linked to a history of the law and development movement, understood in turn as an expression of modernization theory, new institutional economics, and human rights and capabilities. How this discussion fits with the volume as a whole is somewhat unclear. However, as a conclusion it provides a useful reminder that IEL is neither the sole cause of, nor the sole solution to, the challenges of poverty and development that motivate much of the global justice debate; domestic institutions cannot be left out of the story.

III.

Linarelli's emphasis on development provides a useful bridge to the second volume under review, *Poverty and the International Economic Legal System: Duties to the World's Poor*, edited by Krista Nadakavukaren Schefer. There is much in this volume; but one of its recurring themes is the need to disaggregate development from poverty alleviation, and to recognize the independent normative pull that the latter concept exerts. It is with that claim that I therefore begin.

It is frequently observed, particularly by those seeking to deflate the more ambitious egalitarian claims of cosmopolitans, that the fact of absolute poverty means that questions of equality, or indeed of global justice, are largely beside the point. Considerations of humanity are enough to condemn the existing international order, without engaging with these more contested normative questions.¹⁵ The fact of absolute poverty, this argument suggests, makes discussions of global justice superfluous or, at least, premature.¹⁶ In so far as this volume proposes poverty, whether relative or absolute, as an appropriate critical lens for IEL, it appears substantially to reflect this view. At a number of points contributors link poverty alleviation to other normative schemes, most prominently international human rights law. However, it is the fact of IEL's effects on poverty, rather the analysis of those effects in terms of human rights or global justice, that is the principal focus. It is therefore worth reflecting on the limits of this approach.

The most obvious difficulty it faces is that poverty, while undoubtedly an urgent challenge, is not the only value, whether legal or moral, that bears on international economic regulation. This is particularly the case when, as in a number of contributions, poverty is understood to include both absolute and relative poverty. We

¹⁵ e.g.: Nagel, *supra* note 6, p. 118. A similar thought motivates Amartya Sen *The Idea of Justice* (Oxford University Press 2009), 24-27

¹⁶ The line of thought is criticized in Brian Barry, 'Humanity and Justice in Global Perspective' in J. Roland Pennock and John W. Chapman (eds), *Nomox XXIV: Ethics, Economics and the Law* (NYU Press 1982) 219-52

may recognize that we have *pro tanto* reasons, whether legal or moral, to be concerned about poverty, but we cannot know, without a broader analysis, what we have all-things-considered reasons to do. For example, Picker (‘Anti-poverty v. the international economic legal order? A legal cultural critique’) highlights the distinction between poverty alleviation and economic development, and the extent to which measures pursuing the latter may hinder the former. To the extent this is the case, it suggests that poverty alleviation should be a more explicit part of the conversation about IEL and development. However, there is little in this volume that would help us to resolve the potential conflict between these values. Perhaps poverty should trump development, or vice versa? Elsewhere, we find a potential choice between poverty alleviation and efficiency (Cottier, ‘Poverty, redistribution and international trade regulation’). We need a thicker normative picture to resolve these conflicts.

A second concern with this emphasis on poverty is that it risks obscuring the importance of the state in mediating between IEL and severe poverty. In many cases, as Linarelli emphasizes in respect of development, domestic institutions are the most direct determinants of poverty. Concerns to alleviate poverty internationally thus translate into concerns to reform institutions in afflicted countries. However, unless qualified by due regard for other important values, most obviously national autonomy, this insight can support prescriptions that, while potentially effective for poverty alleviation, should be rejected for other reasons. This worry is raised particularly by the chapters on international financial regulation, a number of which are concerned to assess how far institutional reforms incentivized by multilateral and bilateral development lending affect poverty and, where those effects are negative, to diagnose the reasons for this. (e.g Thirkell-White, ‘Ambitious goals, limited tools: The IMF and poverty reduction’; Ellis, ‘The World Bank: Fighting poverty – ideology versus accountability’; Buckley, ‘The direct contribution of the international financial system to global poverty’) What is underemphasized is the question of whether, apart entirely from the question of effectiveness, using conditional lending to stimulate institutional change is justifiable, having regard to the claims of affected countries to equal respect and autonomy.¹⁷ If we regard such schemes as discretionary then the fact of conditionality may be less troubling; but if we start from the premise that duties, whether legal or moral, are owed to those living in poverty beyond our borders, then it is less obvious that donors have any claim to determine what constitute satisfactory institutional reforms.¹⁸

¹⁷ Ellis acknowledges this point, but it does not seem to play a significant role in his analysis. Rather, his argument for a more bottom-up approach to World Bank conditionality is primarily based on effectiveness.

¹⁸ The effect that thinking about international assistance in terms of justice rather than humanity has on choices about when and how that assistance is delivered is developed in Barry, *supra* note 15. The implications of understanding development lending in terms of justice are developed in Garcia, *Three Takes*, *supra* note 3, p. 95.

Admittedly these concerns can be avoided by emphasizing the specific goal of this volume, namely to analyze IEL in terms of its relationship to states' obligations to reduce poverty. It is no criticism of a volume about IEL and poverty to note that it is not a volume about IEL and justice, or indeed about IEL and sovereignty. Further, in so far as poverty, as distinct from development, has been underemphasized in IEL scholarship to date, a volume on this specific question is wholeheartedly to be welcomed. However, to the extent that it is read with its narrower perspective in mind, its prescriptions must be similarly restricted, and so necessarily subject to being trumped by other values outside its normative focus.

These preliminary concerns aside, there is much in this volume that will be of interest.

A number of contributions are concerned to explore whether and to what extent poverty imposes legal obligations on governments, foreign and domestic. This question is often elided by philosophers concerned with global justice, many of whom have been quick to conclude both that severe poverty violates human rights, and that this imposes responsibilities both on the states in which the impoverished live, and on foreign governments, and indeed citizens.¹⁹ For lawyers, however, that move is more demanding, particularly given the authors' decision to address both absolute and relative poverty. Schefer locates obligations to address both in the ICESCR, the former in a number of specific rights, and the latter in the progressive nature of obligations under that convention, and in the right against discrimination. ('Poverty, obligations and the international economic legal system: what are our duties to the global poor?') Hakimi adopts Shue's *respect/protect/fulfill* typology in an effort to translate this recognition of poverty's link to human rights into an account of the specific obligations attaching to states in respect of poverty within and beyond their borders. ('Human rights obligations to the poor') She emphasizes the duty to protect, showing how this has different implications for states *vis-à-vis* their own populations, for whom the duty is general, and foreigners, in respect of whom it arises only given special relationships between the state and the human rights violator. However, it is not clear how broad this latter duty is. Would it, for example, extend to a duty to restrain companies from impairing human rights overseas? As Hakimi emphasizes, at least as regards less severe violations, international law significantly restricts states' concern for those outside their own territory. However, it is difficult to see where exactly the line is. Besson takes up this question of how duties are allocated in moral rather than legal terms, arguing that human rights duties fall primarily on institutions, and only secondarily on individuals. ('The allocation of anti-poverty rights duties:

¹⁹ See, most prominently, Thomas W. Pogge *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity 2002); Henry Shue *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton University Press 1996). For a recent restatement of the view that IEL violates (moral) human rights, Thomas Pogge, 'Are We Violating the Human Rights of the World's Poor' (2011) 14 *Yale Hum Rts & Dev LJ* 1-33. Even thinkers more hostile to cosmopolitanism have generally recognized severe poverty as a human rights concern, and as potentially calling for an international response. *E.g.*: David Miller *National Responsibility and Global Justice* (Oxford University Press 2007) p. 231.

Our rights, but whose duties?') Further, she distinguishes between human rights duties, owed to specific right-holders, and more diffuse human rights responsibilities, which are both less determinate, and are not directed to particular right holders. While human rights duties fall primarily on domestic and regional institutions, responsibilities are more widely distributed, falling on other states and on international institutions. However, she argues, it is important not to conflate these responsibilities with duties; to do so would be to undermine the particular power of human rights as specific and doubly directed, identifying both rights holder and duty bearer.

These contributions highlight the difficulty identifying a clear legal obligation on states, and by extension on IEL, to respond to poverty, whether relative or absolute, beyond our own borders. Certainly, they suggest that a straightforward human rights argument will not do the job. However, to the extent that is the case, it seems again to raise the problems noted above; if no conclusive legal imperative can be identified, how should concerns for poverty alleviation be integrated with other values that IEL should respect, protect and fulfill? As Besson observes, international human rights do not exhaust duties of global justice; these chapters seem then to imply that consideration of human rights against poverty must necessarily be embedded within wider theories of global justice more generally.

These conceptual chapters comprise parts I and IV of the volume. They bracket 26 contributions on the relationship between poverty and specific issues in IEL. These are in turn divided amongst trade, investment and commercial arbitration, international financial regulation, and effects on particularly vulnerable populations. I will not try to engage with each of these. However, a number merit particular mention.

A number raise concerns about the institutional structures of IEL, and in particular the absence of constituencies within specific legal processes empowered or incentivized to advocate for poverty reduction. (Kee, 'International Commercial Arbitration and Poverty, not obvious but (maybe) possible'; Dimsey, 'Dimsey - Foreign direct investment and the alleviation of poverty - Is investment arbitration falling short of its goals?'; Daly and Melikian, 'Access to Justice in Dispute Resolution'; Crespo, 'From problem to potential - The need to go beyond investor-state disputes and integrate civil society, investors and state at the local level'; Thirkell-White, 'Ambitious goals, limited tools? The IMF and poverty reduction'; Buckley, 'The direct contribution of the international financial system to global poverty') Each, in varying ways, addresses the same problem; the elaboration of rights and duties can have little impact unless appropriately motivated agents have an effective role in decision-making affecting those rights. Some thinkers would go further, making political empowerment rather than legal remedy the essential prerequisite to effective poverty alleviation. Sen, for example, has famously argued that famines do not occur in democracies, because democracy empowers individuals and incentivizes governments to take appropriate

preventative steps. In so far as the determinants of poverty are located in the international rather than domestic sphere, democracy cannot provide a general answer, notwithstanding the ambitions of deliberative democrats and globalization theorists. Identifying appropriate alternative mechanisms for making international institutions and legal processes more responsive to the demands of affected populations is therefore an important step. However, it is not simply a problem for poverty alleviation.²⁰ Nor, in consequence, is it a challenge that can be analyzed solely from this perspective. Thus, taking one example, Crespo argues for integrating civil society more closely into decision-making relating to foreign direct investment. Despite the obvious attractions of this view, it necessarily implies a challenge to the role of the state in aggregating and, where necessary, trading off the interests of different constituencies. This in turn raises questions about the extent to which such trading off is permissible, particularly when those whose interests are discounted are already marginalized groups. This will presumably depend on how we answer the questions, adverted to earlier, about the proper relation between poverty alleviation, development, efficiency and autonomy, amongst other relevant values. This need not constitute a challenge to Crespo's proposal; it simply shows the inevitable limits of poverty as a normative lens.

Cottier's contribution analyses the interaction between relative and absolute poverty alleviation in the context of the trade regime. This chapter is interesting for the extent to which it emphasizes not only the normative imperative on the trade regime to alleviate poverty, but also the extent to which this constitutes a political prerequisite to the regime's success. Various scholars have emphasized the ways the trade regime evolved to accommodate the post-war welfare state.²¹ Cottier however emphasizes another relation; the extent to which the welfare state was a political prerequisite to post-war liberalization, allowing states to compensate those who suffer as a result of free trade. Where liberalization has faced significant political opposition, he links this to the absence of effective welfare mechanisms. This argument is interesting because it grounds an argument for poverty alleviation as an instrumental requirement of the trade regime; we should address poverty not only because we (presumably) have a moral obligation to do so, but also because failing to do so would deprive us of the economic benefits of trade liberalization.²² It thus potentially side-steps a number of the concerns, raised above, about conflicting values; on this view, poverty alleviation supports free trade efficiency.

²⁰ See, for example, He and Murphy's contribution to the first volume under review.

²¹ John G. Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 *International Organization* 379-415; Howse, *supra* note 2; Andrew Lang, *World Trade Law after Neoliberalism Re-Imagining the Global Economic Order* (Oxford University Press 2011) pp. 190-200

²² Crespo makes an analogous point in respect of investment protection: 'From problem to potential – The need to go beyond investor-state disputes and integrate civil society, investors and state at the local level'.

These applied chapters are perhaps strongest where they illustrate the operation of specific institutions, and their particular ideologies and pathologies. For example, Ellis provides an illuminating account not only of the ideological biases in World Bank policy-making, but also of the institutional characteristics that entrenched those biases, and the crises that destabilized them. ('The World Bank: fighting poverty – ideology versus accountability') Tan analyses the debt relief regime as expressing a palliative ethos, placing responsibility solely on borrowers; instead, she argues, we should understand financial stability as a global public good, and debt relief as an aspect of human rights and global distributive justice. It is only based on such a changed understanding of what the debt relief regime is for that we can identify appropriate institutional reforms. ('Life, debt and human rights: contextualizing the international regime for sovereign debt relief.')

The chapters on vulnerable populations also stand out, highlighting underemphasized aspects of IEL's effects on poverty. Thus, Choudhury discusses the impact of IEL, and specifically investment arbitration, on women living in poverty. ('International economic law, women, and poverty') Most readers will be familiar with critiques of investor-state arbitration in terms of both democracy and development. However, Choudhury shows how the costs of liberalization may be disproportionately borne by women in particular cases, and how liberalization interacts with social norms in particular contexts for further amplify those costs, problems that may be less familiar. Similarly Hess-Klein brings a new perspective to familiar critiques of the TRIPs agreement, showing how both national and international copyright protections impede access to knowledge for persons with visual impairment or other disability. ('The book famine: International copyright rules as barriers to knowledge for impoverished persons with disabilities') This is further linked to specific legal protections for the rights of persons with disabilities to argue for a greater recognition of the interaction between these areas of law, recognizing that at present "the difficulties facing persons with disabilities remain largely invisible beyond the field of human rights". To the extent this reviewer is representative of IEL scholars, this claim is hard to fault.

Returning to the three challenges to a more productive engagement between new normative approaches and IEL, outlined above, these might equally be applied to categorize the essays in this volume. The largest part of these falls under the first challenge: they highlight areas where existing approaches ignore or exacerbate problems of at least *prima facie* normative concern. By contrast the conceptual chapters, and a number of the applied chapters, take up the second and third challenges, elaborating normative standards applicable to those problems, and showing how those normative standards in turn prescribe particular institutional responses. Thus, despite quite different starting points, both volumes can be understood as part of the same broad project of destabilizing dominant approaches to IEL, and proposing plausible alternatives.

IV.

I began with an account of the challenges facing new normative approaches to IEL. The volumes under review each address these challenges, albeit in quite different ways. One is self-consciously theoretical. The other largely eschews theory, instead concentrating on a single issue of undeniable moral concern. I have sought to emphasize above the limitations of both approaches. It therefore seems apt, by way of conclusion, to consider whether either should be preferred to the other, or indeed whether they might be fruitfully integrated.

Amartya Sen criticizes contemporary thinking in political philosophy about justice, whether within or beyond the state, as engaged in sterile debates about ideal justice, an approach he labels transcendental institutionalism. He contrasts this with an approach he describes as realization-focused comparison, which addresses clear cases of injustice, without needing first to identify what perfect justice would require.²³ The merits of this latter approach are substantially the merits of the poverty approach to IEL. It allows us to gather a broad church in support of specific reforms, without needing to resolve all of our underlying disagreements. It thus avoids constant, fruitless debate. We do not need to know whether freedom should be understood in political or perfectionist terms, or whether justice should focus on welfare, resources or capabilities, to recognize a moral imperative to alleviate absolute poverty. By contrast, if we allow ourselves to get caught up in these questions, we may fail to act on that clear imperative.

However neither global justice nor IEL reduces to poverty alleviation. Questions of justice, of fairness, and of rights, arise above this minimal level. Further, in many cases we find normative claims in apparent competition. Even if we focus solely on absolute poverty, we face questions about the appropriate agents, powers and structures for addressing that challenge. Many of these subsequent questions cannot be resolved without first clarifying why exactly we regard poverty as imposing moral obligations, and how those obligations relate to others that we may recognize, whether towards other persons or groups, or in terms of other values. It is in answering these questions that philosophical accounts of global justice can be of value.

Rather than choosing between these normative lenses, then, we might regard them as parallel rather than competing approaches. The key question, as so often, is not whether one approach or other is better, but rather which is more useful in a particular context. For IEL scholars, however, the era of automatic recourse to economic analysis is, if not over, at least ending. Even if we do not draw on these new approaches, it is at least incumbent on us to become familiar with them, and to recognize when they might add value to our work. To the extent that is the case, either of these volumes would be a good place to start.

²³ Sen, *supra* note 14, pp. 8-10