
Global Justice and Bioethics



Edited by Joseph Millum
and
Ezekiel J. Emanuel

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CHAPTER 2



Global Bioethics and Political Theory

JOSEPH MILLUM*

INTRODUCTION

The world is very unequal. While a billion people live in luxury, billions more struggle with hunger, pollution, inadequate housing, unsafe working conditions, economic vulnerability, and poor health care. Many of the questions confronted by contemporary bioethicists are affected by or the product of these gross international inequalities. Some issues concern interactions that take place against the backdrop of inequality. For example, faced with the disparities between the care that is available at home and the care received by their participants, Western researchers working in developing countries are forced to consider whether they owe participants clinical care, whether there should be local access to the fruits of research, and so forth. Other questions concern the structures of systems that might themselves be analyzed as just or unjust. For example, the implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement means that intellectual property (IP) protection is international, which affects the ability of everyone to access patent-protected medicines. And economic disparities between countries lead to “brain drains” of essential workers from the poor countries where they are most needed to rich countries, and allow better-off citizens of industrialized

* The ideas and opinions expressed are the author's own. They do not represent any official position or policy of the National Institutes of Health, Public Health Service, or Department of Health and Human Services.

countries to take advantage of less expensive health care available in developing country hospitals through health tourism.

Global inequality is, then, the source of a number of bioethical problems. Considerations of global justice therefore appear relevant to bioethics. However, exactly how we should apply the concept of justice beyond the borders of the nation-state remains a matter of fierce dispute among political theorists. Some—cosmopolitans—argue that exactly the same principles of justice apply internationally as they do domestically. Others with more statist leanings think that the requirements of justice beyond national borders are severely attenuated. It is therefore important to consider how these debates are relevant to bioethics. Can bioethicists ignore them? Or must they argue for a position on global justice before they can properly resolve their specific problems?

Most bioethicists who address questions to which global justice matters have not considered the significance of the disputes over the correct theory of global justice. Some restrict themselves to analyzing the morality of individual interactions, and so treat these international bioethical problems no differently than other cases in applied ethics. Alternatively, those bioethicists who take distributive justice seriously generally adopt or defend some version of cosmopolitanism. Consequently, the significance of the differences between theories of global justice for bioethics has been obscured.

In this paper, I consider when and how these differences are important. I argue that certain bioethical problems can be resolved without addressing disagreements about global justice. People with very different views about global justice can converge on the existence of a duty to aid the very badly off—those in absolute poverty—wherever they may be.¹ However, despite agreement on extreme cases, there should be disagreement over the extent of international obligations to those who are only relatively poor. Consequently, different theories of justice will diverge in their implications for a number of important problems in contemporary bioethics. I close by sketching in more detail two contemporary bioethical issues—concerning pharmaceutical patents and the health worker brain drain—and show how responses to them might be developed by cosmopolitan and statist liberals. These sketches demonstrate the relevance of specific theoretical claims about global justice to particular bioethical problems.

JUSTICE

Justice, says John Rawls, has as its primary subject matter “the basic structure of society, or more exactly, the way in which the major social

institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.”² Since social cooperation may generate burdens, too, we may also say that justice should be concerned with their distribution.³ Thus, the subject matter of what has come to be known as “distributive justice” is primarily the analysis of social institutions, where “institution” can be understood very broadly to include both formalized and informal social practices. I include respect for human rights under this heading, too, since the realization of human rights is a matter of institutional organization.⁴ Distributive justice should be distinguished from two other senses of justice that may be of interest to bioethicists. The first is *transactional justice*, which is concerned with the conditions under which individual interactions between people or institutions are permissible (for example, when considering whether a clinical trial hosted in a developing country would be exploitative). The second is *justice as requit*, which concerns what should be done when someone experiences a loss (for example, through injury as a result of a surgeon’s error). I return briefly to these other senses of justice later in this chapter; here, I focus primarily on theories of international distributive justice. When I mention justice *simpliciter* I mean this sense of justice.

When analyzing theories of justice, we should distinguish *ideal* and *non-ideal* theory. According to Rawls, *ideal* theory concerns well-ordered institutional arrangements—that is, those institutional arrangements that are just, are known to be just, and with which individuals subject to the institutions willingly comply.⁵ The central task for ideal theorists, therefore, is working out realizable conceptions of just institutional arrangements. *Non-ideal* theory, by contrast, deals with the obligations that arise either when institutional arrangements are not completely just, when the individuals subject to the institutions do not fully comply with them, or, commonly, both.⁶

Academic philosophers have most rigorously explored questions of ideal theory. Their answers tell us what a just state or a just global order would look like. However, our day-to-day concerns about justice are not just about the final goal at which people working for justice should aim. We also want to know what to do in the face of the practical problems that arise in our imperfect world. These are generally questions of non-ideal theory. For example, ethical questions about health worker migration (the brain drain) are premised on the massive economic inequality between countries. If the disparities between countries were not so large, movement between them would probably not be so unidirectional (i.e., from poor to rich), and people would therefore be unlikely to be so troubled about the question of its regulation. International bioethicists must therefore concern themselves with non-ideal theory, as well as ideal theory.

THE EXTENT OF INTERNATIONAL REQUIREMENTS OF JUSTICE

A central question that divides theorists writing about global justice, and that affects most directly problems in international bioethics, concerns what the people and governments of rich countries owe to those outside their borders.⁷ The possible answers are generally thought to range from “the same as they owe to similarly situated people inside their borders” to “nothing at all.” Consequently, answering this question satisfactorily requires addressing both the scope and the content of the requirements of global justice. In this section, I sketch the spectrum of possible positions and explain how they might be defended. This allows me to show when and how disagreements about global justice should make a difference to answers to bioethical questions.

The views occupying the two extremes I label *cosmopolitan* and *statist*.⁸ According to pure cosmopolitans, the principles of distributive justice that apply in the domestic sphere apply equally internationally.⁹ Thus, if Rawls’ difference principle were the right way to allocate primary goods within a country, there should also be a global difference principle allocating primary goods among all people in the world.¹⁰ According to pure statist, principles of distributive justice apply only domestically. Between these two lie more moderate statist positions that acknowledge cross-border duties of justice but claim that they are weaker than domestic duties.

One need not be of any particular political creed to be a cosmopolitan or a statist. For example, liberal egalitarians could think that the principles they endorse require redistribution for equality across the globe; but equally, a libertarian could think that the same principles should apply to institutions in order to protect property rights and negative liberties around the world.¹¹ Nevertheless, the discussion of the international scope of principles of justice has been dominated by arguments between cosmopolitan liberals on the one side, and statist liberals and communitarians on the other.¹²

Cosmopolitanism

Cosmopolitan positions may be distinguished by the grounds that are thought to underlie them. *Humanitarian cosmopolitans* believe that duties of justice do not arise from associations like the state, but from characteristics of persons as such, independent of their relations to other persons. Any utilitarian theory of global justice should take this route, since utilitarians hold that the ultimate justification for principles of justice is their

contribution to aggregate utility, and it is irrelevant in whom that utility is located.¹³

Political cosmopolitans accept that some characteristics of associations like those epitomized by the state are the grounds for the applicability of the requirements of justice, but argue that these characteristics are in fact found in international associations, too. For example, it might be thought that mutually beneficial cooperation between individuals is necessary and sufficient to ground requirements of justice in the distribution of the products of that cooperation. The extent and importance of global trade could then be cited as evidence that mutually beneficial cooperation extends well beyond national borders. This would imply that the requirements of justice extend beyond national borders, too.¹⁴

This latter strategy is used by Charles Beitz in *Political Theory and International Relations*. He argues that the global institutional order is analogous to a state in two key respects. First, there is an analogy between the arbitrariness of the natural distribution of talents between individuals and the arbitrariness of the natural distribution of resources between states.¹⁵ As with natural talents, Beitz argues, social institutions should not allow these morally arbitrary differences to disadvantage people. He concludes:

The underlying principle is that each person has an equal prima facie claim to a share of the total available resources, but departures from this initial standard could be justified (analogously to the operation of the difference principle) if the resulting inequalities were to the greatest benefit of those least advantaged by the inequality.¹⁶

Second, Beitz argues that substantive global economic interdependence exists in the form of international investment and trade, and that this interdependence “yields substantial aggregate benefits.”¹⁷ These international transactions are regulated by global institutions, as well as by informal practices of economic policy coordination. Thus, there exist cooperative interactions that generate benefits and burdens that must be distributed, and there exist institutions that already affect the distribution of those benefits and burdens. These are the very conditions, Beitz argues, that motivated Rawls to argue that the institutions that constitute the basic structure of a society must be designed in accordance with principles of justice. In exactly the same way, therefore, we can determine the principles that should govern the distribution of benefits and burdens. Beitz proposes a global “original position” constituted by individuals (not peoples, as Rawls later has it).¹⁸ From this original position, ignorant of their nationality, Beitz argues, people would choose the same

principles in the international case as in the national one, and for the same reasons.

Unlike humanitarian cosmopolitanism, the political strategy for justifying cosmopolitanism makes its truth contingent. In a world of autarkic states there would not be any duties of international justice. In the present world, presumably, if there are states or communities that are sufficiently separate from the rest of the international community, then they are not owed assistance as a matter of justice. To some, this may be disquieting: whether the billions of poor people in the world have a justice-based claim to assistance is dependent on whether they happen to be part of the global economy. Worse, it is the very poorest in the world who are most likely to be excluded from the global economy and therefore, on this account, most likely to be excluded from justice-based consideration.¹⁹ To others, this fits with longstanding intuitions about the applicability of claims of justice.

Statism

We may divide statist into *nationalist statist* and *political statist*. Nationalist statist think that there is something morally important about nationality, independent of the state, that is sufficient to ground special duties toward co-nationals and that makes it permissible to prefer co-nationals. For some, this is because being part of a national culture is necessary for a person's identity as a moral being.²⁰ For others, it is because of the great value of national cultures.²¹ Nationalists argue against cosmopolitanism on the grounds that it does not make room for the moral importance of national ties.

Nations and political states may, of course, come apart, since political borders are not always drawn around groups of people who share a national identity. I include nationalists as a form of statist because they privilege co-nationals (as political statist privilege co-citizens) rather than treating everyone the same, and because nationalists typically view an independent state as one of the desiderata for a nation.²² Indeed, one of the primary motivations of more practically minded nationalist theorists is to defend the demands of some cultural or ethnic group for its own state.

Political statist argue that obligations of justice arise only when a state already exists. The associative relationships between people in the same state generate normative relationships between them that did not exist before. However, political statist deny that the current relationships between people in different states are sufficiently like being in a state to generate similar normative relationships. Thomas Nagel, for example,

argues that the state is distinctive because of the coercive power that it wields over its citizens and because the actions of the state (e.g., in wielding this power) are taken in the name of its citizens. Neither of these characteristics, Nagel says, applies to existing international institutions.²³ Political statist therefore accept that the global order *could* be such that the requirements of justice were universal (if, for example, there were a world government). They simply deny that the requisite empirical conditions exist. They therefore reject the second strategy for defending cosmopolitanism outlined above.

Degrees of Statism

It is helpful to distinguish statist positions according to the degree of normative primacy they assign to the state. A *pure statist* would deny that there are any duties of justice that extend outside the borders of the state. However, few theorists seem willing to adopt such an extreme position. More are what I will call *strong statist*: they hold that the main locus of duties of justice is the state, but allow some very attenuated duties of justice outside its borders. For example, Rawls' Law of Peoples states the principles of justice that should govern the interactions of liberal states with other states. These principles do not include distributive principles, like those that apply to domestic institutions: Rawls does not think inequalities between states are the proper subject matter of justice. However, as well as constraints on how states may interact, Rawls acknowledges a duty of assistance to "other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime" to help them reach a point where they can have a just or decent regime.²⁴ As I note in the following section, depending on how many people live under such unfavorable conditions, this duty may be quite stringent.

Although most discussion of the scope and content of requirements of global justice so far has contrasted cosmopolitan and strong statist positions, there is also room for intermediate positions. Such *moderate statist* positions would recognize some significant requirements of justice beyond the boundaries of the state, but would limit their nature or extent. Limitations on international duties could take different forms. For instance, there might be duties owed to co-citizens that must be fulfilled before duties to non-citizens take effect; it might be that what is owed to non-citizens is less than what is owed to co-citizens; or it might be that certain duties of justice apply both domestically and internationally and others apply only domestically.²⁵

For example, one way to argue for a moderate statist position would be to show that some duties of justice apply in virtue of people's moral status and other duties require some special relationship between the people to whom the duties apply. Different duties of justice falling into the latter category could then be stratified according to the nature of these relationships. For example, purely economic transactions might be governed by principles of fairness for the distribution of the benefits and burdens of just those transactions. But political rights might remain with just the people living within the borders of a state, since only they would be rightfully subject to that state's coercive authority. Such moderate statist positions have not been much explored in the literature on global justice.²⁶

ABSOLUTE POVERTY AND AGREEMENT ON INTERNATIONAL DUTIES

Despite the large differences between theories concerning the scope and content of the requirements of global justice, there is still a substantial core of agreement among most commentators regarding certain duties that extend past national borders. In the case of people who are sufficiently badly off, almost everyone endorses normative principles that commit them to some duty of assistance incumbent on those who can help. Consequently, when it comes to bioethical problems that are primarily of relevance to this group, there is no need for extended arguments about global justice: agreement on a duty to help can be assumed.

This agreement applies clearly to the case of people living in conditions of what Peter Singer calls "absolute poverty."²⁷ Their deprivation is such that even their most basic needs (for nutritionally adequate food, clean water, shelter, basic health care, and so forth) are not met. According to the most recent figures from the World Bank, in 2005 approximately 1.4 billion people were living on US\$1.25 a day or less,²⁸ the measure the World Bank now uses to judge absolute poverty.²⁹ Absolute poverty indicates both that the people suffering from it are very poor indeed, and also that their poverty is not simply relative to other people. There are also billions of people in the world who live in what I will call *only relative poverty*—people who are able to meet their basic needs, but who are very poor relative to other people in their community, country, or the world. I argue shortly that agreement on international duties of assistance disappears when we come to this group. Consequently, when it comes to bioethical questions that concern the only relatively poor, complete answers will likely require bioethicists to articulate and defend political views.

For many of the absolutely poor, there are many actors who could ameliorate their situation. National governments in all but the poorest countries could prioritize their spending differently and save many lives. Other governments, particularly those of the richest countries in the world, could provide directed aid that would help the poor, and could negotiate transnational economic policies that help instead of exacerbating global poverty. Even individuals now have the power to save the lives of distant others, through donations to nongovernmental organizations (NGOs) that provide essential services in very poor environments.³⁰

Given the extent of the deprivation of the absolutely poor and the possibility of ameliorating at least some of it, we can see why people who have quite different political views are still likely to converge on the conclusion that governments and individuals have a duty to assist the absolutely poor.³¹

Consider first the different theories of international distributive justice. Most clearly, humanitarian cosmopolitans believe that all the absolutely poor have a right to assistance, since their claims to resources have an equal standing with the claims of everyone else. This claim is held against any and all governments that can meet it (and, perhaps, against nongovernmental institutions and individuals, too). For political cosmopolitans, the requirements of justice apply when people are involved in systems of cooperation that generate benefits and burdens, like the state. They believe that the existing international order—such as the global economic order that is given formal shape by institutions like the World Trade Organization (WTO)—is sufficient to generate obligations of justice with regard to those within it. As I noted above, this is liable to exclude people who are not part of the international economic system. Moreover, many of the absolutely poor are marginalized to the point that their contribution to the global economy is negligible. This might lead someone to the conclusion that the absolutely poor would therefore not have a justice-based claim to resources under the political cosmopolitan's rationale. But this would be a mistake. The great majority of the absolutely poor are still affected by the global economic system, even if they are not great contributors to it. For example, whether or not they have employment, training, or social security may be determined partly by international economic policies and agreements. Thus, though many of the absolutely poor may be excluded from beneficial participation in the global economic system, it is still a powerful determinant of their life prospects.

One does not have to be a liberal cosmopolitan to think that the existence of people in conditions of avoidable absolute poverty entails a duty to assist them.³² Only pure statist deny that there are *any* international duties of justice.³³ So, for example, Rawls, a strong political statist, denies

that we have duties to ameliorate the poverty of people in other states, even if they have much less than we do, so long as they are able to live under just or decent regimes. But, as I noted in the previous section, he does think that there is a duty of assistance to people who are unable to live under such regimes. This duty of assistance includes securing the “basic needs” of people in burdened societies.³⁴ All except the most extreme nationalist statist may agree. Though nationalists believe that there are reasons to favor co-nationals over non-nationals, most accept that there are *some* duties owed to people of different nationalities, and that those duties can take preference over helping co-nationals, when the needs of the other people are urgent enough. For example, David Miller writes:

[W]e can agree that the existence of societies scoring very low on the HDI [Human Development Index, calculated by the United Nations Development Programme] is a global injustice without agreeing about why it is an injustice—whether by virtue of the inequality between rich and poor societies, or simply by virtue of the absolute level of deprivation experienced by most members of the poorest societies. Our moral responses to the global status quo are over-determined, and so we can agree in practice about what needs to be done most urgently to promote global justice without having to formulate explicitly the principles that lie behind this judgement.³⁵

Even if it were argued that there are some people beyond national borders who fall outside the scope of distributive justice, there are other universally acknowledged moral duties. First, the very poor are frequently considered to be the victims of a global economic order that has been imposed upon them (mainly by rich country governments whose bargaining power allows them to shape international agreements in favor of their own perceived economic and geopolitical interests). For example, the structural adjustment programs instituted during the 1980s and 1990s by many developing-country governments, under pressure from global institutions like the World Bank and the International Monetary Fund, appear to have made many people in those countries worse off.³⁶ People may therefore be starving as a direct result of the actions of rich-country governments. If these empirical claims are correct, then those responsible owe assistance to their victims as a matter of compensatory justice.

Second, there are humanitarian duties, which are thought to apply just by virtue of the beneficiary of the duty having morally significant needs, and not because of some special relation between the duty bearer and the beneficiary.³⁷ Consider, for example, the duty of rescue, according to which we are obliged to provide urgently needed assistance to others when we can do so without great cost to ourselves. Though there is

dispute over the extent of duties of rescue, including exactly how much we can be obliged to sacrifice for others and whether the duty changes in the face of others' non-compliance,³⁸ it is hard to see how someone could consistently believe in any duty of rescue but deny that the rich people and governments of the world have a duty to spend the relatively small amounts of money necessary to provide people with clean water or life-saving vaccinations.

Thus, the depth of the deprivation of the absolutely poor means that it is overdetermined that citizens and governments of rich countries have some duties to help them. Since everyone endorses at least one of the normative principles I just outlined, everyone is committed to a global duty of assistance to the absolutely poor.³⁹ The consensus that exists is therefore a function of the truly awful situation of the world's poor, rather than any theoretically interesting agreement between different theories of justice.

This consensus is not available when we turn our attention to people who are very poor by the standards of rich countries, but not in such desperate straits as the absolutely poor. The justifications I just gave do not apply to them, or, at least, it is controversial whether they do. First, strong statisticians generally argue that relative poverty is the business of the state, and not the business of other states. For Rawls, for example, once a people has the resources to live under a "just or decent political and social regime," the duty of assistance cuts off.⁴⁰ Second, the principle of compensatory justice may not apply to many of those who are only relatively poor. Standards of living have improved for many people in the world over the past few decades, which makes it far from clear that they have been harmed by the international economic system.⁴¹ Finally, the duty of rescue applies only when a great good can be provided to someone at a low cost to the provider (that is, when it is possible to execute an "easy rescue"). But as we move further from the satisfaction of basic needs to other things that might improve the well-being of the relatively poor, the extent to which they benefit is likely to decrease, while the cost of providing the benefit increases. For example, the cost of saving a human life by providing the traditional immunization program of childhood vaccinations in South Asia and Sub-Saharan Africa is approximately US\$205.⁴² By contrast, hip resurfacing surgery, which generally aims only at improved mobility and pain reduction and is mostly performed on elderly patients, costs around US\$5,000 in private Indian hospitals.⁴³

Compared to the average citizen of a developed country, billions of people in the world are only relatively poor. Were these people citizens of one of these developed countries, most statisticians (and cosmopolitans, of course) would agree that they deserved assistance as a matter of justice.

However, as I just argued, strong statist will generally not agree that those in other countries who are only relatively poor deserve assistance from developed countries. This, then, is the key difference between the implications of statist and cosmopolitan theories of global justice. It is a difference that has implications for how we should respond to a number of important bioethical problems. It demarcates the range of problems concerning which bioethicists cannot assume that there will be agreement about duties to people outside national borders, and therefore the area where fully addressing these problems requires engaging with the debate over global justice. In the section entitled “Two Theories of Justice and Two Bioethical Questions” I illustrate this by considering how different theories of justice apply to two specific problems—pharmaceutical patents and the brain drain. But before I can do this, I must say something about the notion of basic health care, because these bioethical problems relate to health care, and the inability to access basic health care is indicative of absolute poverty.

ABSOLUTE POVERTY AND BASIC HEALTH CARE

Whether someone is in absolute poverty depends on the resources to which he or she has access. The absolutely poor lack access to the resources that are necessary for leading a minimally decent life. Access to health care is one of these resources: without health care, someone’s life prospects are likely to be severely diminished. I will call *basic health care* the level of health care someone must be able to access in order to escape absolute poverty.⁴⁴ People may be able to access basic health care because they have the personal wealth needed to pay for medical treatment or health insurance, or they may be able to access it because it is supplied to them through a public health care system. How they are able to access it is not important to my analysis here.⁴⁵

Unlike, say, necessary nutrition, defining basic health care is complicated. Everyone has similar nutritional needs, and so we could confidently place an upper bound on the amount of food someone would need to be able to access in order to escape absolute poverty. But people have very different health needs. People with certain conditions may need treatment that is very expensive. For example, the average price of a possibly life-saving heart bypass is around US\$20,000.⁴⁶ Are people who are unable to afford a heart bypass absolutely poor? This seems implausible: if we were to call people absolutely poor because they could not afford every medical intervention they might possibly need, this would detach the concept of absolute poverty from our intuitive understanding of what it

means, and from the justifications that imply a duty to help people in absolute poverty. Thus, basic health care will include some, but by no means all, of the medical care that someone might need in order to lead a minimally decent life. Whether a particular intervention is included will presumably depend on whether its cost-effectiveness reaches a certain threshold.⁴⁷

It follows that people in only relative poverty are nevertheless likely to lack health care for many conditions. For example, people in only relative poverty still might not have access to hepatitis A vaccines, treatment for deteriorating eyesight, heart bypass surgery, and so forth. Such treatments are not trivial: they are necessary for good health. However, they may not be necessary for someone to escape absolute poverty.

This analysis tells us how the conclusions I drew about agreement and disagreement between different political theorists should apply to the particular cases of medical research and health care provision. Agreement on the existence of a duty to aid those in absolute poverty leads to the conclusion that there is a universal obligation to encourage research and health care provision such that everyone is able to access basic health care. However, disagreement over what is owed to the only relatively poor will create disagreement about what medical research should be funded, what care should be provided by whom, and how the rules governing research and provision of care are constrained. For the strong statist, relative poverty matters within the state; outside the state it does not. Thus, according to a strong statist, people living within a comparatively rich country may have a justice-based claim that their government support research into diseases that affect them, and ensure that they can access existing treatments for these diseases. The same government will not have similar obligations to people living in relative poverty in other, poorer countries.

In the following section I explore this implication in greater detail, by examining two important questions of international health policy.

TWO THEORIES OF JUSTICE AND TWO BIOETHICAL QUESTIONS

For the most part, bioethicists who have addressed questions involving international justice have taken one of two routes. First, some bracket the broader theoretical questions of distributive justice and make do with moral analysis on a more narrow scale. They discuss, for example, particular interactions between individuals, or appeal directly to the needs people have or the harms they perceive are being caused. In short, they do

traditional applied ethics in the international sphere.⁴⁸ Second, those who argue from more foundational theories of justice to specific conclusions about policy or practice usually do so by assuming or defending some version of cosmopolitan liberalism.⁴⁹ Furthermore, these analyses frequently focus on the plight of the worst off (who are generally the absolutely poor). The result is that the implications of the differences between theories of global justice have often been obscured.⁵⁰

I close by sketching two bioethical problems and showing how cosmopolitan and statist liberals are likely to develop responses to them. One concerns IP and its effects on access to medicines; the other concerns the brain drain of health care workers from developing to developed countries. For reasons of space these are no more than sketches; they are not intended as contributions to the debate about these specific issues, but to illustrate the importance of the differences between theories of global justice noted above.

Intellectual Property and Access to Medicines

Private research and development of health care products is primarily motivated by patent laws. A patent allows the inventor of a novel product or process to prevent others from making commercial use of that product or process for the lifetime of the patent (normally 20 years). Patents on medicines allow pharmaceutical companies to charge much more than the cost of production for the medicines and so recoup their substantial research and development expenditure (as well as making a tidy profit).

In 1994 the WTO established the TRIPS agreement, which will standardize IP laws across WTO states to the higher levels found in developed countries. The least developed countries have until 2016 to implement TRIPS, but its effects are already being felt. In India, the generic drug industry is now threatened by the 2005 Indian Patents Act implementing TRIPS and establishing a 20-year patent life for products and processes. Individual countries are also pressured into implementing IP laws that give even more protection than TRIPS (“TRIPS-plus” agreements), principally through bilateral free trade agreements with the United States or European Union.

The patent-based approach to incentivizing the development of new medicines has several drawbacks, which are exacerbated in the global environment. First, for those products that get developed, the prices set during the life of the patent are (in principle) determined by what will maximize revenue, not what will maximize the number of people using the product. This means that new medicines are frequently priced out of

the reach of a substantial proportion of the people who would benefit from them. Second, the patent system affects the products that actually get developed. Since the central motivation of pharmaceutical companies is profit, companies tend to develop products on the basis of whether they can be sold, not their impact on health. This has at least two consequences: it encourages the development of expensive products rather than cheaper interventions that might benefit health more, and it means that the health problems for which products are developed will be the problems of people who have the money to buy them. Consequently, the current international IP system has been widely criticized for producing medicines that only the rich can afford, and that focus mainly on the problems of the rich.⁵¹ It means that millions of people do not have access to urgently needed medicines, and the development of new interventions does not focus on the problems that are most urgent for the global poor.

Alternative ways to incentivize the development of important health interventions have been proposed, including alternative types of patent that reward inventors in proportion to the positive health effects of their interventions,⁵² and rules that give greater power to governments to negotiate prices or overrule patents.⁵³ Arguments in favor of and against these various systems get couched in the language of social justice. I am not going to assess the merits of these proposals here: the essential point for my argument is that there are alternative ways in which a system could be set up, and therefore the system is amenable to moral assessment. Moreover, I now argue, different theories of global justice should diverge in their views about which system should be preferred.

Considering the previous arguments about research priorities and access to medicines, there should be some agreement among different theorists. Those arguments suggest that even for strong statist the international IP regime should not impede access to medicines that are required for basic health care.

But for the strong statist, when it comes to other interventions and conditions—those that apply to the development and marketing of treatments that are not part of basic health care, as I have defined it—whatever gets negotiated between governments stands, even if it is to the disadvantage of some and the advantage of others. Nagel, for example, denies that the sort of collective commercial engagement constituted by agreements overseen by the WTO is sufficient to trigger obligations of justice.⁵⁴ Instead, he argues, the agreements made may have whatever content the contracting parties agree upon: “contracts between sovereign states . . . are ‘pure’ contracts, and nothing guarantees the justice of their results.”⁵⁵ Thus, for example, Nagel would say that so long as it does not impede the ability of British citizens to access health care, and so long as there are

sufficient exceptions to allow people in developing countries to access truly basic health care, support by the UK government for TRIPS or “TRIPS-plus” IP regimes cannot be criticized on the ground of justice.

The strong statist line would be opposed by cosmopolitan liberals. This can be seen most clearly if we assume that the different parties agree on the grounds for IP protection (e.g., if we suppose that they agree that an instrumentalist justification is correct). Suppose, for example, that the strong statist and the cosmopolitan are agreed that the right system of IP over pharmaceutical products is whatever system maximizes the long-term health gains from medical treatments. The strong statist thinks that the health gains that count for making this evaluation are gains to people within a particular state, subject to the caveat just noted concerning basic health care. Thus, according to the strong statist, when the UK sets domestic IP laws or negotiates international laws, it should evaluate the health gains to people within the UK only (again subject to the caveat). The cosmopolitan, on the other hand, thinks that the gains that count for this evaluation are health gains to everyone in the world. Thus, when the UK sets domestic IP laws or negotiates international agreements, it should take into account the effects of the laws on everyone.

Different ways of setting up the international IP system will lead to different research being conducted, and so to different products coming to the market, at different prices. In other words, different IP systems will be better or worse at meeting particular sets of health research priorities. But the global health research priorities are very different than the domestic health research priorities of developed countries.⁵⁶ For example, of the estimated 241 million cases of malaria each year, 204 million take place in Africa and a mere 3 million in the Americas and Europe.⁵⁷ Thus, we can expect that the IP system for pharmaceuticals supported by a strong statist will be quite different from the system supported by a cosmopolitan.

It might be objected that the implications of the theoretical disagreement between cosmopolitans and strong statist are much less substantial than I have claimed. Suppose that the international IP system has a negative effect on people who are only relatively poor within a particular country. If it thereby precludes their government from fulfilling its *domestic* duties of justice, it can be condemned on those grounds. Thus, it might be thought, the strong statist will have to condemn the international IP system in much the same set of cases as the cosmopolitan.⁵⁸ In response, we should remind ourselves of what the requirements of domestic justice are: they demand, among other things, fairness in the distribution of resources within the state. But this says nothing about the amount of resources a state is able to distribute. Its international agreements may positively or negatively affect those resources, as may the actions of

other states. But those agreements need not affect whether the resources within a state are distributed fairly between its citizens. Thus, the international IP system is unlikely to actually preclude a government from being domestically just, at least with regard to the only relatively poor, and therefore cannot be condemned on those grounds.

It is worth noting that moderate statist might also oppose the strong statist view regarding the permissible IP rules governing pharmaceutical patents. The WTO is a complex international organization, which has significant effects on people's lives and the power to enforce compliance with agreements.⁵⁹ Leaving the WTO is liable to come with substantial economic costs. For moderate statist, these characteristics may be sufficient to generate some obligations of justice, even if the WTO's requirements are not as stringent as the obligations generated by a fully fledged state. For example, moderate statist could argue on that basis that at least the economic and health gains from the international IP system should be shared fairly among the various parties affected by it.

The Health Care Worker Brain Drain

My second case concerns the brain drain: the systemic loss of skilled workers from one economic sector to another. In many developing countries, brain drains of health workers (such as doctors and nurses) are of grave concern. They take two forms: first, within-country brain drains from the public to the private sector; second, international brain drains, from poorer to richer countries. I focus here on the latter.

Huge numbers of health workers are economic migrants. For example, a 2006 WHO report estimated that 25% of the doctors and 5% of the nurses trained in Africa were currently employed in industrialized countries that are members of the Organization for Economic Cooperation and Development (OECD).⁶⁰ Frequently, these workers are actively recruited by the recipient country in order to make up for a perceived shortage of locally trained workers. The policies of recipient countries, specifically with regard to the training, recruitment, and immigration of health workers, thereby have large and predictable effects on whether health workers trained in developing countries migrate. This migration exacerbates existing inequalities in trained personnel. For example, the doctor–patient ratio in sub-Saharan Africa is now estimated at about 20 per 100,000, compared with a ratio of 220 per 100,000 in developed countries.⁶¹

The emigration of health workers is generally thought to negatively affect donor countries.⁶² Though there is some gain through remittances

home, transnational networking, and workers who eventually return better trained to their country of origin, these are more than negated by the lost investments in training and shortages of personnel. I consider the justice of policies related to health worker migration on the assumption that this empirical claim is correct.

Three key actors are involved in the health worker brain drain: the recipient country, the donor country, and the health workers themselves.⁶³ Each may assert claims. For example, donor countries may argue that they have the right to compensation from recipient countries or that they may require locally trained health workers to work domestically for some period after they qualify. Health workers may claim that they have both a right to the education they receive and the right to emigrate to any country that will accept them. Finally, recipient countries may assert their right to open their borders to whomever they choose.

What do the theories of international justice tell us about the duties of recipient countries, with regard to their recruiting policies, and the rights of donor countries?

First, as with the effects of IP rules, the effects of the brain drain on absolute poverty must be considered. Some minimum level of health care worker coverage is clearly necessary for everyone to have basic health care, and therefore for everyone to be brought out of absolute poverty. In countries where, for instance, the number of health care providers is so low that routine childhood vaccinations cannot be supplied, or where many people have no access to maternal health services, the lack of trained health care personnel perpetuates absolute poverty. For example, Chen et al. suggest a threshold of 2.5 health care workers per 1,000 for meeting targets of 80% coverage of measles immunizations and skilled attendants at birth.⁶⁴ WHO estimates that the average density of health workers in Africa is 2.3 per 1,000, as compared to 18.9 per 1,000 in Europe and 24.8 per 1,000 in the Americas.⁶⁵ While sub-Saharan Africa has only 3% of the world's health workers, it has 24% of the world's burden of diseases.⁶⁶ Again, theorists of all persuasions ought to agree on an international duty to prevent further loss of health care workers from absolutely impoverished areas and help them reach the minimal levels of coverage necessary to bring them out of absolute poverty. Some measures may have to be domestic, since the brain drain typically involves a loss of trained workers from rural to urban (and from public to private) environments within a country. But others can be international, since the international brain drain appears to exacerbate this loss. However, once the minimal level is met for a population, large disparities in health care workers will likely remain. The different theories of global justice will again diverge in their views about the appropriate response to those disparities.⁶⁷

For the strong statist, above the minimal level of health care workers needed for the provision of basic health care, the additional health gains from having more trained doctors, nurses, and so forth will no longer be the concern of foreign countries and governments, even though people may have claims against their own governments to supply them.⁶⁸ Thus, strong statist are likely to see nothing wrong with hiring health workers from the developing world, so long as they come voluntarily and legally (according to immigration agreements) and do not violate any duties the hiring state has to give its citizens priority for employment.⁶⁹

In contrast to strong statist, the cosmopolitan liberal will look for those emigration and immigration policies that would have the optimal impact on global health, independent of location. This would surely militate in favor of policies to restrict the migration of health workers from developing countries (insofar as that does not violate their human rights) or at least to heavily incentivize them to stay in the countries where they are trained. Moreover, the policy recommendations of the cosmopolitan should apply equally to both emigration and immigration: donor countries have an obligation to do what they ethically can to retain needed health care workers, and recipient countries have a duty to restrict health care workers' movement away from the places where they can do the most good. Given cosmopolitans' rejection of the normative significance of national boundaries, in an ideal world we might expect them to be most in favor of freedom of movement. Somewhat ironically, in the actual non-ideal world they should support restricting freedom of movement.

In fact, consistent cosmopolitans might be committed to even more extensive redistributive duties. As noted above, almost all of the countries in sub-Saharan Africa have massive burdens of preventable or treatable diseases, but inadequate health care infrastructure and far fewer health workers than they need. The good that any particular physician could do (with appropriate supportive funding) in sub-Saharan Africa is far greater than the good he or she could do in the UK (to take an arbitrary developed country). Now, on the cosmopolitan view, the UK should definitely be investing in training health workers in sub-Saharan Africa (as well as taking measures to reduce their emigration to the UK). But this will take time. In the short term, the greatest progress towards a just allocation of doctors would be for the UK to send substantial numbers of its doctors to countries in sub-Saharan Africa—that is, to encourage a “reverse brain drain.” After all, at the moment they could do far more good there.

Naturally, such a proposal would generate all sorts of objections: it would wrong the doctors to send them abroad (but: salaries could simply be adjusted to provide appropriate incentives rather than coercing

doctors, and they could be sent for limited tours of duty); it would not cure the underlying problem (but: it would naturally go alongside a radical cosmopolitan scheme of building domestic capacity); and so forth. My aim is not to defend the specifics of some such proposal. Instead, this is intended to illustrate how radical the practical implications of the cosmopolitan's theoretical commitments might be.⁷⁰

CONCLUSIONS: THEORETICAL DISAGREEMENT AND MORAL PROGRESS

This chapter has given an overview of the current debate on theories of international justice, and shown how international justice is relevant to contemporary bioethical problems. I have argued for two specific conclusions.

First, some progress in international bioethics can be made in the face of uncertainty about the correct theory of global justice. A great deal of agreement exists on a minimum duty to provide aid to people living in conditions of absolute poverty. Such agreement can have implications for policies that can be enacted now. We should not exaggerate the differences between different views when it comes to the moral claims of people in desperate need.

Second, when it comes to the situation of the billions of people in the world who are only relatively poor, not absolutely poor, the differences between theories of justice make a difference. Consequently, to address comprehensively their distinctive problems in the international arena, bioethicists must work on issues across the spectrum of normative theory, from classical bioethics through to political theory.⁷¹ Solutions to many of the most important problems in bioethics require simultaneously grappling with questions of international justice. The arguments just sketched concerning how cosmopolitan and statist liberals should approach IP and the health worker brain drain suggest that resolving these bioethical problems is likely to require committing to substantive claims about the correct theory of global justice.⁷²

NOTES

1. For further work on this question see Sreenivasan G. (2002). International justice and health: a proposal. *Ethics & International Affairs* 16(2):81–90, and Wolff J, Chapter 4 in this volume.
2. Rawls J. (1971). *A Theory of Justice*. Cambridge, MA, and London: The Belknap Press of Harvard University Press, p. 7.

3. Cf. Beitz C. (1999). *Political Theory and International Relations*. Princeton, NJ: Princeton University Press, p. 131.
4. Pogge T. (2002). How should human rights be conceived? In Pogge T. *World Poverty and Human Rights*. Cambridge, UK: Polity Press, 52–70.
5. Rawls, 1971, pp. 8–9.
6. These correspond to two branches of non-ideal theory: *transitional theory* and *partial compliance theory*. See Sreenivasan, Chapter 6 in this volume, for an extended analysis of these categories.
7. Almost nothing has been written on the question of what other countries (i.e., those not among the rich countries of North America, Western Europe and East Asia) owe to people within and without their borders.
8. As I explain shortly, the latter set of positions includes both those who think that the existence of a state is what is morally significant and those who think that the existence of a nation (defined in virtue of shared characteristics of its members) is morally significant. I choose the term “statist” to describe both, rather than “nationalist,” since the latter has more connotations that might lead us astray. Nonetheless, my use of the term “statist” must be distinguished from its use to describe political views that privilege the state over the people within it or that extol state intervention in a country’s economy. I impute neither of these views to the statist I describe.
9. My way of defining cosmopolitanism therefore focuses on the conclusions that the theory of justice draws. This contrasts with views that focus on the reasons why the theory of justice draws its conclusions. So, for example, Charles Beitz defines cosmopolitanism as follows:

At the deepest level, cosmopolitan liberalism regards the social world as composed of persons, not collectivities like societies or peoples, and insists that principles for the relations of societies should be based on a consideration of the fundamental interests of persons. (Beitz, C. (2000). Rawls’s Law of Peoples. *Ethics* 110(4), p. 677)

For alternative definitions see Pogge T. (2002). *Cosmopolitanism and sovereignty*. In Pogge T. *Human Poverty and Human Rights*. Cambridge, UK: Polity Press, p. 169, and Brock G. (2009). *Global Justice: A Cosmopolitan Account*. Oxford, UK: Oxford University Press, pp. 11–14.
10. The difference principle is Rawls’ preferred principle for allocating primary goods. It states that social and economic inequalities are permissible only if they are to the greatest advantage of the least well-off members of society (for discussion, see Rawls, 1971, pp. 65–73).
11. Cf. Nagel T. (2005). The problem of global justice. *Philosophy and Public Affairs* 33:113–147:

“I am leaving aside here the very important differences over what the universal foundation of cosmopolitan justice is. Cosmopolitans can be utilitarians, or liberal egalitarians, or even libertarian defenders of *laissez faire*, provided they think these moral standards of equal treatment apply in principle to our relations to all other persons, not just to our fellow citizens” (p. 119n).
12. Communitarians believe that the principles governing a just society must take into account the existing shared practices and understandings within cultures, whether by basing principles of justice on these shared practices and understandings or by taking account of them in working out the content of the requirements of justice.
13. See Goodin RE. (1995). *Utilitarianism as a Public Philosophy*. Cambridge, UK: Cambridge University Press, for an application of utilitarian thinking to social justice, including global justice.
14. Note that this view does not commit its proponents to the desirability of a global government: the types of institutions needed to treat everyone equally are determined by practical as well as normative considerations and these might favor a decentralized

- global network of power centers rather than a single world government. Cf. Beitz, 1999, pp. 182–183, and Tan KC. (2000). *Toleration, Diversity, and Global Justice*. University Park, PA: Pennsylvania State University Press, pp. 100–102.
15. Compare Barry B. Humanity and justice in global perspective. In Pennock JR, Chapman JW. (1982). *Nomos XXIV: Ethics, Economics, and the Law*. New York: New York University Press, 219–252, who considers the implications of treating the world's resources as belonging to all of humanity.
 16. Beitz, 1999, p. 141.
 17. Beitz, 1999, p. 145. Though note that he does not require that it produce benefits to all in order for considerations of justice to apply, either in the domestic or the international case. Considerations of justice apply, according to Beitz, to all “institutions and practices (whether or not they are genuinely cooperative) in which social activity produces relative or absolute benefits or burdens that would not exist if the social activity did not take place” (p. 131).
 18. Beitz, 1999, pp. 152–153. Rawls J. (1999). *The Law of Peoples with “The Idea of Public Reason Revisited.”* Cambridge, MA, and London: Harvard University Press.
 19. My thanks to Bob Goodin for emphasizing this point.
 20. See, e.g., MacIntyre A. (1984). *After Virtue* (2nd ed.). Notre Dame, IN: Notre Dame University Press, and Walzer M. (1983). *Spheres of Justice*. New York: Basic Books.
 21. See, e.g., Miller D. (1995). *On Nationality*. Oxford, UK: Oxford University Press, and Tamir Y. (1993). *Liberal Nationalism*. Princeton, NJ: Princeton University Press.
 22. Cf. Barry B. (1998). Statism and nationalism: a cosmopolitan critique. In Shapiro I, Brilmayer L. *Nomos XLI: Global Justice*, pp. 20–21.
 23. Nagel, 2005, p. 140.
 24. Rawls, 1999, p. 37. Other strong statist include Nagel *op. cit.* and Michael Blake (e.g., Blake M. [2002]. Distributive justice, state coercion, and autonomy. *Philosophy and Public Affairs* 30(3):257–296).
 25. We might expect there to be moderate nationalist positions, too. Nothing in the justifications given for nationalism entails that special duties to co-nationals must always, or even usually, trump other special or general duties, including duties owed to foreigners. Cf. Michael Blake, who writes:

But surely, if cultures are goods, then they may be evaluated as such; if they are morally important, they nonetheless may be outweighed in moral importance by other goods—such as the claims of non-members to, for instance, simply survive as human beings. Establishing the importance of a distinctive way of life does not establish that such a creature is more important than others’ abilities to survive. (Blake M. International justice. In Zalta EN, ed. *Stanford Encyclopedia of Philosophy* (Winter 2008 edition). (URL: <http://plato.stanford.edu/archives/win2008/entries/international-justice/>).
 26. Though see Cohen J, Sabel C. (2006). Extra rempublicam nulla justitia? *Philosophy & Public Affairs* 34(2):147–175.
 27. Singer P. (1993). *Practical Ethics*. Cambridge UK: Cambridge University Press, pp. 218–220. The term comes from Robert McNamara, who describes absolute poverty as “a condition of life so characterized by malnutrition, illiteracy, disease, squalid surroundings, high infant mortality and low life expectancy as to be beneath any reasonable definition of human decency” (quoted in Singer, *Practical Ethics*, p. 219).
 28. Chen S, Ravallion M. (Aug. 1, 2008). *The Developing World is Poorer than We Thought, But No Less Successful in the Fight Against Poverty*. World Bank Policy Research Working Paper Series No. 4703. (Available at SSRN: <http://ssrn.com/abstract=1259575>). The figure of \$1.25 a day represents the amount of goods that could be purchased in the United States in 1993 for US\$1.25 (rather than the amount that could be purchased in any particular country for US\$1.25).

29. The World Bank's method of measuring poverty has been criticized (see, e.g., Reddy S, Pogge T. (2002). How Not to Count the Poor. Unpublished Manuscript. Available on www.socialanalysis.org, who argue that there are both conceptual and empirical flaws in the World Bank's methods) and, in any case, the concept it seeks to measure may not map exactly onto the concept of absolute poverty I am using. However, this figure does give some idea of the massive extent of absolute poverty.
30. Singer P. (2009). *The Life You Can Save: Acting Now to End World Poverty*. London: Picador.
31. Note that I am not arguing that most people believe that there is such an international duty of assistance. I am arguing that given the facts, and given the normative principles to which most people (including political theorists) are committed, they ought also to endorse an international duty of assistance.
32. Gopal Sreenivasan argues along similar lines in order to show that the OECD countries ought to allocate 1% of GDP to improving the health of the worst off. He concludes: "Any plausible and complete ideal of international distributive justice, I suggest, will at least require better-off states to transfer *one percent of their gross domestic product* (GDP) to worse-off states" (Sreenivasan, 2002, p. 83; italics in original).
33. Though libertarians could accept that there are international duties of justice, but argue that they do not require the provision of assistance to anyone, just as they do not in the domestic context.
34. Rawls, 1999, pp. 106 and 114–116. See, also, Nagel, 2005, p. 118, and Blake, 2002, pp. 258–260.
35. Miller D. (2005). Against global egalitarianism. *Journal of Ethics* 9, pp. 63–64.
36. See, e.g., Shah A. Structural adjustment—a major cause of poverty. *Global Issues*, Updated Oct. 29, 2008. (Accessed Jan. 25, 2010. <http://www.globalissues.org/article/3/structural-adjustment-a-major-cause-of-poverty>); and George S. (May 1993). The debt boomerang: the Third World debt crisis is doing you harm—whether you live in the North or the South. *New Internationalist*, p. 243.
37. These duties are sometimes called duties of humanity, duties of beneficence, or duties of charity.
38. See, e.g., Murphy LB. (1993). The demands of beneficence. *Philosophy and Public Affairs* 22(4):267–292.
39. Wouldn't the different justifications for a duty to aid pick out slightly different sets of very poor people and prescribe slightly different duties of aid to them? Almost certainly. But there will also be many difficulties in measuring people's needs, working out what would address them, comparing the expected impact of different policies or institutional set-ups intended to help them, and so forth. These other sources of imprecision are likely to swamp the differences between the various sets, so that it will generally be unhelpful to separate them.
40. Rawls, 1999, p. 111.
41. Chen & Ravallion, 2008.
42. Brenzel L, et al. (2006). Vaccine-preventable diseases. Chapter 20 in Jamison et al., *Disease Control Priorities in Developing Countries* (2nd ed.), Washington DC and New York: The World Bank and Oxford University Press, p. 401. This includes the cost of providing the vaccinations and the probability that a child will die from one of the infectious diseases vaccinated against if he or she is not vaccinated.
43. Mudur G. (2004). Hospitals in India woo foreign patients. *BMJ* 328:1338. The price is substantially greater in developed countries.
44. This is a stipulative definition for the purposes of this paper. The set of interventions included in basic health care need not correspond to other lists of basic health care interventions, such as WHO's list of essential medicines (see http://www.who.int/topics/essential_medicines/en/).

45. Though it may make a difference to how secure their access to basic health care is, which might then be relevant to assessing their level of poverty.
46. This is the price in the United States. The prices of operations vary widely from country to country. For example, the price of bypass surgery in Canada appears to be about half of that in the United States (see Eisenberg MJ et al. [2005]. Outcomes and cost of coronary artery bypass graft surgery in the United States and Canada. *Arch Intern Med* 165:1506–1513). Nevertheless, my point should be clear.
47. James Dwyer makes essentially the same point:

“Basic needs” is a vague concept, of course. Sometimes we know whether something is a basic need, but sometimes we do not; and in my own view, there is no easy, context-free way to specify basic needs, especially those that concern health care. I may “need” a very expensive, rare, and technical treatment (extracorporeal oxygenation, for example) in order to live. From an individual point of view, this treatment may seem like a basic need because it is the only way to sustain life. But from a social point of view—taking into account population needs, cost-effectiveness, and opportunity costs—we may not want to count this need as basic. (Dwyer J. (2007). What’s wrong with the global migration of health care professionals? Individual rights and international justice. *Hastings Center Report* 37(5), p. 39).
48. For this style of argument applied to the brain drain see, e.g., Hooper CR. (2008). Adding insult to injury: the healthcare brain drain. *Journal of Medical Ethics* 34:684–687. On intellectual property and access to medicines see Resnik D. (2001). Developing drugs for the developing world: An economic, legal, moral and political dilemma. *Developing World Bioethics* 1:11–32; and Schüklenk U, Ashcroft RE. (2001). Affordable access to essential medication in developing countries: conflicts between ethical and economic imperatives. *Journal of Medicine and Philosophy* 27(2):179–195.
49. On the brain drain see, e.g., Gostin LO. (2008). The international migration and recruitment of nurses: human rights and global justice. *JAMA* 299(15):1827–1829, who assumes a particular (and apparently cosmopolitan) view of global justice and in any case focuses his analysis on the worst off (those whose right to health has not been fulfilled). Thomas Pogge argues for what he describes as a cosmopolitan view (Pogge T. [1992]. Cosmopolitanism and sovereignty. *Ethics* 103(1):48–75) and has developed a detailed proposal for incentivizing the development of medicines on that basis (see, e.g., Pogge T. [2005]. Human rights and global health: a research program. *Metaphilosophy* 36:182–209).
50. A notable exception is Norman Daniels, who cites the two examples I discuss to illustrate the need for bioethicists to address broader questions of global justice (Daniels N. [2006]. Equity and population health: towards a broader bioethics agenda. *Hastings Center Report* 36(4):29–34).
51. Pogge, 2005, *op. cit.*
52. Pogge, 2005, *op. cit.*
53. For example, greater use of compulsory licensing for public health emergencies, whose legality is affirmed in the Doha Declaration on the TRIPS Agreement and Public Health, WT/M/DEC/W/2, Nov. 14, 2001. (Available at <http://www.who.int/medicines/areas/policy/tripshealth.pdf>. Accessed Oct. 8, 2009.)
54. Nagel, 2005, pp. 142–143. Though he does acknowledge that we might have a duty to restrict the content of international agreements for humanitarian reasons.
55. Nagel, 2005, p. 141.
56. For example, one important difference is that infectious diseases still account for a much higher proportion of the projected burden of disease in 2030 for low-income countries

- than for high-income countries. This suggests that their current domestic research priorities should likewise differ. See Mathers CD, Loncar D. (2006). Projections of global mortality and burden of disease from 2002 to 2030. *PLoS Medicine* 3(11):e442.
57. World Health Organization. *The Global Burden of Disease: 2004 Update*. (Available at: http://www.who.int/topics/global_burden_of_disease/en/. Accessed Sept. 28, 2009.) The malaria disparity is actually much greater than this suggests, since the great majority of the American cases occur in Latin America.
 58. My thanks to Bob Goodin for pressing this objection.
 59. World Trade Organization. (2007). Chapter 3: Settling disputes. In: *WTO. Understanding the WTO*. Geneva: World Trade Organization, pp. 55–61.
 60. World Health Organization. (2006). *World Health Report 2006—Working Together for Health*. Geneva: WHO.
 61. Hamilton K, Yau J. (2004). *The Global Tug-of-War for Health Care Workers*. Washington, DC: Migration Policy Institute. (Available at: <http://www.migrationinformation.org/feature/print.cfm?ID=271>. Accessed Oct. 8, 2009.)
 62. Kuehn BM. (2007). Global shortage of health workers, brain drain stress developing countries. *JAMA* 298:16:1853–1855; Johnson J. (2005). Stopping Africa's medical brain drain. *BMJ* 331:2–3; World Health Organization. (2006). *Working Together for Health: The World Health Report 2006*. Geneva: WHO, pp. 97–104.
 63. There is also an important collective action problem when we come to consider what policies individual developed countries should follow in the face of expected continuing recruitment by other developed countries.
 64. Chen L, Evans T, Anand S, Boufford JI, Brown H, Chowdhury M, et al. (2004). Human resources for health: overcoming the crisis. *Lancet* 364:1984–1990. These are not arbitrarily chosen figures but derive from the Millennium Development Goals. I take them, therefore, as a rough proxy for what might be necessary to lift a population out of absolute poverty. As before, however, nothing in my argument turns on this particular figure being correct; it must merely be the case that there is some level of health care workers needed to bring a population out of absolute poverty, that this level is not universally met, but that many populations who are relatively poor do meet it.
 65. World Health Organization, 2006, p. 5.
 66. World Health Organization. (April 2006). *The Global Shortage of Health Workers and its Impact, 2006*. Fact sheet No. 302. (Available at: <http://www.who.int/mediacentre/factsheets/fs302/en/index.html>.)
 67. There may be room even for a little more consensus than this, on the grounds of compensatory justice. Daniels argues that one cause of the brain drain is the Structural Reform Programs imposed by the International Monetary Fund and the World Bank in the 1980s, which devastated public health care provision in developing countries and thereby drove many health workers out of the public sector (Daniels, 2006, p. 33). This suggests that there could be a consensus view according to which when global institutions cause the conditions for brain drains, they commit some *prima facie* wrong. But this seems at best to be an indirect argument for restrictions on immigration and targeted hiring; it would be more plausible to argue that the actions of the IMF and World Bank should be altered and/or directly compensated for.
 68. Dwyer suggests that cosmopolitans and political statisticians would agree about medical migration, because the brain drain tends to undermine social justice in donor countries (Dwyer, 2007, pp. 40–42). But except when we are dealing with basic needs, this seems false: the donor countries are responsible for distributing the human health care resources that they have in a just way, and differences in the amount of human health care resources between countries are not the concern of justice for the strong statist.

69. Again, we might look for a moderate statist position on the brain drain. However, there is much less of a case for claiming that a global institution governing health worker migration exists than in the case of IP protection: there is no obvious analogue to the WTO here.
70. In this respect, it is interesting to note the content of the 2003 Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa on the reciprocal Educational Exchange of Healthcare Concepts and Personnel, which resulted in the training of South African nurses in the UK and senior nurses from the UK working in South African hospitals as mentors (Nullis-Kapp C. Efforts under way to stem “brain drain” of doctors and nurses. *WHO Bulletin* 2005;83:2).
71. Cf. Daniels, 2006, pp. 33–34.
72. For helpful comments on previous drafts of this chapter I would like to thank Danielle Bromwich, Kirstin Borgerson, Bob Goodin, Marika Warren, and Alan Wertheimer.