

Reconciling Effectiveness and Distributive Justice.

Towards a Model of Performance Justice in International Environmental Politics

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Abstract

Most (global) environmental governance arrangements face a potential trade-off between solving environmental problems and the just distribution of their social costs and benefits. So far, however, these two policy objectives have by and large been analysed separately. The contribution of this paper is to bring these two strands of research closer together by developing a comprehensive model of performance justice. In terms of environmental improvements the model employs problem solving as the benchmark indicator. Regarding distributive justice, the paper draws on a global application of Rawls's difference principle and combines this with Sen's and Nussbaum's capability approach in order to derive criteria for the just distribution of costs and benefits from environmental policy measures. The overall model of performance justice then lays out minimum requirements for problem solution as well as a twofold standard of distributive justice. The second half of the paper gives some hints how this model might be operationalized for empirical research.

1) Introduction

Global environmental policy measures frequently face a trade-off between the effective treatment of the ecological problem(s) at stake and the just distribution of social costs and benefits. The introduction of environmental policy measures can change the constellation of winners and losers as compared to the status quo (Weidner 2007: 459) or it can exacerbate existing imbalances (Adger/Paavola/Huq 2006: 4). Hence, just like mitigation of ecological problems is a key requirement for environmental governance, governance arrangements that do not pay attention to distributive justice requirements appear as unsatisfactory from a normative point of view.

Though the claim to include issues of distributive justice in the analysis of the effectiveness has been made quite frequently (e.g. Abromeit 2002: 18; Brühl/Liese 2004: 181f; Scharpf 1997: 153) there have hardly been any attempts at integrating the effectiveness and distributive justice of (global) governance arrangements into one coherent and empirically testable model. Quite to the contrary, particularly in the field of global environmental politics there appear to be two parallel strands of research. On the one hand, there is a vast amount of literature on the effectiveness of international environmental regimes (pathbreaking: Haas/Keohane/Levy 1993; Helm/Sprinz 2000; Miles et al. 2002; Young 1994; Young 1999) which has recently also been applied to global public private partnerships (e.g. Beisheim/Liese/Ulbert 2008; Huckel/Rieth/Zimmer 2007). On the other hand, there is a growing interest in questions related to the (distributional) justice of the costs and benefits of environmental politics; particularly climate change politics (e.g. Dobson 1998; Ott/Döring 2008; Page 2006).¹

This research gap is the starting point for this paper. It asks how a model can be developed that encompasses both the ecological effectiveness and distributive justice of environmental policy measures and how this might be measured in practice. The article should be understood as a theoretical and conceptual framework that has to be further specified in empirical case study research. Its focus is on the impacts of political action so that it will be appropriate to focus on a consequentialist (as opposed to a proceduralist) notion of justice. The argument unfolds in three steps. The next section elaborates on a notion of international justice that combines a comparative with an absolute standard of justice. While a comparative standard determines the justified claims for each single person by comparison between different groups of people who have different resource endowments, an absolute standard sets out to guarantee

¹ Breitmeier (2008) includes both goal attainment and just and sustainable outcomes in his analysis of regime legitimacy. Yet considers them independently of one another and not as dependent variables.

to each person the preconditions for a dignified human life (Ott/Döring 2008: 80). The third section discusses how the effectiveness of environmental policy measures can be assessed and opts for a focus on impact as focal point for this paper. A combined model of what will here be denominated as “performance justice” and its operationalisation will then be sketched out in the fourth part. The conclusion summarises the main arguments and points towards further steps in this research endeavour in particular what might be independent variables that explain how just *and* effective environmental international policies might be achieved. The focus throughout the paper is on questions of intragenerational justice. Since intergenerational justice can hardly be assessed empirically this question has to be left for philosophers and political theorists.

2) The Distributive Justice Dimension

This section develops a twofold standard of justice through a combination of John Rawls’s comparative with Amartya Sen’s and Martha Nussbaum’s absolute standard of justice. After displaying the particular strengths and basic arguments of Rawls’s (domestic) theory of justice it is shown how the theory can be applied to the global level. In a second part this section argues with Sen and Nussbaum that Rawls’s focus on economic means remains however too limited and should be broadened by the inclusion of minimum capabilities.

Recent political reasoning about international justice has for the most part built on John Rawls’s *Theory of Justice* (2003; published first in 1971) (Kymlicka 1997: 56; Sen 1992: 79). His work bypasses important shortcomings of many prevalent competing theories of justice. Utilitarian approaches (going back to Mill 1998, originally 1861, and Bentham 1948, originally 1789) which call for the maximization of overall utility run the risk of sacrificing some persons in favour of the majority. Libertarian theories emphasize personal freedoms but abandon persons to their fate even if this entails their total deprivation (e.g. Nozick 1974). In contrast to these universalist theories, so-called communitarians (e.g. Walzer 1983) argue that standards of justice are time and place specific. Hence if this is in accordance with local principles, even societies that do not grant all their members the same value may claim to have a just structure. Against these drawbacks, the normative appeal of Rawls’s liberal theory lies, firstly, in its uncompromising respect for the moral equality of all humans and, related to that, secondly, in its insistence that social institutions have to be designed in a way that grants fair life chances to everybody. It therefore constitutes the theoretical foundation of this paper.

The starting point for Rawls's contractarian theory is a hypothetical original position which places all (rational) members of a society behind a veil of ignorance before they choose the institutional setting and the principles of justice for their respective society. They receive no information about their social position and status or about their personal capacities like intelligence, bodily strength, psychological dispositions and so on. "Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain" (Rawls 2003: 11). This method rules out the arbitrariness of innate talents as a criterion upon which people base their preferences for a particular social order (ibid.: 14).² According to this procedure people would choose two basic principles which follow a lexicographic order, i.e. the first one is superior to the second one.

*"First Principle. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all.
Second Principle. Social and economic liberties are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged (...), and (b) attached to offices and positions open to all under conditions of fair equality of opportunity"* (Rawls 2003: 266).

In line with this paper's focus on the distributive impacts of global (environmental) policies, the following concentrates on the second principle, the so-called difference principle. Its key concern is the distribution of "primary goods" such as wealth and income, social positions of authority and responsibility and the social bases of self-respect. Basic liberties and equality of opportunity being in place, all inequalities in social and economic endowments should be arranged so that they are to everybody's benefit (ibid.: 53-56). The practical application of the difference principle entails several distinctions. In a perfectly just scheme the expectations of the least advantaged cannot be increased any more by changes in the situation of the better off. The situation in which the maximum for the disadvantaged has not yet been reached and improvements in the situation of the better off can still enhance the situation of the worse off can be considered as "just throughout, but not the best just arrangement" (ibid.: 68). In an unjust scheme a decrease in the situation of the better off could rise the living conditions of the less well off. Hence an unjust basic structure may require changes that lower the situation of some of the better off (ibid.: 68f).³

² As a second methodological device, Rawls refers to the basic intuitions that he believes people have about justice. He thus develops the principles of justice from two ends by verifying whether the initial situation that would be chosen behind the veil of ignorance conforms to people's basic convictions. "By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgements and conforming them to the principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgements duly pruned and adjusted" (Rawls 2003: 18).

This account of justice has been developed by Rawls for national social orders only. His later book *The Law of Peoples* (1999) lays out a very tentative conception of global justice. Arguing that the enormous worldwide pluralism prohibits holding people in one country responsible for the fate of people elsewhere, he confines the responsibility for just living conditions to the single political communities.⁴ Yet if one accepts that nowadays there is a world economy with external effects and that peoples respect each other to a minimum degree as cooperation-partners who should benefit equally from cooperation, the question ensues whether growing global disparities are to the benefit of the least advantaged (Ott/Döring 2008: 75f). This has encouraged several authors to think about a global difference principle.

Charles Beitz (1999; published originally in 1979) was among the first to advocate an international application of the difference principle in addition to the domestic difference principle (Beitz 1999: 179). His conception of international justice is ultimately concerned with individuals (ibid.: 181) but the parties to the original position are conceived of as states who represent their population (ibid.: 136). Beitz brings forward two arguments for an international difference principle: First, even without inter-state cooperation, societies in the original position would worry about global resource distribution. Given an unequal allocation, some societies might prosper easily while others – no matter how hard they worked – could not reach the same levels of affluence. Beitz claims that due to the arbitrary global allocation of raw materials the possession of resources by one society does not justify denying other (resource poor) societies the benefits derived from these riches (ibid.: 138). Lacking information about their particular endowment, the parties would request a global resource redistribution principle that enables all societies to establish an economic system that can fulfill its members' basic needs. "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 (...) if the resulting inequalities were to the greatest benefit of those least advantaged by the inequality" (ibid.: 141).⁵ Second, assuming international (economic) interdependence, Beitz points out that worldwide aggregate economic growth is related to growing inequalities between richer and poorer countries. If participation in the

³ For an illustration of a just inequality consider the higher benefits that entrepreneurs may expect in comparison to the working classes. According to Rawls inequalities are just if the expected higher utilities encourage the entrepreneurs to foster economic activities in a way and at a pace that its eventual outcomes also benefit the unskilled workers (Rawls 2003: 66).

⁴ According to Rawls (1999), a just international system is characterized by its commitment to the established principles of international public law such as respect for the freedom and self-determination of peoples, compliance with treaties and limitation of the use of force to self-defence.

⁵ In order to meet the individuals' needs interstate transfers should be designed in a way that supports just domestic distributional systems (Beitz 1999: 181).

international economy has helped the richer society to develop its wealth, it has social obligations towards the less well-off societies (ibid.: 149ff).

Others have taken up Beitz's case for an international difference principle even if their interpretations of international justice differ in detail. Hirsch (2001), for example, drafts a model of *moral federalism*. In this two tier structure states design their domestic system of justice in line with their particular cultural characteristics (ibid.: 62). Despite their diverse cultural backgrounds the states share an interest in their independence and security as well as the well-being of their citizens. Therefore they would only accept an equal status of all states at the international level. Accordingly, in a world of economic interdependence global socio-economic inequalities need special justification in the form of a global difference principle that applies analogously to the domestic one (ibid.: 63f). However, Hirsch adds to Rawls's conception that the difference principle sets in only after certain basic needs have been covered (ibid.: 67ff).

Contrary to Hirsch, Pogge envisages a unique global original position which applies the veil of ignorance to the entire social world (Pogge 1989: 147). Like Beitz, he considers the distribution of natural resources among states as arbitrary so that living on a naturally rich territory does not justify claims for particular benefits for making them available (ibid.: 250). Instead, international cooperation should be designed in a way that the social inequalities following from variations in resource endowment serve the "worst representative individual share" (ibid.: 251). Yet, Pogge rejects Beitz's proposal of a global resource distribution principle that restricts the rights that states have over their natural assets. According to Pogge's understanding of Rawls, a just global economic scheme would leave the right to develop and use its resources to each state as long as this benefits the least advantaged person. Furthermore, though the geographical distribution of resources is a natural contingency, the use that can be made of them for the benefit of individuals is a social question of institutional design. Therefore, Pogge dismisses Beitz's suggestion of a global resource distribution principle that takes states as its basic units (ibid.: 251f) and favors an interpretation of the original position which pays due attention to the fate of all individuals and not only to a particular community. Hence, a just scheme would require a unique global original position composed of single individuals and not representatives of states (ibid.: 256f).

Summing up the discussion so far, different authors in the Rawlsian tradition converge on the assumption that the domestic difference principle can be transferred to the international realm. This is initially a strong argument for employing Rawls's theory as normative basis to

evaluate the justice of international environmental policies. Yet, as outlined below, the theory's focus on economic means is a weak point that can be offset through a combination with the capability approach by Sen and Nussbaum.

The call for a focus on human capabilities as the central measure for a person's position is the key innovation the capability approach has introduced into the discourse about global justice. Sen and Nussbaum acknowledge that Rawls's analysis of "primary goods" includes social positions of authority and responsibility besides the distribution of wealth and income. However, they criticise that this view remains restricted to the means people have at their disposal without revealing much about the real opportunities they have to realize the ends that they value (Nussbaum 2000: 65-68; Sen 1999: 72f). People live in different social and natural environments and differ in their personal characteristics so that they can accomplish different goals with the same bundle of resources. Thus their endowment with resources alone does not provide sufficient information about their ability to lead a decent life (Nussbaum 2006: 283; Sen 1992: 8, 20; Sen 1993: 41). This drawback should be avoided by the capabilities approach: "about a variety of functions that would seem to be of central importance to a human life, we ask, is the person capable of this or not?" (Nussbaum 2002: 127).

Two concepts are central for understanding this approach: functionings and capabilities. Functionings "represent parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life" (Sen 1993: 31). They may be as elementary as being adequately nourished or as complex as being integrated into one's community. The ability to achieve different functionings and to choose among them, then, constitutes a person's capability (ibid.). "A person's advantage in terms of opportunities is judged to be lower than that of another if she has less capability – less real opportunity – to achieve those things that she has reason to value" (Sen 2009: 231). This points to the crucial relevance of freedom in the capabilities approach: the capability set mirrors a person's freedom of choice among different ways to organize his or her life (Sen 1992: 40). A shortage of key capabilities can find its expression for example in premature mortality, critical malnourishment, persistent morbidity, pervasive illiteracy and so forth (Sen 1999: 20).⁶

In the first place, the capabilities approach has been developed as a more sophisticated device for comparing the well-being of different people. But as theories of justice typically lay out a

⁶ Despite the strong focus on capabilities Sen does not consider it sufficient. In line with Rawls's account of justice, he underlines the significance of liberty: "Indeed, a person's capability may be reduced in exactly the same way in two cases: (1) through a violation of his liberty (by someone violating her freedom over a personal domain), and (2) through some internal debilitation that she suffers. (...) In this sense, the capability perspective, central as it is for a theory of justice, cannot be entirely adequate for it. There is a real need to bring in the demands of liberty as an additional principle" (Sen 1992: 87).

desired state of people, the capabilities approach can also serve for an assessment of justice (Nussbaum 2002: 122). Consequently the determination which functionings (and capabilities) are to be considered as relevant and how they are to be distributed turns out to be of eminent importance. The concrete specification of valuable functionings constitutes a main difference of Sen's and Nussbaum's respective versions of the capability approach.

According to Sen, there are some basic capabilities (like the ability to be well nourished or the ability of avoiding preventable diseases etc.) that are so elemental that they will most likely be highly valued by everybody. But in general people have different preferences with regard to the functionings and capabilities they desire (Sen 1993: 31). Hence, in many instances inequality evaluation need not presuppose agreement on the exact contents of and weights attached to the functionings and capabilities to be evaluated. The relative values of the different functionings and capabilities should instead be determined by reasoned agreement (ibid.: 48). This does not require a unique set of weights but: "In the democratic context, values are given a foundation through their relation to informed judgements by the people involved. (...) It is not so much a question of holding a referendum on the values to be used, but the need to make sure that the weights (...) used remain open to criticism and chastisement, and nevertheless enjoy reasonable public acceptance" (Foster/Sen 1997: 206). It follows from this that Sen neither specifies valuable capabilities nor can he say much about minimum levels that should be reached or how capabilities should be distributed in detail (e.g. Sen 1992, Sen 2009; on this see also Nussbaum 2000: 12).

Unlike Sen who is primarily interested in the measurement of human well-being, Nussbaum is more concerned with developing a concept of the good life. At the core of her theory is a list of ten capabilities all of which she considers necessary for "a life that is worthy of the dignity of the human being" (Nussbaum 2006: 70). The objective of all politics has to be to provide all human beings with capabilities (Nussbaum 2002.: 79f) such as the ability to lead a long life, the ability to be in good health or the ability to hold property (Nussbaum 2002: 130f).⁷

⁷ The complete list reads: "1. Life. Being able to live to the end of a human life of normal length (...). 2. Bodily health. Being able to have good health, including reproductive health (...). 3. Bodily integrity. Being able to move freely from place to place; to be secure against violent assault (...); having opportunities for sexual satisfaction and for choice in matters of reproduction. 4. Senses, imagination, and thought. Being able to use the senses to imagine, think, and reason (...). 5. Emotions. Being able to have attachments to things and people outside ourselves. (...) 6. Practical reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. 7. Affiliation. A. Friendship. Being able to live with others, to recognize and show concern for other human beings, to engage in various forms of social interaction (...) B. Respect. Having the social bases of self-respect and non-humiliation (...). 8. Other species. Being able to live with concern for and in relation to the animals, plants, and the world of nature. 9. Play. Being able to (...) enjoy recreational activities. 10. Control over one's environment. A. Political. Being able to participate effectively in political choices that govern one's life. (...) B. Material. Being able to hold property (...); having the right to employment (...)" (Nussbaum 2002: 130f).

The capabilities are intentionally formulated very indeterminate so that they leave enough room for people to realize their own conceptions of life (Nussbaum 2002: 131). Concerning the distribution of capabilities, Nussbaum demands an equal distribution only for those capabilities that are directly related to equal human dignity such as political, religious, and civil liberties. Those capabilities related to property or having an instrumental character have to be guaranteed to everybody only to a sufficient degree. For instance, human dignity is satisfied by an *adequate* house or shelter (Nussbaum 2006: 292f). Nussbaum therefore also speaks of a threshold level for each capability below which a good human life is impossible (ibid.: 71).

In contrast to Rawls's theory there has not been much debate about the international applicability of the capability approach. Nussbaum argues quite straightforwardly that "our world is not a decent and minimally just world, unless we have secured the ten principles, up to an appropriate threshold level, to all the world's people" (Nussbaum 2006: 281). She does not see any general obstacle to applying the capabilities approach globally (ibid.: 305). Yet, she does make a difference with regard to the determination of capabilities. In the domestic context, what threshold level is sufficient should be determined by each society. In the international case there should be equality between nations with regard to capabilities that are particularly closely related to equal human dignity, among them primary and secondary education and access to elementary medical care (Nussbaum 2006: 295).

Overall, the capabilities approach thus supplements the traditional income-centred view on justice by its focus on the extent to which people can realize their various objectives. Yet it focuses more on the level to which certain capabilities are realized than at their distribution. (Indeed, the capability approach is compatible with different distributions of inequalities above the threshold (Nussbaum 2006: 75).) So how can the different concepts be reconciled?

As long as there is no morally sound reason to justify an unequal distribution of valuable goods it seems appropriate to refer to an equal distributional principle because unsubstantiated unequal distributions are likely to be arbitrary, discriminating or biased (Ott/Döring 2008: 93). Yet, faced with the choice between a guaranteed humanitarian minimum for all in combination with significant inequalities (situation A) and an equal distribution of goods slightly below this minimum (situation B), one would certainly give preference to situation A. Equality for equality's sake cannot be the ultimate goal. There would unquestionably have to be additional criteria (like a humanitarian minimum endowment or the difference principle) to complement egalitarian principles (Ott/Döring 2008: 82). A viable to solution would thus be

to combine both approaches. In a first step, an indispensable minimum standard will be defined according to the capability approach. Here, it may be useful to concentrate on certain predetermined capabilities that are elemental enough to be in line with Nussbaum's capability list and to fit into Sen's rather open concept of vital capabilities that everybody would value. In a second step, still taking the relevant capabilities as the relevant space for the assessment of inequality, Rawls's difference principle will be transferred to the international area (for similar proposals see also Hinsch 2001: 67ff; Ott/Döring 2008: 85, 102).

Prior to the operationalization of such a twofold standard of justice in section four the following section embarks on a discussion of effectiveness as a second component to a model of "performance justice".

3) The Effectiveness Dimension

This section outlines that effectiveness can be understood in different ways and asserts that for the purpose of a model of performance justice the assessment of impact is most appropriate.

Young (1994: 143-150) identifies six dimensions of regime effectiveness: 1) Problem solving relates to the successful elimination of the problematique which has motivated the parties to come to an agreement in the first place. Obviously, not only the problem itself may change its character in the course of time but its framing may also differ among parties or over time. This variance can then be reflected in judgements of problem solving effectiveness. 2) Goal attainment reveals how far a regime's stated (or sometimes even unstated) goals can be realized over time. This may be closely related to problem solving but is not the same since goals may be adopted that are not sufficient to resolve a problem entirely.⁸ 3) Behavioral effectiveness changes the members' behavior as a consequence of the regime. In many cases, though there may be a (strong) correlation with problem solving or goal attainment, there is not necessarily a causal relationship between these different aspects: Behavioral responses may also lead to a problem shift. 4) Process effectiveness follows from the implementation of the regime's rules into the laws of the member states and from compliance with these stipulations. Though implementation and compliance are key to problem solving and goal attainment this obviously holds only insofar as the rules are adequate for the problem at stake.

⁸ A vivid illustration of a specific goal being met but the underlying problem not being solved is provided by Jacobson and Brown Weiss (1998: 5): "[A] treaty prohibiting international trade in a certain species of monkey could effectively stop the trade but have little impact on the decimation of monkey populations, which may be consumed within the national borders where they are located, rather than abroad, after being exported".

The difference to behavioral effectiveness lies in the fact that not all behavioral consequences of a regime flow only from implementation and compliance with its rules. 5) Constitutive effectiveness takes into consideration the expenditure of time, energy and resources by the regime members. The participants may devote a lot of attention and resources to the operation of the regime and there may be a lively exchange, but this might not solve the underlying problem or any of the articulated goals. 6) Evaluative effectiveness is more encompassing in that it is less interested in the generic consequences of the regime but instead asks whether it “produces results that are efficient, equitable, sustainable, or robust” (Young 1994: 149). Though these are distinct measures of effectiveness and provide different information, they may of course overlap.

A similar yet more parsimonious categorization of different forms of effectiveness of international (environmental) regimes is offered by Bernauer. Successful institutions can “1. change the behavior of states and other actors in the direction intended by the cooperating parties; 2. solve the environmental problem they are designed to solve; 3. do so in an efficient and equitable manner” (Bernauer 1995: 358). A further threefold differentiation is often undertaken by complementing David Easton’s categorization of policy results. He distinguishes between the output and outcome of a regulation: “[A]n output is the stone tossed into the pond and its first splash; the outcomes are the ever widening and vanishing pattern of concentric ripples. The actual decision and implementing actions are the outputs; the consequences traceable to them, however long the discernible chain of causation, are the outcomes” (Easton 1965: 352). This distinction has been taken up by research on international regimes and extended by the notion of impact (e.g. Young 1999, Underdal 2002). In demarcation to outcome, which in this conception describes the behavioral changes of the rule addressees in accordance with the regime rules (compliance), impact relates to the material (ecological) consequences which result in a real contribution to problem solution (Beisheim/Liese/Ulbert 2008: 454f; Beisheim/Dingwerth 2008: 7).

This short synopsis of some approaches in the research on international institutional effectiveness reveals that two broad routes can be taken. The evaluative dimension obtains a distinct status here because equity and justice issues are judged as so important that they should be treated as a separate component of performance justice.⁹ Following this, environmental regime effectiveness can either be assessed regarding institutional and behavioral changes or regarding changes in the material world. While there may be multiple links between the two approaches one has to be cautious not to infer impact merely from

⁹ Thus, in a way this paper advances Young’s sixth and Bernauer’s third dimension of effectiveness analysis.

changes in behavior (Underdal 1992: 230). Due to the enormous difficulties associated with observing impact and particularly with relating it causally to the operation of an international regime many authors (e.g. Chayes/Chayes 1995; Jacobson/Brown Weiss 1998; Mitchell 1994) suggest to restrict effectiveness evaluation to the observable behavioral effects of institutions, notably – but not exclusively – to compliance. The underlying assumption is that effective institutions can strongly influence the policy process in the direction of more environmental sustainability by contributing to more appropriate agenda setting, international policy specification and fostering national adaptation to international regulations (Keohane/Haas/Levy 1993: 7).

There are, however, good reasons not to limit the analysis of performance justice to behavioral aspects but to focus on real impact. For instance, regimes with high compliance rates may be very weak, i.e. they have few binding obligations, or their requirements may simply freeze the existing status quo (O'Neill 2009: 107f). With regard to this paper's interest in distributional justice one should furthermore consider that justice is concerned with the distribution of the costs and benefits of a policy measure's material consequences. Ergo the analytical focus of the effectiveness dimension has to lie on the actual impact. Adhering to Young's categorization, impact can be assessed with regard to problem solving or goal attainment. In order to avoid the analytical difficulty of inappropriate or counterproductive goal specification and in order to satisfy the high normative standards that a distributive justice perspective sets for environmental policies, the model will integrate problem solution as the effectiveness component. The guiding question will hence be how much an environmental governance arrangement in fact contributes to solving the problem that lies at its heart. Though this is a very far reaching approach, its analytical value still remains limited by how the creators of the institution define the problem. Yet it yields the obvious advantage that effectiveness is evaluated not only by the ambitions the institution sets itself (Mitchell 2008: 88f). Still, it cannot be ruled out that there remains a certain degree of mismatch between the ecological characteristics of the problem and its definition by the institution. For the moment the only way out of this impasse appears to validate in each case whether the institutional problem definition conforms to expert assessments.

Summing up, among the many possible standards for measuring effectiveness this paper draws on a notion of problem solution. This dimension is most appropriate for this study's concern with policy results and it corresponds best to the requirements of distributive justice. As has already become apparent, a precise definition of problem solving is very difficult. The following section reveals that actually measuring problem solution is even more complex.

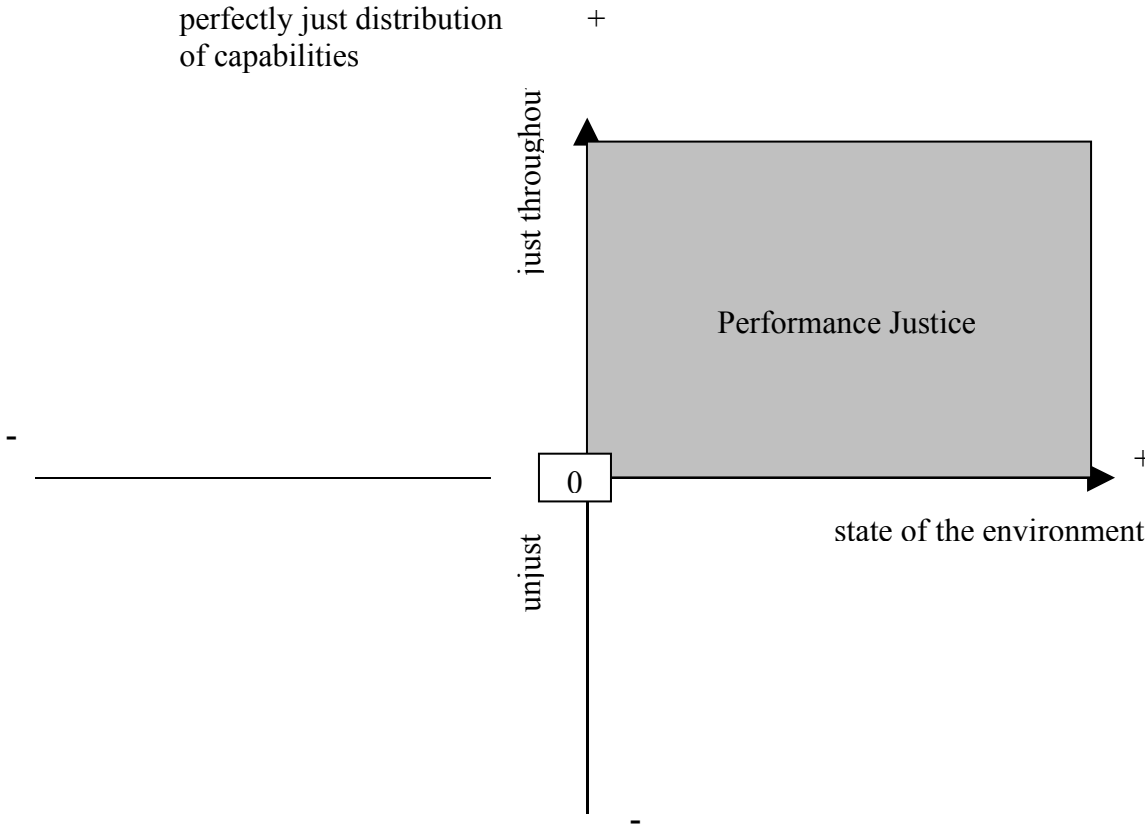
4) A Combined Model and its Operationalization

Before turning to operationalization this section combines the two dimensions of (international) distributive justice and international (regime) effectiveness into one comprehensive model of performance justice. The model is based on the premise that a normatively rich view on the impact of environmental policies has to incorporate both components equitably.

Ecological sustainability conceptions frequently emphasize that political measures must first and foremost take into account ecological carrying capacity and that resources can be distributed according to principles of distributive justice only within these limits (Ott/Döring 2008: 55f). According to this so-called notion of strong sustainability the ecological carrying capacity takes precedence over distributional questions. In contrast, the World Commission on Environment and Development (WCED) emphasizes that more equality (implicitly meaning more justice) leads to a better environmental quality and that therefore a global redistribution of wealth is necessary in order to protect the environment (quoted in Dobson 1998: 14). Even if it is impossible to conduct a causal analysis of these competing propositions here, the quote from the WCED reveals that in any case it is not unconditionally possible to superordinate the preservation of the environment over social matters of distribution. Accordingly, performance justice is understood here as dependent on a certain degree of fulfilment of both elements. The threshold level for the ecological dimension will be any improvement as compared to the starting point of the regime. The threshold for the justice dimension will be set in accordance with the three core capabilities income/wealth, health and nutrition (as explained below). When these are fulfilled equity questions in line with the difference principle come into play.

How the two dimensions can be operationalized will now be elaborated in more detail. For a graphical illustration see figure 1.

Figure 1: A Combined Model



0 : state of the environment prior to the operation of the regime; minimum threshold for key capabilities

The operationalization and empirical analysis of the justice dimension will not attempt to investigate international distributional justice per se. Environmental policy measures represent only a fraction of the international interactions that influence individual life chances. Obviously, they cannot be expected to support the whole spectrum of capabilities discussed by Nussbaum and Sen (see also Alkire 2007: 2). The option to focus on transboundary justice in a specific setting is envisioned by Sen’s concept of plural affiliations which builds upon the observation that people’s multiple identities need not be tied to national borders. Therefore, Sen suggests to evaluate the justice of outcomes separately for the different relations in which groups of people stand to one another (Sen 2002). Drawing on the existence of plural associations, this paper restricts the analysis to distributional issues in the field of international environmental policy.¹⁰ In every policy field the well-being of persons can be compared against two points of reference: their de facto absolute attainments or their shortfalls from the maximum they could potentially achieve. In line with Rawls’s principle

¹⁰ When it comes to empirical analysis it will even be possible to focus on a specific environmental regime.

that a just system should aim at making the worst off as well as possible, Sen argues that the yardstick for assessing different persons' positions should be their achievement (Sen 1992: 90-92). In addition, the analysis can hardly take into account the fate of each single individual but welfare comparison has to refer to groups (Sen 1992: 117f).

The fundamental frame for the empirical analysis of distributional justice is thus determined by its focus on transboundary relations in environmental policies, on achievement instead of shortfall and on the achievements of groups of people rather than every individual. Against this background the following first specifies how to determine the relevant capabilities for the analysis and their threshold levels and second how to proceed in order to assess their distribution according to the difference principle.

Despite Sen's general scepticism regarding fixed lists of capabilities and Nussbaum's fixed but very unspecific list, a compromise procedure is developed here that singles out central capabilities which are assumed to be in line with both variants of the capability approach (such a procedure has already been applied in empirical studies; for example Comin 2008). This seems a viable option as Sen himself does not clarify how capabilities should be chosen contexts where public discussion is difficult to realize or what other criteria should apply in order to avoid that public discussion specifies capabilities in a way that turns out to be even detrimental (Alkire 2007: 6).

Alkire (2007) discusses several methods for the selection of capabilities. Two of them appear particularly useful for the evaluation of justice in international environmental politics because they draw on measures that can be employed in different contexts. "Normative assumptions" derived from the researcher's own educated guess, social theory, religious or psychological views and so on may strongly determine which dimensions are seen as essential for a worthy human life. Alkire considers Nussbaum's list of capabilities as falling into this category. The Human Development Index (HDI) is a prominent empirical example because it is based on the assumption that people around the world value certain goals (Alkire 2007: 8). Yet, the broad use of this normative approach is questionable unless its basic assumptions are transparent for public scrutiny (Alkire 2007: 9). The other option is to refer to "public consensus" about what is valuable in life. Compilations such as the Universal Declaration of Human Rights or the Millennium Development Goals have the advantage of being widely recognized and receiving widespread political support. Their global nature makes them applicable in very diverse contexts. Even though there has been an ongoing critical debate, these lists' advantage is that in the course of their widespread discussion they (or their

interpretation) have already been to some extent amended in response to criticism. Therefore – even despite a certain neglect of the voices of the very poor – some lists of social and political goals hold an imminent claim of widespread acceptance (Alkire 2007: 9f). The different selection methods may of course overlap. It can, for instance, be assumed that the HDI is not only based on the educated normative assumption of some researchers but also enjoys a high degree of public and political acceptance as an inequality measure.

The Human Development Reports which annually compile the HDI are also introduced by Sen as a starting point for assessing well-being since they go beyond the rudimentary traditional measure of GDP per capita (Sen 1993: 73). The authors of the reports acknowledge that human development includes an array of goals and that the choices people would like to have might be infinite and change in the course of time. “But at all levels of development, the three essential ones are for people to lead a long and healthy life, to acquire knowledge and to have access to resources needed for a decent standard of living” (Human Development Report 1990: 10). These are seen as key capabilities that lay the foundation for the pursuit of many other goals that people may have in life (ibid.). The Millennium Development Goals have been adopted by all countries and the world’s leading development institutions in 2000. Eight goals, specified by eighteen targets, call governments to action to improve remarkably the situation of the poorest people in the world by 2015 (United Nations 2010). The Universal Declaration of Human Rights has been adopted by the UN General Assembly in 1948 in the aftermath of WWII and constitutes the basic standard of protection that every individual should be guaranteed.

Focusing on the field of international environmental policies and drawing on widely recognized lists of human values this paper suggests assessing capabilities in three dimensions: wealth and income, health, and nutrition levels.¹¹ Wealth and income still remain a central indicator of what people can achieve in life. It also features centrally in the HDI and the MDGs. The threshold will be achieved when, in the area where the environmental policy measure is undertaken, affected people do not live below the subsistence level. In accordance with Millennium Development Goal 1 this is preliminary set at one Dollar a day per person (United Nations 2010). Health and nutrition are selected here because they can in some respects be very much affected by the state of the environment. Further, they play an important role in the HDI, the MDGs and to some extent also in the Universal Declaration of

¹¹ In the following, “income/wealth”, “health”, and “nutrition” are only shorthand denominations for the associated capabilities.

Human Rights¹² and are therefore considered as consensual objectives. The minimum threshold for health should be determined according to the availability of and access to medical services related to the particular environmental problem. For example, the affordable accessibility of medical personnel trained in skin cancer treatment might be an issue in ozone protection policies. Minimum nutrition levels should be set according to definitions of minimum calorie and nutrient intake by the World Health Organisation.

After having established three central capabilities and their respective thresholds, the second step of justice analysis must focus on issues of equity in distribution. A prominent starting point for the operationalization of the difference principle is Pogge's "Realizing Rawls" (1989). In line with Rawls, Pogge requires that the difference principle be applied only after liberties and opportunities have been distributed evenly (Pogge 1989: 163, 168). He acknowledges that defining who should be considered as the least advantaged group globally cannot avoid a degree of arbitrariness but he does not see this as problematic. "The fraction to be chosen must fall within a certain range – must be large enough to appeal to the parties' interest that their criterion should issue in definite and significant demands for situations of injustice and must be small enough to appeal to the parties' interest to aim these demands specifically at improving the worst shares". Following this, he considers a fraction between 4 and 20 percent as adequate. Within this range different stipulations would more or less call for the same policy measures (ibid.: 204). Due to enormous global disparities it might be most appropriate to look at the bottom 20 percent of those that are in some way affected by a particular environmental policy measure. These will then be the yardstick for evaluation how (un)equal the capabilities income and wealth, health and nutrition are distributed as a consequence of a particular environmental governance scheme and whether the inequalities are to the benefit of the worst off. Depending on the degree to which the situation of the worse off can be enhanced by less inequality the justice assessment moves up and down along the "just throughout"-axis (figure 1, page 14).

It has to be mentioned here that these three key capabilities should be evaluated on their own as they are basically non-commensurable. This means that none of the capabilities can be measured in terms of any other (Sen 2009: 240f). Indeed, a minimum level of wealth, health and sufficient nutrition can hardly offset each other. Therefore, the comparison of the levels of different capabilities does not necessarily offer clear-cut answers. A pragmatic way of dealing with this would be to adopt a partial ranking, i.e. to rank those aspects that can clearly

¹² E.g. Art 25.1 "Everyone has the right to a standard of living adequate for the health and well-being..." (United Nations 1948).

be assessed and be very clear about the limitations of the evaluation exercise (Sen 1992: 48f). This is to say that clearly, an institutional design that leads to higher levels of wealth, health and income is always preferable. But the research exercise cannot a priori decide whether an institutional design that entails higher levels of health but lower nutrition levels would be preferable to one where nutrition levels are higher but general health levels lower.

Turning now to the operationalization of problem solving it is of utmost importance to identify clearly what constitutes the problem to be examined. Sometimes there may be more than one founding rationale and these may even be contradictory. Consider the International Tropical Timber Agreement's principles of increasing trade in tropical timber and strengthening sustainable forest management (Bernauer 1995: 367). In the context of assessing performance justice it is sufficient, in such cases, to evaluate only the effectiveness of the environmental problem solution because economic concerns are assessed in the justice dimension where their fair distribution should be scrutinized. After the problem has thus been isolated, the standard against which effectiveness is to be evaluated must be set. A crucial step in this regard is the choice of a point of reference. This can either be the hypothetical state of affairs that would have occurred in the absence of the regime. This point of reference is appropriate to assess the relative improvement accomplished by the regime. Or, the regime can be assessed in relation to a reasonably derived collective optimum in order to determine in how far the regime actually works towards a solution of the problem. "Using potential achievements as our point of reference, we would define a 'perfect' solution as one that accomplishes all that can be accomplished – given the state of knowledge at the time" (Underdal 1992: 231). Obviously, these two approaches are complementary (ibid.) and have indeed been combined in a measurement concept that relates the two standards to each other and so enables the calculation of an allegedly more balanced effectiveness score (Helm/Sprinz 2000: 636f).¹³

The research design proposed here focuses on what has been achieved in comparison to the non-regime counterfactual. This is in line with the general research interest in the multiple (social and ecological) impacts of an institution and also in line with the focus on what has actually been achieved in the analysis of distributional effects (where the analysis also does

¹³ The so-called Oslo-Potsdam-Solution ranges the actual achievement of a regime on a continuum ranging from a non-regime counterfactual (NR) to the collective optimum. The NR is derived from the assumed state of the environment in the absence of the regime; the collective optimum is the material result that could be expected from a 'perfect' regime. The actual policies (AP) usually fall somewhere between these two extremes. The effectiveness score (E) can then be calculated by the ratio of the difference between actual policies and the non-regime counterfactual divided by the difference between the collective optimum and the non-regime counterfactual: $E = (AP - NR) / (CO - NR)$ (Helm/Sprinz 2000: 636f).

not consider what could have been achieved; see above). Furthermore, from a methodological point of view the non-regime counterfactual is easier to handle than the collective optimum because the moment of regime formation represents a clearly identifiable starting point for the analysis (Breitmeier 2008: 31). Counterfactual analysis is of course still not an easy endeavour and has to be conducted with great care. Yet, *only* after systematic reasoning about what would have happened in the absence of a particular institution it is possible to assess its contribution to effectiveness. Therefore counterfactual analysis seems unavoidable in policy evaluation (Helm/Sprinz 2000: 633).

The key to minimizing the “speculative element” of counterfactual analysis lies in a rigorous and precise reconstruction of the chain of events that would have occurred if certain policies had not been undertaken and to compare this hypothetical development with the actual course of history. In particular one should look at important milestones where the development might have taken another direction (Levy/Young/Zürn 1995: 294f). There are two strategies to make such an argumentation more credible: “(1) by invoking general principles, theories, laws, or regularities distinct from the hypothesis being tested; and (2) by drawing on knowledge of historical facts relevant to a counterfactual scenario” (Fearon 1991: 176). “[A]nalysts using the strategy of counterfactual argument should pay close attention to whether their counterfactual suppositions are cotenable with the facts and theories used to draw the causal inferences they make” (Fearon 1991: 194). The problem of course is that environmental impact can only be observed after several years of operation of the regime (Underdal 2002: 6). Case selection has to take this into account. Yet if these precautions are duly considered, counterfactual analysis can be a helpful methodological device, not least in order to single out which changes in the state of the problem can really be attributed to the observed impacts (Bernauer 1995: 361).

Effective environmental problem solution can, however, not be understood as a static situation that needs only to be upheld after it has once been achieved. Rather, many environmental problems such as handling toxic waste or global climate change can hardly be solved within an intermediate timeframe. Young (1997: 286) therefore suggests viewing the ecological performance of international environmental regimes as a continuous process management which can progressively contain environmental problems. This process character accordingly also applies to the justice dimension since the further development of the regime also requires a continuous adaptation of its social costs and benefits. Insofar, any analysis of performance justice can only reveal development tendencies of justice and effectiveness.

Finally, it is important to discuss the analysis' limits regarding environmental performance. Simple environmental performance is defined by the restriction of policy results to their behavioral context, by short causal chains and by a positive contribution to the solution of the problem at stake. Where simple performance is complemented by broader outcomes outside the initial behavioral context, longer causal chains and negative as well as positive outcomes in regard to the problem at stake one may speak of complex performance (Young 2002: 14f; similarly Wolf 2006: 202). Quite frequently it may be the case that a regime achieves high levels of simple performance while the broader consequences it generates may even offset its contribution from a perspective of social welfare more generally (Young 2002: 15). Social externalities will be included in the analysis through its combination with a particular notion of distributive justice; ecological externalities can for reasons of empirical manageability not be included in this paper's model.

Drawing together the overall model of performance justice and its operationalization, it consist of two components – ecological impact (effectiveness) and distributive justice that are considered as equally relevant from a normative point of view. Effectiveness will be assessed by an improvement in the state of the environment of a selected ecological context. The baseline for assessment will be the non-regime counterfactual. The empirical justice analysis will first have to establish whether the minimum thresholds for wealth/income, health and nutrition are met. If this is the case, a second analytical step will have to determine whether distributional inequalities are in accordance with an international difference principle and whether these inequalities are more or less “just throughout”. Policy results that meet these three requirements can be considered as performance just in line with the model (upper right quadrant of figure 1).

5) Conclusions and the Road Ahead

Environmental problem solving and issues of distributional justice are not only closely related but they are also of equal importance for human well-being. Yet, this is not well reflected in current social science research. Very often issues of effectiveness and justice are dealt with separately and where they are dealt with in combination one aspect is often attributed precedence over the other. This paper has been an attempt to devise a model that integrates international environmental effectiveness and distributional justice. Crucial thresholds have been identified as an improvement of the state of the environment and the meeting of the wealth/income, health and nutrition capability thresholds. The justice dimension has been

complemented by Rawls's difference principle. The reflection on operationalization has revealed that there are many challenges for empirical analysis but these can be overcome.

Where to go from here? Besides conducting an empirical analysis of the performance justice of different global environmental governance arrangements the most pressing analytical question will be which factors contribute to just and effective results. While there has already been a wide array of empirical analysis of the causes of regime effectiveness there has been substantially less empirical research on international justice (for some empirical explorations of the capability approach see some of the contributions in Comin et al. 2008). Therefore, the paper will end on a short reflection about independent variables that might contribute to the realization of the two dimensional concept of performance justice.

Scholars of international environmental regimes have compiled volumes of case studies starting from various angles and employing (partly) different methodologies that generated diverse results on what factors appear to influence the impact of environmental policies. Therefore it is only possible to provide a very broad overview here. Key influences have been ascribed to the nature of the problem, i.e. whether it is benign or malign; the working of distinct social forces (material conditions, interests, ideas etc.); the endogeneity or exogeneity of mitigation instruments; or even the extendedness of a regime in a larger institutional structure and its fit with social institutions at the domestic and local levels (Young 1997: 288). An important part of research has also been conducted on compliance – assuming that compliance with a rule that is considered as justified and legitimate by its stakeholders will eventually also increase problem solving effectiveness (e.g. Jacobson/Brown Weiss 1998; Mitchell 1994). Besides isolating factors that may contribute to ecological problem solving some authors moreover include side effects in the list of factors that determine overall effectiveness (e.g. Underdal 2002: 6).

In addition to key factors that promote environmental problem solving, which factors have to be met to foster policy results that can at the same time be considered as socially just? In a first approximation three factors seem to play a role: inclusive decision making procedures, accountability, and resources. Each of them can only be very briefly discussed here.

Inclusive procedures: The socio-economic well-being of the people and the realization of central capabilities are likely to depend very much on people having a voice in the decisions affecting them. Democratic procedures give people the means to draw attention to their needs and to pressure policy makers who need their support in order to stay in office. To put it very bluntly: “[N]o substantial famine has ever occurred in a democracy – no matter how poor.

This is because famines are extremely easy to prevent if the government tries to prevent them, and a government in a multiparty democracy with elections and free media has strong political incentives to undertake famine prevention” (Sen 1999: 51f). The drawback of course is that inclusive procedures threaten to slow the decision making process or to require policies on the lowest common denominator so that effective (ecological) problem solution is severely hindered (Dahl 1994). But this can at least to some extent be mitigated by an institutional design that keeps the number of participants relatively low yet pays attention to their representative composition and equal decision rights (Beisheim/Liese/Ulbert 2007: 262).

Accountability: In order for an institution to be open to demands for distributive justice it does not only have to lend a voice to its stakeholders but it also has to guarantee accountability, i.e. it has to make a “commitment to respond to and balance the needs of the stakeholders in its decision making processes and activities, and deliver[] against this commitment” (One World Trust 2007: 11). An important precondition for accountability is transparency. It enables stakeholders to scrutinize political processes and to call decision makers to account for policy measures that fail to provide sufficient degrees of justice. Only actors who are informed about all steps in the decision making process are able to place their own concerns on the political agenda and to follow on their implementation (Take 2009: 15).

Resources: This factor can be split into material and cognitive resources. Firstly, if the ecological measures undertaken by some institution imply an unequal distribution of costs and benefits or even a distribution that leaves some fraction of the stakeholders below crucial capability thresholds, the institution may be required to supplement redistribution among its members by its own resources in order to materially bolster the potentially negative social side effects. Secondly, the process character of environmental governance as described above and the related necessity to adopt policy measures to changing environmental conditions are likely to impact upon the distribution of capabilities. This requires a continuing evolution of knowledge in order to adapt the policy measures in a way that guarantees the best possible just distribution of key capabilities (on the importance of organisational learning for “better” policy results see e.g. Haas/Haas 1995).

In a complex social world of multiple causality and equifinality (George/Bennet 2005: 161f) this list may not be complete. On the other hand it will not be helpful to extend it indefinitely. The key challenge for future theoretical thinking about the contributions to performance justice will be to figure out a small number of core variables that have most explanatory power. Above all this, it should not be forgotten that effectiveness and distributive justice

cannot be considered as an “all or nothing” question but will rather have to be assessed in terms of “more or less”.

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