Obligations Abroad: Towards a Just Foreign Policy

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Abstract

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This dissertation considers three implications of collective self-government for just foreign policies in an imperfect world. Individuals are the appropriate moral unit of analysis, constrained to govern themselves justly, together with compatriots. First I derive limits to state autonomy that follow from states being mere aggregations of rights-bearing individuals: human rights constrain treatment of individuals, and government must include all citizens. States are governed well-enough that others should not interfere if all citizens have effective political powers without risking their dignity. These states are collectively self-determined.

Second, the fact of citizenship constrains redistribution of wealth among countries. Shared wealth should presuppose shared governance, and if one wants to limit the latter, one should limit the former, to that needed for collective self-determination. Providing clear limits on aid, as well as interference, helps avoid abuse. While participation, representation and accountability do not guarantee good government, they are prerequisites; the primary international obligation is to develop well-ordered institutions.

Third, I derive constraints on national autonomy that follow from the need to secure international cooperation. Reasonable disagreements about fairness are sometimes indistinguishable from rational-interest pursuit, giving others reason for distrust. Since collectively self-determined citizens put their interests first, how are countries to agree on a single cooperative solution? If they agree to follow a single course of action when new problems arise, before they know which countries will in fact benefit, and with the knowledge that risks, costs and benefits would be distributed fairly over time, countries would find it reasonable to trust one another as long as they are all seen to comply. Citizens would find it rational to cooperate because long-term security is in their own long-term interests. Equivalently, countries could agree to join a transnational institution that is run democratically, with authority to issue binding decisions on problems over which it has jurisdiction. This limits what each country can decide for itself, while enabling greater cooperation and trust on sub-national and international levels. This encourages flexible, complex solutions to global collective-action dilemmas, and allows costs to be distributed among countries and over time.

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I. Introduction: Towards a Just Foreign Policy

A. Just Actions Beyond Borders

What guidelines can political theory offer to a country that, having a stable, successful constitutional democracy within its borders, wants to act justly beyond them as well? This dissertation considers this question. The world presents many appalling examples of injustice on a grand scale, and of urgent problems that require countries to act in concert, first having come to some agreement about what to do. As citizens of one or another democracy that sometimes tries to address problems beyond its borders, we need to consider first, what justice requires, prohibits and permits; second, what actions are feasible and effective; and third, in which order to address pressing issues.

This is the question of how to construct a just foreign policy. A useful answer will interweave a theory of justice (especially a theory of international justice) with constraints on what is possible (or realistic) informed by political science more generally. In the next three chapters I address normative questions of decreasing abstraction, and increasing relevance to specific choices of policy (although all three remain firmly within the realm of theory).

First, I discuss basic human rights as prerequisites for a well-ordered society, because they enable citizens to pursue full justice for themselves without risking their lives or health. Guaranteeing such rights for people in another country is thus targeted towards securing their collective political autonomy (as well as their individual lives). This would make it easier for the intervener to defend against charges of paternalism and imperialism (and to resist those temptations as well). My argument for collective self-determination is also an interpretation of what John Rawls described as decency in his 1999 book The Law of Peoples, though it is much more demanding (and liberal) than most of his readers have understood him to mean.

Second, I turn to the question of how a state could use foreign aid to relieve poverty elsewhere, while preserving (or enhancing) the poor country’s autonomy,
and not provoking resentment. Material donations have often been seen as inappropriate or sinister, especially after the fact; it is also extremely difficult to ensure that all of the aid gets to all of the needy individuals. Rawls rightly says that these problems of poverty are clearly political, but he fails to show why.

The reason is that, in several ways, poverty, inept governance and abuses of power feed on each other. This makes it impossible to relieve only one of these at a time, yet it is both difficult and risky to try to relieve all at once. I suggest that the traditional approach to minimizing the just country’s work (and opportunities for abuse) fails to address the political and social requirements, and overestimates the economic costs. That is, in an effort to avoid paternalism the just country spends too much and gives it to the wrong people. Aid that works requires much more engagement between the countries, which is risky, but is less wasteful, less expensive and has a slim (but better) chance of success. In the long run, such engagement preserves each country’s independence, but requires more interdependence in the short run. (If the reader fears that, in the real world, this interdependence would likely degenerate into exploitation, that would be a further reason to prescribe independence; I make no judgment here.)

Third, I explore the limits to any country’s autonomous policymaking. Some have argued that such limits arise out of the global web of trade and legal harmonization that both constrains what countries are able to do (especially economically), and binds them legally (via treaty) to agreements that may no longer be in their best interests. I offer a new argument that even in the absence of this ‘global basic structure’ there are some collective action problems such that a willingness to treat other countries fairly (as equal partners) is not enough to ensure a cooperative, peaceful resolution.

The problem of global climate change poses such a challenge. One can imagine allocating scarce pollution permits in many ways, each of which treats countries fairly, as equal partners. No one of these concepts of fairness is more reasonable than the others, although each scheme would serve some countries’ rational interests more than others. But peaceful cooperation is premised on countries subordinating their own advantage to mutual advantages (because they
are safer and more profitable in the long run). In this case, mutual advantage is not decisive, and is obviously more costly than following their rational interests. This means no country has reason to trust the others to cooperate, and no incentive to cooperate itself. Efforts to justify a cooperative solution will sound disingenuous, further eroding trust; in the worst case, international cooperation may break down completely as countries find evidence that their former allies are untrustworthy.

The solution to this dilemma is that countries must work together enough to create the conditions under which they can trust one another, and under which their citizens can trust enough to enable actual compliance with agreements that are costly. These conditions require ongoing coordination under established rules and procedures that they all agree are fair and binding. By consistent application of a single standard of fairness over time, however arbitrary it seems in any one case, the process ought to ensure an even distribution of benefits and burdens among the member states. Institutional (or procedural) solutions to collective action dilemmas are familiar, but they purchase peace and stability at the price of increased inter-member coordination of policy, and consequent loss of opportunities for independent policymaking. I think it is possible to balance autonomy and cooperation in a satisfactory way.

B. From Individuals to Collective Self-Determination

For these questions of just foreign policy, national boundaries and citizenship clearly matter, obligations to fellow citizens are different from obligations to citizens of other countries. If we consider individual human beings to be the only acceptable moral unit of analysis, how can obligations rest on anything as contingent as borders between countries where individuals happen to live? There have been many attempts to justify special obligations to compatriots on grounds such as gratitude, common heritage, tacit consent or physical proximity, all of which I find unsatisfying (to different degrees). Cosmopolitan liberalism is based on the intuition that if boundaries are not morally relevant, then they must play no role at all.
In contrast, I argue that although borders and citizenship have no intrinsic importance, they indicate political constraints that are very important. If we value individual rights in part so that individuals can govern themselves collectively, then it matters a great deal whether specific individuals are participants in one's own collective, and can share in the decisions it makes, or are outsiders who are thus more passive recipients of one's own country's choices about help. This has consequences for state autonomy that do not depend on any prior idea of national unity or consciousness. It doesn't matter who the individuals are, or where their borders are, what counts is how human beings should treat others with whom they share voice in government, and others who do not.

A state whose citizens all share power and effective decisionmaking, and which protects everyone's basic human rights from state and private violations, can be considered collectively self-determining. All its citizens have enough power within their own system to argue for change without jeopardizing their security; dissent does not lead to violence or privation. In contrast, for foreigners to promote change from outside, they must circumvent domestic politics, guided by no formal procedures for ensuring fairness or peace. Such interventions are inherently undemocratic, not collectively self-determining and lack safeguards (like mechanisms of accountability); as a rule, they ought to be avoided where possible, and minimized where unavoidable.

For example, where individual human rights are regularly and egregiously violated, where the harms caused by nonintervention would plausibly be worse than the harms of intervention, other countries ought to step in, to protect basic rights. However, to the extent that foreigners are acting on behalf of those citizens who are not represented in their own government, they ought not to act instead of those citizens, but rather to help them govern themselves, peacefully and inclusively. Foreign help must be ultimately help towards collective self-determination, or else it is merely interference, however good the intention. (A somewhat-more-democratic alternative would be to annex the unjust state and

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1 In a moral, not legal sense of the term. (I thank Michael Blake for suggesting this clarification.)
make its population full citizens of one's own country, represented, able to participate and to hold the government to account. This sounds like a bad idea for many reasons, though of course that judgment is partly based on long experience of annexation not followed by full citizenship.) Conversely, countries that are collectively self-determining (CSD) are well-enough governed that undemocratic interference is never justified. This description will be more or less plausible depending on how one specifies CSD; in the next chapter, I argue for a very demanding standard.

Shared government, or lack thereof, also has implications for redistribution of wealth. If taking money from people with no say in the matter is undemocratic, giving them money is equally undemocratic, though possibly less harmful. Nonetheless, it is justified in some circumstances, where the recipients are badly-off enough that their needs override the requirement of representation. However, the problem of getting aid to the needy individuals is unavoidably political in several ways, and the obstacles are both political and difficult to avoid.

Help is not simple, but requires a good deal of imported labor, experience and oversight. These are the kind of things we think ought to be under the control of the people affected, to make sure that their needs, interests and opinions are taken into account fairly. Importing the administration of aid distribution does not ensure accountability to the recipients, and that ought to make us very uncomfortable. The discomfort can be overridden for good reasons, but again, the standard is easier to satisfy when both payers and payees are full citizens of the same country than when they are not.

If shared governance is required over matters of redistribution (beyond basic needs), then there needs to be some shared governance among countries of the world to allow them to coordinate global restraint in a fair and stable manner. Such bodies can be voluntary where participation (and enjoyment of benefits) is optional, but for matters requiring near-universal compliance, the international regulatory body may need the authority to compel compliance from countries that disagree. Parties demonstrate their willingness to cooperate even when it proves costly by binding themselves to one fair scheme for allocating costs and benefits before they
know whether compliance is advantageous in each case. This makes their claims to
to fairness credible, both to other countries and to their own citizens, who hold their
government accountable and expect it to promote citizens’ interests. Why would such citizens not demand their government always act in its rational interest,
whatever might be desirable from an international perspective? The answer is that
they must trust their government to demand evidence that other countries are not
cheating or free-riding, which makes them willing to provide such evidence of their
own good faith to others. That is, democratic legitimacy makes the institution and
its stream of decisions fair enough, and predictably so, to make assent and actual
compliance reasonable, and not irrational.

Collective self-determination is thus important for peace, stability and
security at multiple levels, with different implications for individuals, countries and
international alliances. As elaborated in the next several chapters, it is neither
cosmopolitan nor particularist, but shares the appealing elements of both, while
avoiding the more troubling of their defects. I discuss this more in the next
subsection.

C. Global Justice or Just Foreign Policy

Questions of justice across national borders can be approached in at least
two ways. One seeks to describe a just world order, harmonious relations among
well-governed countries, while the other asks how a just society would behave
when faced with the problems that real countries face in a demonstrably unjust
world order. The two approaches are different, but they have been similarly
neglected in the literature over the years, with sporadic (but often excellent)
treatments of issues as diverse as just wars, global redistribution, secession,
multiculturalism, environmental sustainability and human rights.

The result is that the reader interested in justice across national borders is
faced with a contradictory set of extensions to a theory of justice within a single
society. Consider, for example, the description of a just society in John Rawls’ A
Theory of Justice (Rawls 1971). Justice is premised on the ideas that individuals
are moral equals, and that morally arbitrary factors like parentage ought to be
irrelevant to one's place in society; but initial citizenship is based on place of birth and parents’ citizenship. Very bright people have drawn opposite conclusions from the premise of moral equality and Rawls' logic on questions like: can there be political obligations that attach to citizenship, such as obligations to vote, or serve in the military? can certain benefits be limited to citizens, or even to residents of a country, or should people everywhere be treated equally as far as possible?.

There have been two notable attempts in the last quarter-century to draw out the implications of a liberal theory of constitutional democracy for the wider world. Although agreeing on the content of justice within a society, Charles Beitz and John Rawls offer dramatically different visions of the international realm.

Beitz reasons that if a just scheme of social cooperation must be governed democratically, with great attention to reducing inequalities among equal citizens, then the interdependent world economy makes the international realm a single scheme of social cooperation. That is, although it may be governed as separate countries, each one ought to be a liberal democracy, and distributive justice ought to obtain between countries as well as within each one.

Rawls, instead, asks how a just society ought to behave towards other countries in the world, knowing that they are not all just, and given that the others are not inclined to collaborate closely enough to redistribute wealth and resources. In fact, given the vast differences in beliefs and practices, he suspects that many people will want to preserve their own country's culture and shared practices more than they would want to share wealth or govern together with the rest of the world. As far as practices are consistent with basic human rights, Rawls thinks preservation is acceptable, and it is the boundaries of such toleration that determines how countries may act towards one another. He agrees with Beitz that distributing the fruits of shared social cooperation would require shared democratic decisionmaking, but thinks it is less desirable.

The theories are different because one is a theory of global justice, while the other is one of a just foreign policy. I will offer a brief summary of the two, and then discuss some of their differences. Which approach is more useful often depends on the question one asks, and for the question of how a single country can act justly in
the wider world, it will make more sense to reason within a model of interactions of independent states. But it is also important to understand the limits of any model, in order to decide what is required of a just society when some of the model’s premises are violated.²

**D. Two Theories Summarized: Beitz and Rawls**

In 1979, Beitz offered a theory of global justice in *Political Theory and International Relations* (Beitz 1979b). Rawls had said that justice must apply over the whole of each scheme of social cooperation. Beitz examined the global web of trade, travel, immigration and diplomacy, and concluded that individual countries could not be considered in isolation, because each depended too much on its external relationships, especially economic ties and histories of conquest and development (pp.141-149). A very rich and very poor country should not consider only redistribution within their respective borders, because this neglects the scheme of social cooperation in which they are embedded (esp. pp.121-123).

Beitz held that there are no reasonable grounds for limiting justice to single countries, and certainly not grounds to give countries exclusive title to the natural resources found within their borders. This is even less likely when we reflect on the set of historical accidents and unjust wars that draw those boundaries (pp.8, 136-143, 161).

When, as now, national boundaries do not set off discrete, self-sufficient societies, we may not regard them as morally decisive features of the earth's social geography. For purposes of moral choice, we must, instead, regard the world from the perspective of an original position from which matters of national citizenship are excluded by an extended veil of ignorance. (p.176)

The many injustices committed by actors not under the control of any (or any one) government, also require a certain amount of collective regulation (pp.143-154) as a matter of justice, not charity (pp. 172-176). This does not require there to be a

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² Amartya Sen describes the two models as Global Universalism vs. National Particularism. He argues that the former is too ambitious and uninstitutionalized, while the latter is restrictive and separatist, the correct (in his view) middle ground allowing for institutional ties to one’s nation and non-national or transnational groups (identities) (Sen 2002). This dissertation offers something similar, but not quite the same.
single world government, but can be ensured by separate countries committed to justice; a country's sovereignty depends on its demonstrated commitment to justice (see also Part II)

Twenty years later, Rawls offered his own description of how justice within a society is properly extended to the international realm; *The Law of Peoples* (Rawls 1999) notably rejects Beitz' interpretation of international distributive justice (§16.2, pp.115-118), but endorses the conditions he places on whether a country\(^3\) ought to be immune from interference by just societies (Rawls 1999, p.38n44; citing Beitz 1979b, pp.121-123). Rawls divides countries into five broad classes, according to the ways in which a just society ought to behave towards them (see esp. Introduction, p.4; §8.1, p.63).

There are just societies, which practice some variety of liberal democracy, including political equality for all citizens and some demanding form of distributive justice as well, though not necessarily Rawls' own favorite. There may be decent societies, ones that are relatively just, with many political and civil rights, rule of law, stable politics and distributive justice, but decent societies do not believe in political equality, perhaps on religious grounds. To be decent, though, they must offer a great deal of respect to even the least-respected groups, and demonstrate sincere concern for their welfare. If instead some people suffer poverty, abuse or severe neglect because of their subordinate roles, the society is considered burdened (by unfavorable traditions and bad government) rather than decent. A burdened society has the potential to become just or decent, if its practices are

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\(^3\) It should be noted that Rawls is very concerned about the words we use to distinguish countries. He chooses 'peoples' or 'societies' to emphasize that they are not the usual post-Westphalian sovereign 'states' or 'countries' and certainly not 'nations' as that has too many uncooperative and bloody associations. (He would reject Sen's characterization of his theory as 'national particularism' because the word 'nation' has the wrong connotations.) I find that, in my writing, it is distracting and unpleasant to use only the words 'people' and 'society' (this implies no criticism of Rawls' own writing). Accordingly, I rarely use the word 'people' except when quoting Rawls or referring to more than one person. I also use 'society' 'state' and 'country' interchangeably. Similarly, Rawls rejects the word 'sovereign' because in the real world it includes the right to go to war when the sovereign state alone decides it would be justified. When I describe a Rawlsian just society as 'sovereign' or 'nearly sovereign' I mean that it has all the usual immunities except for the aggressive ones. This ought to be clear from the context.
reformed to treat all members of society as valuable and respectable, able to lead a decent life.

There are also outlaw regimes, whose leaders are not interested in reform or good governance, but instead deliberately violate the conventions of civilized society. They may brutalize their citizens, or steal from the public coffers, or they may aggress internationally, threatening other countries. Finally, there is the possibility of benevolent despotism, which is a country that happens to be governed effectively and efficiently, treating all citizens well, providing for their needs and not abusing its authority, however, these are not matters of right or guarantee, but are provided at the whim of a dictator, who might change his mind. Burdened, outlaw and benevolent despotisms are badly-ordered societies, while just and decent are well-ordered; this is the most important distinction Rawls makes.

A well-ordered society accepts certain principles (§1, §3, §4 esp. p.37): it respects human rights within its borders and is willing to secure them for all people everywhere, including rights to subsistence and personal security; it will only go to war in defense against extreme violators of human rights (of any humans), or in self-defense or defense of its allies. Well-ordered societies abide by their treaty commitments, are economically self-sufficient in a sustainable way, and when they make war, they abide by specific rules of conduct (see also §13-14).

They treat one another as independent, free and equal members of the international order – never expecting to use their size or power to gain advantages over other just or decent countries. Being well-ordered makes a country nearly sovereign (though Rawls rejects the word, see footnote 3 above) – as long as a country is just or decent, no other has the right to interfere with its domestic government, not even to help it become even more just. However, just and decent countries work together to help badly-ordered societies to become well-ordered, and to help provide material assistance for citizens of countries that do not guarantee them the means of survival, whether out of poverty, ineffectiveness, indifference or malice.
This last is called the Duty of Assistance, and is primarily political. Material redistribution is limited to necessities of life, and is never needed among just and decent societies; by definition a country that couldn’t feed its population could not be well-ordered (§15-16). Rawls’ idea is that if everyone in the world were a citizen of a just or decent society, then all would have their basic human rights guaranteed, and they would all have a host of other political and civil rights, and various opportunities, guaranteed by some government. Everyone could work within that society, under rules that were close enough to justice that they did not impose unreasonable burdens on citizens, even on those who were working to change the rules (§8-12). Democracy and decency are much more efficient enablers of commerce and production, so that there would be no problems of poverty, as we see it in the world today, if all societies were well-ordered. Any residual differences in wealth, once even the poorest were guaranteed a decent minimum, would not be terrible, or worth eliminating (§15-16).

E. **Differences Between Them**

Although well informed by one another, Rawls and Beitz offer radically different visions of a just international order. What is the reader to make of this, and how to proceed?

They differ so sharply for two reasons. Most importantly, their theories are intended to do very different things. Beitz is interested in justice for human beings – in a just world, would people allow their opportunities in life to be constrained by where they happened to be born, or by the fact that their national borders happened to include some but not other natural resources? If there are no reasons to think that rational individuals, treating each other as morally-capable actors with equal standing, would find reasons for these distinctions that the others could also accept, then these things could not be relevant. That is, historical accidents might determine where one lives, and which others were one’s compatriots, but could not legitimate large differences in ability to live a decent life.

International justice should produce similar results, for individuals, to domestic justice: restrictions on inequality through a mechanism of redistribution, in
the context of fair value of political liberties (perhaps in separate countries and with equal international influence) which have priority. World government isn’t needed, and he prefers a cooperative network of separate states. Beitz describes a just world, and assumes that real countries aspiring to justice should act in whatever way might bring the real world closer to the ideal. However, his theory isn’t intended to illuminate what they should do to get there, or what obstacles might be in their way, and so it doesn’t.

Rawls, in contrast, is not interested in finding the best way to organize the world. He asks how a just society would formulate a just foreign policy towards other countries that were not (yet) just. It is philosophy with a specific, and limited goal: to promote justice effectively. It is immediately relevant, for each country needs a foreign policy, whether or not they seek economic union, whether or not any others are well-ordered. With this goal in mind, he first needs to address some practical questions: at what point is another country near enough to justice that it should be immune from further interference? What are the connections between poverty, well-ordering and the prospect of treating other countries as equal partners, and what are the implications for foreign policy?

One could try to answer these questions within the framework of Political Theory and International Relations, but it is not really designed for the purpose. For instance, it is not clear whether, towards the end of the book, Beitz is thinking about relations among liberal countries, or among real, imperfect democracies, or a mixture of Rawls’ five types. It is not clear, (if not all liberal) whether Beitz thinks the countries are becoming more just, or less, or if they are in stasis. So it is not clear whether a just country is in the business of reforming the others, or if it is assuming such help is unwise for some reason; if help is contraindicated, we don’t know if that is because the other country is good enough, or because the risks of failure are unacceptably high. But these have very different implications for policymaking, so this theory is less helpful than the other.

Rawls and Beitz make different assumptions about the relationships between poverty, equality and well-ordering, that constitute the second major difference between the two theories. For Beitz, a country’s relative wealth or
poverty is a function of its supply of natural resources, the ease and sustainability of using them, and to a lesser extent, the situation of the rest of the world. Its economic status can be manipulated by global forces while holding features of its domestic governance constant, and vice versa. Even if many countries in the world were to develop just governments, their industries and trade relationships with the outside world might remain the same (especially, one imagines, if they are not state-run). Thus he thinks it important to look explicitly at the trade relations, with a view to keeping all individuals situated as equals irrespective of where they happen to live, as we do in the case of a single society.

For Rawls, on the other hand, there is a complication and a simplification. The simplification is that the purpose of equality within a single society is to ensure political equality, within shared institutions of government. It is less important that individuals be equal to those whose political actions are never compared with their own; those who don’t do things through the same government don’t need equal influence, for it isn’t clear in what ways they could be equal. Politically autonomous countries regulate trade amongst themselves, and so such countries care that they are treated as political equals – equal partners in international agreements, not coerced by larger, richer or more powerful states into unfair arrangements. Rawls also thinks that representatives of well-ordered countries would insist that they be treated this way (and not on other, more individual interpretations of equality).

The complication is that he doesn’t decouple politics and economics. This actually makes his task easier, because Rawls claims that just societies, committed to autonomy and treating one another as equal partners, would not engage in drastically unequal economic relationships. Even countries with vastly greater resources and the technology to use them (sustainably) for extraordinary profits, would not use this power to secure better-than-equal deals for themselves, nor would other countries permit exploitation, as a matter of principle among well-ordered societies. Therefore, he concludes, inequalities of wealth among just and

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4 The leaders and the citizens of such countries.
decent countries will not cause political inequalities among them, in treaties, control of land, or the like. Also, those inequalities will not cause political inequalities among individuals, because the latter are only relevant within the institutions they share control of in daily life, contained within a single state where distributive justice already obtains.

So Rawls’ disinterest in international redistribution actually reflects a belief that it is addressed through other means. But while that might make for a parsimonious model, it cannot be presumed to be automatic in the real world, where well-ordering is approximate at best. Real policy would require some explicit attention to redistribution, although one hopes that most of the work required would already be part of other, political reform projects.

As presented here, it seems that Rawls and Beitz disagree on relevant facts about the world (whether economic justice necessarily follows political), but that they would both want similar distributions of wealth among well-ordered societies. It is not clear whether this is true, of course, and they think their disagreement is also normative, reflected in different priorities in each model. Rawls believed, and argued passionately, that Beitz would prescribe redistribution between countries with different economic goals and values; this would eventually pressure the two countries to conform to the same goals, with consequent loss of culture and satisfaction for (at least some of) the citizens. Beitz simply disagrees, arguing that the citizens themselves would choose redistribution because they would not expect complex webs of trade among countries to become just spontaneously, absent planning.

F. Implications for this Dissertation

Because I am looking for a guide for real foreign policies, Rawls’ approach is more relevant than Beitz’ and thus I operate under the framework of the Law of Peoples. The chapters move progressively farther from Rawls’ own argument, however, as I elaborate, or adapt his words for new purposes, or simply disagree with his analysis.
This is not because I prefer a world of sovereign, independent countries to a more interdependent, cosmopolitan environment, but simply because for the questions at hand, the second gives too little guidance. Both are merely models of complex political processes, and either could describe the same underlying world well for different normative purposes. So my project is not to take sides between the two approaches, but to make some headway in thinking about policies that I could endorse as both consistent with justice and appropriate to the circumstances and dangers of the international realm.

Taking individuals as the appropriate moral unit of analysis, constrained by the need to govern themselves in common with some (but not all) others, where each has very little scope for choosing compatriots, the next three chapters explore three implications of collective self-government for forming a just foreign policy. First (in chapter II), I derive the limits to state autonomy that follow from states being no more than aggregations of individuals with rights, including rights to collective self-determination. Many things about such states will be highly contingent – their borders, composition of their governments, strategies for provision of social services – but two things will constrain permissible variation. Basic human rights constrain how individuals must be treated, and the fact of fellow citizenship determines who must be included in governing the country. Together they indicate which states are well-enough governed that their internal politics will not trigger foreign obligations to protect human rights, namely, when all citizens have effective political powers without risks to their safety or dignity.

Under such conditions, the society can be considered collectively self-determined – all individuals can exercise effectively their political rights to self-determination. The country-level property does not rely on any (dubious) analogy between individuals and states, or on genetic or emotional ties among citizens, but follows simply from aggregation. Citizens need not even want to share a state with one another, but if they respect one another’s basic rights, they can address this preference peacefully and with civility. This approach, which owes a lot to Rawls and Beitz, is valuable because countries are not essential categories, nor are ethnic or religious groups. Some countries might allocate votes according to such
qualities, but when we evaluate those countries, we are not passing judgment on their categories, but on their treatment of individuals, and success at governing themselves honestly and fairly. This approach should garner wide support, though the content – which rights are basic, which inequalities are tolerable – may not.

Next (in chapter III) I show how the fact of citizenship can constrain the distribution of wealth among countries. It is not that countries have agency or moral standing, but that there are perils to mandating redistribution among people who are not able to participate in making decisions about that redistribution. Shared wealth should presuppose shared governance, and if one wants to limit the latter, one should limit the former. Regardless of its independence, good government is important because it enables people anywhere to live better lives by their own lights. While participation, representation and accountability are not guarantors of good government, they are, as far as we know, necessary conditions. Ensuring good government is a prerequisite for effective foreign aid. Without well-ordered institutions, the operation requires more detailed management from abroad in order to make certain aid is neither stolen nor wasted; effective administration is hard to import, so the hardest problems of material aid are actually political. By “good government” I mean some form of real collective self-determination as derived earlier. I draw out these and other implications for international redistribution in more detail.

After that (in chapter IV), I discuss the constraints on national autonomy that follow from the need to secure cooperation among separate states and among their citizens. When there is more than one fair solution to a problem requiring global cooperation, it is in each state’s rational interest to argue that its preferred solution is fairer than the others. Since collectively self-determined citizens put their interests first (and when their leaders do not, they can expect to be voted out of office), how are countries to agree on a single cooperative solution? If they agree to follow a single course of action when new problems arise, before they know which countries will in fact benefit, and with the knowledge that risks, costs and benefits would be distributed fairly over time, countries would find it reasonable to trust one another as long as they are all seen to comply. Citizens would find it
rational to cooperate because long-term security is in their own long-term interests. Equivalently, countries could agree to join a transnational institution that is run democratically (according to collective self-determination, but among countries), that would have the authority to issue binding decisions on member countries regarding the problems over which it has jurisdiction. This imposes some limits on what each country is free to decide for itself, while enabling a greater degree of cooperation and trust on sub-national and international levels. This makes for more flexible, complex solutions to global collective action dilemmas, and allows costs to be distributed among countries and over time.

That said, let us begin. First, an account of basic human rights, how they can ground international obligations, and when those obligations have been met.
II. Human Rights, Self-Determination and Decency

A. Abstract

When should a country act to protect another country’s citizens from their own government, and when is it forbidden? In the post-cold-war world, powerful democracies are expected peacefully to respect the sovereignty and laws of other nations, while defending human rights abroad. To have consistent international law, we need standards that define both when human rights violations are severe enough to require international action, and when a country is governed well enough that such interference is forbidden. In *The Law of Peoples*, John Rawls sketches such a theory, but with little detail, and in a way that is easily misunderstood. In this chapter, I elaborate, fleshing out the relationships among human rights, sovereignty, self-determination and tolerance of imperfect governments in a way that is consistent both with his work and with his goal of giving guidance to real-world democracies. I also correct two common misconceptions.

Human rights are important for at least three reasons. (1) Without guarantees of subsistence and personal security, individuals suffer inexcusably. (2) Rights also enable the three components of citizen control of government – participation, representation and accountability – which constitute collective self-determination. (3) In part by guaranteeing these rights, a government demonstrates its sincere concern for all, and demonstrates a common-good idea of justice, giving people reason to obey laws with which they disagree. The three together ensure that a people can work through their government to achieve political goals, and do not need outside help.

To the extent that a government prevents self-determination, it is unjust, and well-ordered peoples must help it to become more well-ordered. Reform of government is a proper political concern of a well-ordered people for a badly-ordered one, and this concern justifies interference of some kind. Self-determining societies should be immune to interference even if they are not fully liberal,
because each society should choose its institutions for itself, as long as they do not involve oppression of some groups of people in or out of the society. Secession is not the same as self-determination; just societies must help all people subject to a badly ordered government, not simply the ones who happen to want their own state. Secession may be compatible with justice, but it is not a right.

B. Introduction

May a country act to protect another country’s citizens from their own government? Is it constrained instead, by its own pacifism, by the other country’s sovereignty, or because concern for human rights can only be justified among people who share a national project? These questions come up often in academic discussions and in contemporary foreign policy. In The Law of Peoples, John Rawls argues that concern for human rights does not end at the borders of a country. Each society has a legitimate, political-in-the-right-way interest that all people have basic rights to enough food, water, and shelter, and physical and mental security that they can live without fear. Although each government should guarantee these, and much more, for its own citizens, when governments do not, others may have to interfere.\(^5\) Interference should be through peaceful diplomacy first; rarely, says Rawls, human rights violations will be so urgent that they can justify war. Yet he also believes that just governments should be run by their citizens, immune from outside interference.

1. The Context of Recent Human Rights Theory

These beliefs are shared by many of his colleagues. Theorists now take for granted that human rights include material rights to subsistence as well as rights of conscience, freedom from torture and the like (Beitz 1979b; Kelman 1977; Nussbaum 2000a; Nussbaum 2000b; Scanlon 1979; Sen 1981; Shue 1979; Singer 1972; Vincent 1986). The amount of effort a society should devote to protecting

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\(^5\) I use the word “interference” to refer to all forms of deliberate foreign involvement to reform a people’s government. The more common word “intervention” has military implications, so here it will refer to uses of force. Rawls believes that only unjust societies could ever be interfered with, but in most of those cases military intervention will be ruled out.
human rights abroad is more controversial (Goodin 1988; Miller 1998; Pogge 2001b; Singer 1972) as is the specific rationale for doing so, especially if the ruling government is the main rights abuser. The challenge is familiar: to justify interfering with a government that violates human rights while not setting a precedent that would allow that government to interfere with one’s own domestic political decisions.

For Rawls, sovereignty is not a necessary property of government, but a consequence of a government’s being well-ordered. Well-ordering means, among other things, that a country does not aggress against others or its own population, hence others have no reason to interfere with its internal processes, or to make war against it. Being well-ordered also means that the government truly represents, and is accountable to, its citizens. Other things being equal, outside influence means citizens’ influence is lessened. So interference should in general be kept to a minimum, and well-ordering sets that minimum at zero. Because self-governance is a key component of justice for Rawls and other liberals, it is useful to think of sovereignty as flowing from self-determination, when that doesn’t involve harming any other country. This locates his approach firmly within the liberal-democratic family of views where self-determination refers to citizens’ power in government (Freeman 1996; Buchheit 1978; Cassese 1998; Philpott 2001; Erskine 2001; Buchanan 1991b; Wellman 1995; Polat 1998; Kohli 1997); (more nationalist definitions refer to the political autonomy of particular ethnic or other groups). I describe the meaning of self-determination in Section II.C.1 on page 32.

If sovereignty depends on self-determination, rather than non-aggressiveness alone, then Rawls can derive an obligation to protect people who live under dangerous governments from those governments. A regime that harms its members, for example, tortures or starves them, cannot be said to be truly governed by its citizens, even if a majority of the population voted to harm the rest. If the whole society is not self-determining – and injuring some citizens disables them politically – then it fails to meet one of the conditions of sovereignty, and just countries have no reason to refrain from interfering. Indeed, they have a good reason to interfere, namely, to protect basic human rights. In the most extreme
cases, just countries may even go to war to protect foreigners from their own governments.

Liberal theorists tend to agree that there are obligations to protect human rights despite claims of national sovereignty, but disagree about the origin of the obligations, and of the rights themselves. They take various approaches. The moral cosmopolitan view is that every person has an individual moral obligation to every other person, and that governments are merely convenient institutions through which we can meet these obligations (Pogge 1992; Beitz 1999; O'Neill 2001). As a result, differences among (just) governments tend to disappear, though states remain formally independent. Systems of laws and distribution of resources become important international matters, not fit subjects for separate societies to decide alone, unless those societies never interact. For example, international trade requires agreement among the countries on definitions of property, due process, things that cannot be sold (such as people or body parts), procedures for making and enforcing contracts, and similar matters. A political theory that binds citizens to their society with arguments of reciprocity, fair play, or hypothetical consent could allow national governments that would act as administrative units, but fundamental matters of justice would have to be settled globally. There would be, in effect, a world government. Some think this would be a good thing, others think it an evil.

Alternatively, a more empirically cosmopolitan view is that despite strong state government and apparently weak or nonexistent political ties to people in other countries, the world is highly interdependent and has been for some time (e.g. Buchanan 2000). “Indeed ... the structures of the world political economy so interpenetrate those of domestic society that one is often at a loss to assign the causal responsibility for structural inequalities to one or the other level,” (Beitz 1999, Afterword p.202). Furthermore, the argument runs, many traditions of violating human rights are legacies of foreign conquest and current exploitation that weakened institutions of justice, created gross material inequalities, wrecked traditional economies and fostered hatred of other groups in society (Pogge 2001b; Beitz 2001; Waldron 1992). The current rich, comparatively well-governed
countries of today were the colonizers of yesterday. They claim to prefer not to get involved so as to avoid repeating these injustices, conveniently saving themselves much money and effort. The empirical cosmopolitan thinks that this distance is inexcusable until they have paid restitution and helped to create a well-functioning economy and effective, representative government. This might not require a world government, but it would require extremely close linkages among countries and again, most fundamental matters of justice would be determined internationally (e.g. Beitz 1979a; Caney 2001a; for a tempered view see Drahos and Braithwaite 2001).

Rawls flatly denies that the legacies of injustice and exploitation require ongoing close economic coordination to restore the balance. Instead, he thinks that fostering just domestic institutions in an unfortunate country would be enough to allow it to prosper justly on its own. (Rawls 1999, §15) Close cosmopolitan ties are not needed for justice, thus not for basic rights of sustenance either. Further, he thinks moral cosmopolitanism and world government would lead to dictatorship, and so must be avoided. Although his liberalism is about governance among groups with different ideas of political right and scope, he does not think that it could encompass the whole world's pluralism at once. Instead, he advocates multiple, reasonably plural societies, where members create the laws for each society, giving each member equal respect, consideration and treatment. In his theory people are deeply connected to their fellow citizens, but not to others, which means each country can be treated as a single scheme of social cooperation. Individuals have only weak ties to people in other countries, and no direct ties to governments of other countries (Rawls footnotes (Goodin 1988)). The ties are strong enough, however, that other peoples are obliged to help guarantee basic human rights everywhere.

In *The Law of Peoples* Rawls proposes a two-stage process to create just institutions, extending his earlier work. In *A Theory of Justice* he used the device of

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6 The empirical cosmopolitan view could be satisfied if there were more than one retributive alliance, so that instead of effectively one world government there would be several smaller ones. This would work against the possibility of a world dictatorship, one of Rawls' main concerns. However, I do not develop this argument further.
the Original Position, postulating that if people were not aware of politically irrelevant details about themselves, and could debate as equals, they would derive institutions that did not offer advantages based on those details. He derived the institutions and rules they would agree to under this condition, which would be liberal and just. As we can imagine more than one set of just institutions arising out of such deliberation, so we conclude there could be more than one liberal state in the world, each with a slightly different form of just government. *The Law of Peoples* begins from this point.

Each of these states sends a representative to a second Original Position, where they debate principles of international interaction. Representatives are again ignorant of irrelevant details, this time about their particular country, such as the size and wealth of its territory, number of citizens, or security of its borders against unjust countries (§3.2, pp.32-3). They do know the details of their country’s political and economic system, however, and know that they represent the reasonable, fundamental interests of their society (which, being liberal, has no shared comprehensive conception of the good).

Rawls proposes that under these conditions, the institutions that emerge would prescribe peaceful diplomacy among countries, and prohibit territorial aggression and unsustainable behavior, such as environmental degradation, that could give future cause for aggression. They would encourage mutually beneficial commerce. For as long as there are any aggressive societies in the world, just societies would have rights of self-defense and mutual defense. Finally, he agrees that just societies should work to prevent human rights violations everywhere in the world. This usually requires peaceful means, but in unusual and extreme circumstances, just countries may use military force, or even start a war, if that is the only way to secure the basic rights. Peaceful interference is then required to help move the country towards justice or decency, where every person is considered important, and is represented in government by accountable officials. This is what Rawls means by a people’s self-determination – he does not believe that any group of people has a primary right to form its own country (though this may be a legitimate policy conclusion).
2. **My Argument**

The more rights a country acknowledges for its citizens, the less interference is justified from abroad. When a society treats its people well enough, giving them universal basic rights and a package of other social, political and economic rights peculiar to that society, it is sovereign in the sense of immune from all interference, and is considered decent and well-ordered. However, when basic human rights - of subsistence and security - are assured, that society is immune from all but persuasion.

I believe that the Law of Peoples includes three arguments that protection of basic human rights make a society exempt from international interference. They have to do with the three reasons basic human rights are important. The first and most obvious reason is that without basic rights, actual human beings suffer enormously, and there ought to be a universal concern for others that requires some action to alleviate this kind of suffering.

Second, when a society's administrators and judges genuinely consider each and every person's interests and opinions when making and enforcing laws, when each person has reason to feel valued both as a moral person and as a contributing member of society, then each person has a good reason not to break those laws. Rawls believes this common-good consideration creates a *bona fide* obligation to obey the law (§8.2 p.65-6), and to work within the system of laws to make any changes, an obligation that, for instance, a slave society cannot generate. So long as everyone’s interests and opinions are considered important, they need not be considered equally important for the obligation to follow.

Third, if all citizens have substantial influence on their government, in choosing policies and making laws, then this together with the previous reason, makes the society self-determining. That is, when all citizens have substantial influence over their government, and when the government is constrained to consider the common good, then the people determine the actions of their

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7 By “citizens” I mean all people more-or-less permanently living within the borders of the people’s territory; I do not mean that a society could legitimately mistreat its residents by systematically refusing some of them citizenship.
government – they govern themselves. Everyone need not have equal influence over their government as long as even the least powerful people have a lot of influence, and as long as they are not at risk of losing what power they have.

Rawls does not spell out this three-part argument. I believe that this is the best way to understand how he thinks basic rights can determine whether a society may be interfered with, and I offer evidence from his text and footnotes to show that he seemed to think along these lines. Because to leave out any of the three reasons is to leave the door open to international interference in a decent society, I shall give Rawls credit for the best argument consistent with what he actually says. Some of his critics do not— they believe that his actual argument is much shallower than he claims. After I discuss Rawlsian human rights, their minimalism and how they justify special concern for people in other societies, I discuss two prominent criticisms of the theory, and where they go awry.

C. How and Why Rawls Defines Basic Human Rights

When first opening The Law of Peoples, one might reasonably expect the staunch defender of equal and extensive political liberties, and inventor of the difference principle, to have a long list of human rights; however, he does not. His very limited list of basic human rights – to enough food, water and shelter to support life, and physical and mental security – has led to surprise and outrage. In this section, I discuss the relationships between Rawls’ earlier descriptions of justice and his current, more encompassing notions of well-ordering and decency, with human rights and the obligations of other societies to interfere or not.

The link is a properly political concern for collective self-determination. I offer an explanation that is consistent with his theory, and explore how it makes sense of the lines he draws, for example, between basic human rights and additional political rights, or between decent and indecent societies.

I also address two common ways to confuse Rawls’ meaning. The first is to misunderstand the relation between human rights and well-ordering. Charles Beitz and Peter Jones believe that Rawls defines decency and basic human rights simultaneously, without argument, to mark cases where interference can never be
justified. The conditions of membership – the basic human rights – are determined by the members themselves as those rights they all happen to guarantee. Beitz and Jones think this definition may work to show that intervention is prohibited among well-ordered peoples. However, it fails to justify intervention in non-member peoples. Since they are not represented in the second original position, and have no opportunity to argue for their own approach to human rights, holding them to member's standards would be an arbitrary use of power by the Society of Peoples (Beitz 2000, p. 684-686).

I argue instead that Rawls does derive the content of human rights in his argument, from universal premises, though implicitly, referring to the work of others (Scanlon 1979; Shue 1980; Soper 1984). I try to make the argument explicit, and contend that cosmopolitans (who think universal concern for individuals should determine international obligations) would be able to accept his premises, though they would add other premises that Rawls rejects. His argument anticipates many cosmopolitan challenges, and at the end of the day, if one is willing to concede that a two-stage process is not necessarily unjust in itself (which is all Rawls asks), then it is difficult to reject any of his conclusions. One may supplement them, but not easily contradict them.

A second confusion is to mistake the meaning of self-determination of a people; this is easier because many people think self-determination means the right to secede or at least to have limited local autonomy. Since Rawls rarely supports secession, he can be misunderstood as unjustifiably fond of the status quo. Allen Buchanan believes that Rawls wants to limit a people’s right of self-determination to cases where a society that previously had governed itself was conquered by a foreign power, simply to limit the opportunities for intervention in other societies’ affairs. Intrastate conflicts – civil wars to liberalize a government, minority groups’ demands for secession, demands for equal treatment – are the source of some of the most horrific violations of human rights in the real world. If Rawls rules them out of the jurisdiction of the Society of Peoples, then he makes his theory irrelevant; worse, he tolerates too much repression in “decent” societies and makes his theory illiberal (Buchanan 2000, pp. 718-720).
I believe that Buchanan is mistaken about the importance of self-determination for all peoples, even those without their own governments. In fact, self-determination is the key to deciding whether a nonliberal society is well-ordered or not. Rawls argues that the only legitimate goal a people may pursue beyond its borders is that others be able to develop just institutions for themselves. Individuals who lack basic human rights cannot be expected to work on such a national political project. Individuals in decent societies can, since they are not preoccupied with scrounging for food or threatened with torture. To guarantee a decent people the opportunity for self-government, a just people need not interfere, and therefore may not – only necessity can justify the costs and restrictions of war (Rawls 1999, §13.2, p.91; Rawls 1971, §58, esp. p. 380+). Interfering even in a non-military way might provoke anger and retaliation as the decent people defends itself, so a just people would risk war by interfering in well-ordered institutions.

The only things that can trump the presumption of noninterference are those needed to ensure the opportunity for well-ordered institutions in the first place – self-defense, defense of allies, and liberation of badly-ordered peoples. A people has obligations to members of unjust societies who cannot help themselves, and those obligations are political in the right way. What Rawls calls basic human needs must be satisfied for people to be able to participate meaningfully in public life. A well-ordered society is one in which people are so able, and do so participate (Rawls 1999, §4.2, p.38n47). The human drive to participate in public life is so strong that only minimal resources are needed to enable it, hence the list is short.8

1. Decency and Self-Determination

One puzzle about The Law of Peoples is that the list of basic rights is so limited, to subsistence and personal security. To be well-ordered a society must also guarantee some basic social rights, to liberties of conscience and expression, though these need not be equally extensive for all citizens. Different societies can

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8 This is the short rebuttal Rawls can offer to my earlier criticism of the brevity of obligations under his duty of assistance. Nonetheless, I believe that while the minimal version may enable mass political participation, redistribution beyond this point makes it more likely to include more people, and they are more likely to demand decent institutions.
grant different rights, as long as each entire set of rights is consistent with respecting all citizens. He includes no right to democracy, merely a strong requirement of representation and accountability. People need not be equal before the law, though they all must be treated respectfully, as moral beings and part of society. This causes great consternation among commentators (for example, Tushnet 2001; Peterson 2000; Garcia 2001; Sellers 2000; Mikhail 2000), in part because Rawls himself has been so persuasive about justice requiring political equality and democracy. If they are required within a just society, it is not immediately clear how they can be optional in others, especially as Rawls does believe there are obligations to members of other societies.

It seems obvious that if another country were to be well-governed enough, the two could trade, form alliances and coordinate foreign policies towards troubled countries, which would be far better – morally and in effect – than remaining isolated. The question then is: how well governed must that be? Domestic political society ought to be governed justly, but a just society ought to allow space for not-quite-just governments elsewhere. Otherwise it would be essentially hostile towards other societies, refusing all cooperation beyond diplomatic recognition and keeping its citizens from doing business with a country unless its government had been vetted. However well-intentioned, this is not an attitude signaling a desire for peace and commerce. But since it would be wrong to support a government that is too unjust, it is important to know the sort of society that would be decent enough to be a well-ordered partner.

Most importantly, a decent society protects human rights. Rawls’ argument connects human rights to well-ordering in two ways that relate peoples to their governments, shown in Figure 1. The more important is basic self-determination, which means that the people itself controls its government; this means that citizens all have effective means of influence, which I describe below. Basic self-determination is a bottom-up relation.

There is also a top-down relation of the government to the people, where the government must demonstrate its sincere and effective effort to consider every citizen’s good in common with all others when making laws and other decisions.
This demonstration of a good-faith effort by officials grounds citizens' obligations to obey their society's laws. What I describe as "self-determination" without the modifier "basic" includes both the top-down and bottom-up components.

![Diagram of Common-Good Consideration and Basic Self-Determination](image)

Figure II.1: Self-Determination of a people consists, in part, of these two relations of obligation between a well-ordered people and its government. Rawlsian human rights are basic to both relations, in addition to their obvious value to the individuals themselves.

An essential part of common-good consideration is a principle of formal equality, that similar cases should be treated similarly, or what I prefer to call rule of law. Rule of law is the opposite of rule by force. In this case it can be thought of as a relaxed version of equal rights, respect and access. In decent societies, individuals don't necessarily have equal freedom of religion, because some sects may be privileged, but everyone has a lot of freedom to practice as they wish. Similarly, members may have unequal access to government institutions. However, even the least important citizens have substantial representation, their interests are considered, and officials have a "sincere and not unreasonable belief... that the law is guided by a common good idea of justice," (§8.2, p.66).

In sum, decency is incompatible with rule by force; any official hierarchy must be genuinely consensual and responsive. Human rights are the things that enable individuals to participate, at least to form and express reasonable challenges (see sections II.C.2.a below and II.C.2.b below). They encourage rule of law by freeing people from exclusive focus on threats to their survival.
The motivation for the class of “decent” societies is a worry about toleration, as noninterference. Rawls asks what sort of society, while not exactly like his just one, would be good enough to its people that a just society should not interfere with it. (It should be fairly obvious that a liberal, though not Rawlsian, society would meet this criterion.) It turns out that the key feature of a decent society, besides protecting basic subsistence and security, is that all of its members can choose, change and govern their own institutions. The limit of toleration is any society that can peacefully choose for itself whether to become liberal, whether or not it actually does. Such a society is truly self-determining.

Could Rawls’ argument be simpler? Perhaps it is as follows: common-good consideration along with guarantees of subsistence and security constitute decency. Although citizens of a decent society can only influence their government indirectly and unequally, the fact that the government considers their interests, combined with popular belief in the value of community and shared traditions would oblige the people to obey the law. But if the citizens themselves were obligated to obey their society’s laws, because they were respected parts of their society, then they could not ask foreign governments to interfere on their behalf. Liberal societies would have to refrain from interfering because to do otherwise would fail to respect the ways in which the decent government genuinely represents its people.

Although this is certainly a good reason for liberal societies to refrain from meddling, I believe it is not enough to force them to refrain in all cases. The argument assumes that when a just society A interferes in a less just one B, it is acting strictly as an agent of B’s citizens; if B’s citizens are constrained to work within their institutions to expand their rights, or achieve equality, then surely their agents cannot bypass the institutions on their behalf. However, one can imagine cases where the particular inequalities of B are such that citizens of A would be bound by their own understanding of injustice to intervene, without violating B’s laws, but through its civil society. I discuss this objection in more detail in section II.C.2.b below.

The phrase “self-determination” is used in different ways in the literature, and it is important to explain exactly what I mean, and what I take Rawls to mean.
His idea is that internal self-determination, or control of one's own government, justifies external self-determination, or state autonomy with respect to other states (Cassese 1998). One can trace this strategy back at least to Locke and his idea that there was a natural right to leave a polity to which one doesn't consent; the strategy then evolved through the work of Rousseau and (less theoretically) Woodrow Wilson, and various United Nations documents (Freeman 1996). Though it has a respectable history, it is not obvious how one can begin a political theory with individual rights and liberties, and derive a "people's right" to anything. It is even murkier when the idea of "a people" is not well specified.

Rawls begins from the belief that there is no reason why any group of people could not find a way to live together peacefully and justly, under one government or several coexisting ones. The arbitrariness of the world's borders, or what Gellner would call the mismatch between political and cultural boundaries (Gellner 1983) doesn't create difficulties for his theory (Rawls 1999, §4.3, p.38-9). Ethnic, cultural or linguistic groups may be very important to their members, and may empirically offer a good base on which to build social cooperation, but common membership is not a prerequisite for treating others with respect.

If this is true, then the question of whether a group should have its own state, simply because it is a group, cannot be a matter of justice. There may be other reasons why some particular group should or should not have its own state that would be reasons of justice – for example, if a just society had been recently conquered, its own government should be restored. However, in a well-ordered society, secession and autonomy demands could be resolved through regular political discussion. It is not necessary to grant rights to the group as a whole, say, rights of cultural or linguistic preservation, in order to have these seen as values by nonmembers. Their importance to members is a reason for nonmembers to find

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9 One might ask whether, following widespread conflict with human rights abuses, surviving members of the different groups would be able to reconcile themselves to one society, or whether justice would require punishment of the guilty individuals. As long as punishment was confined to the perpetrators – however many there were – and did not turn into reciprocal group discrimination, there should be no moral obstacle to peaceful coexistence. There may be good reasons for political divorce, but none for mistreatment of other people. Hence, retribution is not a problem for the theory.
ways of accommodating their different habits, languages or beliefs within a reasonable pluralism (§2.1, p.25). It is not that Rawls doesn’t believe in group importance, it is that he believes group rights don’t add anything positive to the discussion of how best to achieve a just society, and are often confusing.

It is clear then that a people’s self-determination cannot mean the right of each group to its own sovereign state. Although peoples value “their security, territory and the well-being of their citizens” (§3.3, p.34), this is not because peoples are organic wholes with legitimate claims to statehood. Among other things, had he meant this Rawls would have had to offer a detailed account of which group distinctions, out of the many cross-cutting cleavages among individuals, signified state-worthiness. That is precisely what he aimed to avoid.

In other words, a people is not a special kind of group. It is instead a description of the population of an idealized, though achievable state.

The term “peoples,” then, is meant to emphasize these singular features of peoples as distinct from states, as traditionally conceived, and to highlight their moral character and the reasonably just, or decent, nature of their regimes....As just or decent peoples, the reasons for their conduct accord with the corresponding principles. They are not moved solely by their prudent or rational pursuit [of] interests, the so-called reasons of state. (§2.2, p.27)

No group characteristic is more essential politically than any other, either to a “feeling of nationality” (§2.1, p.23n17) or to maintaining a just society (§2.1, p.25). He explicitly does not intend his definition of a people to guide us in determining when a group should or should not have its own government. His hope is that when the law of peoples is fully worked out, we could then go back to the difficult cases with fresh insight (§2.1, p.25), not that hard cases would vanish.

So Rawls doesn’t think there is anything special about “a people” save that it is composed of individuals prepared to live together as one political society. Perhaps they are enthusiastic and closely identified as a members of a distinct culture; perhaps instead they intellectualize membership as a good way to accommodate diverse cultures in a single society. They may even have nothing in common except that the international community describes them as one country. Participating in the public and civic life of one’s people is a good thing, so other
things being equal, other societies should allow peoples to regulate their domestic
affairs for themselves, at least as long as they protect their members' basic rights.

On this understanding, “a people” is unlikely to be a bearer of rights, except
as a metaphor, or shorthand way to say that all citizens as citizens have a
corresponding set of rights. Rawls never does say that a people has an unqualified
right to self-determination. He says that “self determination, duly constrained by
appropriate conditions, is an important good for a people,” (§11.3, p.85), and that
this “argues for preserving significant room for the idea of a people's self-
determination,” (§7.3, p.61, also §15.4, 111).\(^{10}\)

The right to self-determination, as such, is conditioned on (or part of) a
people's being well-ordered, which means also guaranteeing human rights and
basic need satisfaction for everyone (§4.2, p.38). The qualified right is justified by
the fact that, other things being equal, participation in civic life is a good thing for
the individuals who take part and for the society as a whole; collective responsibility
for sustainable resource use and provision for future generations are best secured
by an active, engaged citizenry and an accountable, responsive, just or decent
government.

By a “people’s right to self-determination” I understand Rawls to mean that
the society is one in which all citizens are guaranteed a right to participate to a
substantial degree in their government and civic life (§Introduction, p. 3n2). They
must have influence over setting priorities and endorsing policies, within
“institutions of background justice,” (§2.2, p.26). The government must respect
everyone at least as being responsible, cooperative and capable of moral learning;
administrators and judges must treat similar cases similarly (§8.2, p.65-6) guided
by a common good conception of justice (§9.1, p.71). Every citizen has a right of
dissent, and the appropriate authorities must address any questions or objections.

A people’s right to govern itself is composed of each individual's right to
have a just government of her own, meaning it represents her, respects her,
considers her welfare as part of the common good, and is accountable to her. A

\(^{10}\) Rawls repeats the phrase.
people is self-determining if all of its constituent members are allowed to participate in governing themselves and setting the agenda of important public issues. They cannot be forced to participate, but the government must truly represent their views and interests, which will require substantial engagement. Put another way, government needs to be “of the people, by the people, for the people.” That is, it needs to be of the people itself, neither expansionist nor primarily interested in foreign affairs, and may not systematically ignore segments of the population. It should be by the people it governs, not ruled by a self-serving elite or a foreign power. It should be government for the people governed, not corrupt, or about advancing the interests of some subgroup of the people, but genuinely considering the interests of all the people.

Self-determination is a phrase usually associated with democracy and secession; though Rawls does not make the link explicit, he thinks there is a right of self-determination but no rights to democracy or secession. What then is the relation among these three concepts in the law of peoples? I discuss the right to secession in section II.C.3.c below, and offer a very brief treatment of democracy here.

Rawls intends self-determination to be a component of well-ordering. A just or decent society will respect and include its members, be committed to rule of law and to justifying its rules with reasons that everyone in the society can accept.

I think of decency as a normative idea of the same kind as reasonableness, though weaker (that is, it covers less than reasonableness does). (§8.3, p.67)

Democracy would be one very specific way, or family of ways, of organizing a society well. Just as decency is a more general criterion than reasonableness, so self-determination is a more general criterion than democracy. It contains many of

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11 The quote is from Lincoln's Gettysburg Address. This is perhaps appropriate as the original lecture of "The Law of Peoples" was conceived in honor of Lincoln's birthday. Rawls does not describe self-determination in this way. (Rawls 1995 (1993))

12 In a liberal society, those reasons meet Rawls' description of public reason – justifications that are independent of comprehensive doctrines, because a liberal society explicitly does not endorse any comprehensive doctrines. A decent society may endorse, or privilege, one or more comprehensive doctrines, so decent public reason may rely on them in a limited way (§8.3, p.67).
the features that make democracy so appealing – e.g. that every person should have a right to participate in governance and public discussions, that everyone be represented, that government should be accountable to the people– but Rawlsian self-determination explicitly excludes equality, and is silent on the institutional forms that government may take.

If the criteria of self-determination (on page 39 above) can be met without everyone having equal power and representation, if even the least powerful person in society has her interests genuinely considered and addressed, then we can say that even the least powerful person is part of determining the people’s political affairs and structure. In this way, where everyone has some nontrivial input into decision-making, we can say that the people is self-determining.

It may well be that this cannot happen without equality, that equal political influence is required to keep everyone effectively enfranchised over time (9.2p.75n16). It may be that a consultation hierarchy cannot consistently take everyone’s interests enough into account to count as well-ordered. Surely liberals and liberal egalitarians are motivated by evidence that people with little political power do not have their interests considered fairly even by administrators with good intentions. Nowhere in *The Law of Peoples* does Rawls say that decent societies could exist in the real world, all he says is that if they exist, then liberal societies must treat them in a certain way.

As decency is defined, all citizens have enough access to make a case for liberalization within their existing decent government¹³ (§7.3, p.62). Women can demand better treatment because this would be truer to the society’s own values. It might even be easier to press this claim on behalf of all women than it would in an incompletely liberal society, because Rawls’ decent societies value people in part as members of groups (§9.2, pp.72-3, 73n13). Liberals can hardly think these citizens are so badly off then, with their considerable political influence; if they did not have such influence, the society wouldn’t be decent.

¹³ Although this is not a criterion of decency, it follows from the definition.
If so, then they don’t need foreign pressure on their decent governments to get their views considered in public; foreign aid thus cannot be required. Since *ceteris paribus* justice is better served, and more robust, when citizens participate in their own government, Rawls follows Mill in thinking it best that peoples work on their own institutions and laws rather than depend on foreign help (e.g. Mill 1860, ch. II); foreign interference thus is not really desirable. Rawls does not claim that decent societies would be as good as liberal ones. His only point is only that (at this level of abstraction from the evidence) this is the minimum that liberal peoples can require of another if they are not to interfere.

His former student Daniel Philpott argues that self-determination – the right of a people to rule itself – is a natural consequence of liberal-democratic theory (Philpott 1995). When looking at an illiberal or undemocratic society, one must decide if it currently protects basic rights and its “likely potential for justice - that is, its degree of liberalism, majoritarianism, and treatment of minorities,” (p. 382), since it is better to develop justice within a society than to impose it from without.

Philpott’s idea is that just polities are bound by their own understanding of justice to respect the political will of another people if it isn’t harming any other groups. They don’t merely have to respect the political will of demonstrably liberal social democracies. Of course, the crucial need here is to ascertain the will of citizens who are not treated or respected as equals. Rawls defines a decent society as one that provides the minimal conditions within which a government can be said genuinely act for its people by discovering their opinions.

2. Human Rights and Decency

In order to discover the needs, opinions and desires of all citizens, a society must do several things. It must protect basic human rights, of subsistence and security from mental and physical abuse. People without adequate material resources to survive cannot be expected to have considered political opinions on other matters, much less to have time to express those opinions clearly, even through the best institutions. Physical and mental abuse, or fear of imminent abuse, have a similar impact on political will. Indeed, the purpose of much abuse is
precisely to coerce obedience and keep the victims from discussing or acting on their opinions. Rawls does not discuss this explicitly, but he footnotes an article by T. M. Scanlon, which describes this at length. I thus consider it a legitimate part of The Law of Peoples and summarize the argument in subsection II.C.2.a below.

Protecting basic human rights is not all that a society must do if it is to be considered decent, it must also grant a whole package of social and political rights that allow people to express their opinions, and to make it possible for the government to discern accurately the people's political needs, desires and opinions. These are not called "basic rights" nor are they elaborated, not because they are unimportant, but rather because Rawls wants to avoid a detailed discussion of which rights are essential to each bundle, and which possible combinations can substitute for one another.14 However, decent societies must treat people as free and rational, capable of being moral and responsible (Rawls 1999, §9 esp. pp.71-3) with distinct duties appropriate to the person's social grouping (§8.1 p.64, §8.2 p64-67). They are not to be treated as slaves or parasites, but respected as contributing fellow members in a collective social project – "a decent scheme of political and social cooperation," (§8.2, p.66).

The most important addition to basic rights, that will be necessary in some form in any well-ordered society, is "respect for the possibility of dissent," (§9.1, p.72). This requires some forms of freedom of expression, though not necessarily equal freedom of expression. People will need to be able to discuss their beliefs and objections, both to formulate them and to have them addressed by the judges and administrators of the society.

The minimal form of this kind of expressive liberty is a Right to Discourse. Rawls derives this from the work of Philip Soper. In subsection II.C.2.b I explore the relation between the two men's ideas, as they are not identical. The right to discourse can be understood as an additional basic human right, though perhaps it is best thought of as a corollary of the rights to freedom from mental and physical

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14 For example, Article 22 of the Universal Declaration of Human Rights describes a right to social security that, in Rawls' words, presuppose specific kinds of institutions (Rawls 1999, §10, p.80n23). Though the underlying principle that society ensure that everyone has subsistence is a basic right, this might be a task for local government or provided ad hoc.
abuse. Either way, it is an important part of Rawls' argument connecting a society's protection of basichuman rights with its conditional sovereignty, or other societies' duty not to interfere.

I contend that Rawls offers a three-part argument linking basic human rights protection and non-intervention, as depicted in Figure 2: This corresponds to the three parts of the second criterion for a decent hierarchical society described in §8.2 (pages 65-67). I discuss this in section II.C.2.b below.

a. Basic Rights Are Physical, Not Metaphysical

What are the reasons we have for thinking human rights are not merely good things, but essential, matters of universal right? More to the point, why should very different cultural traditions all agree that these are matters of right, and what reasons should liberals offer to illiberal societies that they can accept without coercion? These questions run through the contemporary discussions of human rights and toleration. Without plausible answers, The Law of Peoples would merely preach liberal ideals around the globe while accommodating societies that had similar moral values, and useful goods to trade, as a sort of semi-apologetic cultural imperialism.

Philosophers are used, when confronted with a clash of values, to reach for something common to both values, and derive a resolution believing both sides are bound to accept it. Rawls' idea of public reason is like this – people with different preferences and beliefs give each other reasons they all can accept for choosing policies. So one might expect his explanation for human rights being both universal and rights would appeal to some universal moral qualities – innate natural dignity, or all being equal in the eyes of a creator, or the like – that a decent, Islamic society would also believe. Though its religious practices would be more central to public life than a secular liberal state’s, the idea of everyone having a soul, or other source of dignity would be one decent and liberal societies could all accept.

This strategy would be a mistake. The effort to make the particular human rights into examples of a very general belief that happens to be common to both traditions is most likely to offend, not least, by getting the other tradition wrong.
When done in the real world it is often perceived as patronizing or proselytizing, which, accurate or not, is counterproductive. To seek a unifying theme for all moral philosophy in order to show the universal import of human rights would be to introduce a harder, intellectual problem in addition to the already hard problem of actual people suffering from human rights violations (Rawls 1999 §8.3 p.68; the same idea is discussed eloquently and at length in Ignatieff 2001). This will be true even if it turns out that all cultures have a norm of something like universal human dignity (Appiah 2001, p.106).

Instead of looking for an abstract, moral or metaphysical quality that everyone can agree on, Rawls borrows a strategy from Scanlon of looking at the physical and political impact of human rights protection and its absence. Here is a brief summary of that argument.

Scanlon recognizes the difficulty of finding moral universals in which to ground human rights, especially for an audience of government policymakers (Scanlon 1979). Instead, he looks to the physical, empirically testable world. Human rights violations are easy to describe, because of the immense, observable injury they inflict. Basic human rights violations are things we think centrally important to people, serious harms with political ends. That the consequences must diminish one's ability to participate meaningfully in public life is what makes other governments' concern for human rights violations not simply about individual welfare (though welfare is an important piece), but a political concern for the other society as a whole.

Basic rights are about things that are very important in a particular way, for three reasons. First, a right has immense value to individuals (p.84) and/or violating the right causes great harm. Second, there must be a high probability of violations were the right not acknowledged (p.85). A human right must be needed to prevent the harm and able to prevent the harm, in the real world, in our experience. This approach sidesteps the question of whether some rights can be universal, but

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15 One can trace this approach at least to Hobbes' idea that, however unequal their physical strength and fighting skill, all people are easily killed, while asleep or by enough others acting at the same time (Hobbes 1651(1991)).
notes that some rights, in our experience, seem to depend on physical facts about human beings (such as needing food), making them universal “for all practical purposes” (p.85). Third, it should be “possible and desirable” to incorporate this type of right into any culture (p.85). If a right depends on the existence of specific political institutions, then it couldn’t apply to every society.\(^{16}\) Many political or civil rights – for example, specifics of due process – are important enough but not sufficiently general to count as human rights per se. By contrast, a rule that any institution, to be legitimate, must somehow ensure that all residents have access to a decent diet, is sufficiently general to apply to all human societies (p.86).

Rights are not simply individual/moral, though that too is an important aspect. Scanlon’s three conditions include the content and effect of the harm for individuals and for governments. When governments or other political actors are prone to commit violations, it becomes the business of any political society to protect these rights. It is not enough that individuals are being harmed; they have to be harmed for political reasons, or by government agents.\(^ {17}\)

To condemn torture as a gross violation of human rights is not simply to deplore pain, suffering, cruelty, and degradation. These things are great evils, but the condemnation of torture involves the invocation of a human right because torture... is a political act – political in being carried out by agents of the state and political in its aims, which are typically to crush opposition through the spread of fear. (Scanlon 1979, p.86) (emphasis added)

For Rawls, justice is political in that it must be constructed by reasonable people with divergent views on metaphysical matters such as religion and how to live a good life. They cannot agree on any underlying concept like human dignity, or principles of natural law as such, the best they can do is to agree on principles of fair social cooperation, and then construct a just system of laws in a properly political way (Rawls 1993, Lect. III §1 p.97). Human rights are also political in that way, needed to enable participation in creating an at-least-decent political society.

\(^{16}\) This marks out Rawls’ basic rights – obviously universally applicable – from the ones that he thinks presuppose specific socioeconomic organizations, like equal pay or social security.

\(^{17}\) Harms carried out by unofficial agents, who have at least tacit support from the government, are still human rights violations. The same is true for violations carried out by opposition movements.
Basic human rights are (nearly) universal for reasons that are physical, not metaphysical; this should make them uncontroversial. They are in part political because they are key for good governance. That human rights violations are typically to crush opposition, I claim, underlies their link to self-determination for Rawls. Specifically, political agents commit human rights violations to keep people from taking political action to modify a government's policies that they don't support, or even to change the government. Both would be moves towards citizen control of government, blocked by those who would lose power.

b. Self-Determination and The Right to Discourse

When it doesn't deliberately seek to prevent self-determination, what sort of government responsiveness is needed to allow a well-ordered government to develop?

As described on page 34, self-determination requires citizen participation, citizen control of government, and common good consideration. That is, the government must both genuinely represent its citizens and make obvious that it truly takes everyone's good into consideration when administering the law. Common-good-consideration must be a part of any well-ordered society, and a constraint on foreign intervention into the affairs of a self-determining people. To show this Rawls first establishes that visible demonstration of common-good-

![Figure 11.2: The three arguments linking protection of human rights and immunity from foreign intervention. Universal human obligation to prevent immediately lethal dangers is the ground for intervention least often invoked (for Rawls). Citizens' obligation to obey their laws is a strong reason not to interfere, but can be overridden in some cases. Self-determination of a people will always ground nonintervention because it renders foreign aid unnecessary.](image-url)
consideration is needed to ground an obligation not to disobey the laws; he does this by referring to Philip Soper's *A Theory of Law*.

As shown in Figure 2, one strand of Rawls’s argument is that a society that protects basic human rights (and offers a coherent but not unique set of additional social and political rights) may well be one that gives its members common-good-consideration. If people are not abused, and if they are treated with common-good-consideration, then they have an obligation to obey the laws of their society, and hence not to try to overthrow the government, because in an important sense it really is their government. This gives other societies a very strong reason not to interfere on behalf of citizens who are obliged not to act for themselves.

I now discuss this strand of argument in more detail beginning with a summary of Soper’s argument. It is lengthy because Rawls borrows some subtle features, but alters others, and it is important to see exactly which pieces he retains, and why, so that his case is not misunderstood. At least one common misreading of *The Law of Peoples*, discussed in section II.C.3.b below, follows confusing theoretical parsimony with lack of rights. Soper is concerned with the conditions that create individual obligations to obey the law, and the theoretical underpinnings of those obligations.¹⁹

He wants to understand why there is an obligation to obey a tax collector’s demand for payment, but not a mugger’s demand, which is backed merely by threats. It derives from the fact that a legitimate government that created the tax in a way consistent with its legitimacy employs the tax collector. That is, the particular tax, or law, doesn’t necessarily have to be just, as long as it was created in a just way (Soper 1984, p.51).

He then asks what makes a law legitimate or obligating? It isn’t simply the use of threats to back the law, as the example of a mugger shows. It can’t be the right to use threats, as that begs the question of legitimacy. Soper argues that the general benefit of having a system of laws is too vague to obligate one to obey any particular law (p. 60-61).

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¹⁸ Later (on page 68) I give reasons why this may not follow as logically as the word “hence” implies.

¹⁹ I was initially persuaded of the importance of Soper’s argument by (Bernstein 2000).
He decides, "The paradigms of obligation developed here are generated by respect for people trying to aim at the common good," (p. 123). This follows from the following observations: (1) Regarding a particular matter, some decision needs to be made, or someone needs to take charge (2) The person who does so is in good faith trying to take everyone’s interests into account nontrivially (3) This effort deserves respect and gives everyone reason to comply even though one may disagree, though if one believes there is a serious mistake the good-faith reason may be overridden (p. 79).

The citizen in society shares at least a basic normative value with the officials he confronts. That shared commitment provides a basis for respect in the individual’s recognition that if he were in charge he too could do no other than seek the common good according to his own lights. Empathy for the difficulty in securing value agreement, respect for the sincerity of the effort of those in charge, and hope that the respect, being mutual, will lead to one’s own views eventually being acknowledged - all these factors play a role on the argument for obligation. (p. 137)

Legitimacy depends on both the need to make a decision and the attempt to consider everyone’s interest, however Soper puts little weight on the former.

How are individuals to determine whether the law reflects good-faith respect of everyone? Insincere assertion of good faith is the canonical form of bad faith (p. 120). For Soper, justifying a law by the good faith of its practitioners makes the justification of law part of the system of laws itself. In other words, the system must require lawmakers and administrators to respond to a reasoned challenge by a person trying to determine if he or she is obliged to obey the law. We know a declaration of good-faith respect is sincere by:

The fact that those in charge are prepared to respond to normative challenge with normative justification of their coercive orders. The implication is that here at least is one right that cannot be ignored if the basis for mutual respect that underlies law and obligation is to be maintained. Dissenting individuals must be assured of a right to discourse, a right to insist on evidence of bona fides of belief in the only form in which sincerity can be tested: communication, dialogue, exchange, debate. (p. 134, emphasis added)
Soper allows a wide range of reasoned arguments for obligation – enlightened self-interest, greater good, fair play – so long as they are not simply threats. He is fond of arguments that refer to the justice of the process that created the laws, and is available to modify them. Arguments giving overwhelming value to public order itself are insufficient; there are alternatives to each law than no law at all (119). Some arguments for respect, as we commonly use the term, are insufficient to demonstrate a prima facie obligation to obey. Autonomy demands mutual respect, demonstration that one thinks of the other as worthy of inclusion in political decisions (p. 137). Not every rationalization counts as a sincerely respectful justification for a law. Conversely, one could be sincerely respectful without offering evidence of it, but this wouldn’t allow the hearer means to verify one’s respectfulness, and couldn’t oblige him.

Thus a right of discourse is more than contingent: it is either a by-product of applying and following the principles of natural justice or, where those principles are not followed, it is a prerequisite of continued respect that one give some justification for not doing so. The more unbelievable or implausible the empirical basis for thinking action is sincere, the more good faith requires explanation. (p. 135)

Soper’s Natural Right to Discourse is quite limited. It isn’t a right to free speech or expression, and many justifications for free speech are irrelevant to this right. Its value is not about the marketplace of ideas, or personal development, or to enable everyone to participate in public life. It is not concerned with how literary, artistic or commercial speech benefits society. Its value is as a check to ensure government’s sincere consideration of everyone appropriately.

The right to discourse gives citizens the right to demand that the state speak in response to a challenge, not necessarily the right to speak on their own. It presumes some form of right to challenge the state in the first place, but this need not be very extensive (p. 141-2). It is not even a right to demand a direct reply to

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20 Soper credits Vincent Blasi “The checking value in First Amendment Theory” 3 Amer Bar Foundation Res J 523 (1977) with making this distinction.
21 Soper notes that in the limiting case one can imagine citizens whose only legitimate challenge is to question why they have no right to challenge specific laws. In the end, he thinks, their society would discover that challenging the system in general is part of good-faith respectfulness, so he doesn’t find it an interesting case (p. 139-140).
the person raising the challenge; an adequate public reply given in the past is
even enough, provided the reply genuinely and respectfully addresses this current
objection. An “outlandish” objection will typically be addressed implicitly in the
justification for the social system as a whole, and the onus is on the dissenter to
explain why it should be answered again (p. 143).

Soper does not speak of basic human rights; instead he allows for natural
rights, “rights against the state which can be invaded or ignored only at the cost of
losing the title of law.” Directives that oppose natural rights don’t impose prima
facie obligations (p. 132). In addition to the new right of discourse, Soper admits
two other natural rights, to formal equality and physical and mental security. The
right to formal equality means that similar cases should be treated similarly, what
on page 34 I referred to as rule of law.

The right to security is also minimal. For example, Soper won’t rule out the
possibility that even slaves might be well cared for and given enough formal
equality that they would have an obligation to obey the law (p. 121-2). He also
thinks that while policies of genocide cannot obligate, there might be a case where
personal security were violated out of a sincere, good-faith official belief that it is
somehow respectful, which could generate obligations (p. 125).

[I]t is a matter of some importance to know that whatever rights are
recognized in the political theory of a particular society, the structure
described here must form the core of those rights if the regime is to
obligate as well as coerce. (p. 143)

Recall that Soper’s goal is to develop a theory of what obligates people to
obey the law, in all different kinds of society and all sorts of laws. In service of this,
he favors parsimonious explanations, looking for a few general propositions (or
natural rights) from which he can derive a comprehensive set of institutional
characteristics. Though the right to discourse is not a right of free speech, it is not
hard to see how one could derive a right of free expression from Soper’s three
natural rights, plus some information about a particular society. Free expression
need not be axiom, one can argue for its value from within many legal systems, so
the right should be derived rather than merely imported or asserted. This is
valuable because the history of familiar legal systems shows how rights to equality
began as minimal and formal, yet evolved through discussion and argument into more substantial equality.

If the appeal of this theory for Soper is its parsimony, for Rawls it is the generality of its premises. Rawls is concerned that his theory of well-ordering should be valid for any culture, not just liberal or western ones. Substantive equality of individuals seems particularly liberal (whether or not it is). That is not true for a formal principle like “treat similar cases similarly,” or what I called earlier rule of law – only the most capricious regimes don’t even pretend to follow this principle. So the fact that Soper begins from so little, yet derives substantial constraints on what a government can do while remaining legitimate, seems to be what makes his work so appealing.

It may be clearer to think about this another way: of the many theorists who have stressed that political interactions require specific kinds of communication if they are to treat people appropriately, why does Rawls single out this one? Soper neither invented the idea of discourse being critical, nor published first, nor is his book the most comprehensive treatment of the subject. More obvious choices range from Habermas, with whom Rawls has corresponded in detail on this issue (e.g. in Habermas 1995), to Blasi who Soper himself cites.

The answer, I believe, is that Soper makes communication look undemanding. Habermas’ theory of discourse ethics requires complete honesty and a genuine effort to understand each other person in the society. Rational calculations, limited disclosure of information and the like are forms of “degenerate communication.” If a right to Habermas-type discourse were a prerequisite for legitimacy, then no society even in Rawls’ realistic utopia could be legitimate. It would not give us a way to distinguish societies whose citizens have direct input from those with oppressive governments, which is what Rawls needs. A more cynical observation may be relevant: if Rawls tried to adapt a minimal concept of Habermasian discourse rights on his own, he would undoubtedly be misunderstood to want the comprehensive version.

So, how does Rawls adapt Soper’s theory of law and discourse for his own purposes?
First, the right to discourse is one part of a more comprehensive set of rights and responsibilities in a decent society – it sets the standard requiring a consultation hierarchy to solicit and address opinions from below. Consultation includes representation, mass participation (though as members of a group rather than as equal individuals) and government accountability (as demonstration of common-good consideration). For Rawls, the existence of a right to discourse in practice means that the government (both institutions and actors) is sufficiently respectful of all individuals that the society can be said to be self-determining. Each member of the society is able to register protests that are taken seriously, and which may result in legal changes if the charges cannot be rebutted. These make up a people’s self-determination, as in Figure 1 (on page 34 above).

Second, the right to discourse is part of a strong reason for other societies not to interfere. For both Soper and Rawls, the right to receive a reply is the key to the legitimacy of a system of laws. When common-good consideration has been demonstrated to the satisfaction of all citizens, each is obliged to obey the laws of her society, because, in essence, administrators and other citizens are visibly committed to including her. They are committed to discussion of policies, giving reasons that she can accept (the decent equivalent of public reasons), and not imposing laws without justification. It is a commitment to deliberation and search for compromises that all can live with, a commitment not to use force, fear or violations of basic human rights.

If citizens must obey the law, and work within their political system to effect changes, then they may not ask other societies to meddle in their politics. The connection here is that Rawls believes that domestic legitimacy implies sovereign authority, so asking for foreign interference is as much a betrayal of shared political bonds as would be revolution. That could only be justified if basic rights are

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22 Consultation has to be institutionalized, part of a system of laws, for the society to be decent (a benevolent despotism could have consultation at the dictator’s whim). Institutionalization requires a whole host of rights and responsibilities.

23 Ignatieff describes this as the moral commitment implied by respect for basic human rights, a commitment to civility rather than violence (Ignatieff 2001, pp. 84, 95). Given his citation of Soper, I believe Rawls thinks that the right to question and receive a reply is fundamentally a political commitment. Otherwise they agree.
systematically violated, or if some citizens have too little power to influence or
generate their government. In a decent society there is nothing to stop individuals
from demanding greater substantive equality within their society, should they want it. However, they are also free to demand compensatory inequalities, greater power in one sphere of life in return for less in another, or truly separate-but-equal
institutions, that would not be liberal.

A western liberal, like Rawls, believes that the latter is unstable in practice –
equality is important because inequalities tend to expand unfairly, so that some continue to gain power at others’ expense. If that is the case, however, people with a right of discourse can offer this evidence as a reason for changing their laws. If the inequalities in power were to make government deaf to such protests, then the right to discourse would be violated, the society would not be well-ordered and would be justified in asking for foreign help; otherwise, other peoples need not challenge the inequalities as unfair.

Just societies can comfort their citizens with a more pragmatic argument. If a society grants its members a lot of influence over their government, and if the arguments for substantive equal treatment are as compelling as liberals think, then the decent society will eventually liberalize itself (Rawls 1999, §7.3, p. 62). If it doesn’t, that could only be because its members believe they have found the correct balance between individual liberties and shared beliefs that some differences require respectful, but different, treatment. The theorist does not need to decide whether this is possible in the abstract, rather, real peoples can decide for themselves, and other liberal societies can evaluate for themselves whether the people is self-determining or merely exploiting the powerless.

Qualified sovereignty is important, not least because Rawls also wants to restrict the legitimate reasons for going to war. He believes that whatever the possibility or stability of decent societies, liberalizing the well-ordered could never lead to a just war – it cannot be worth killing for. Societies should thus take care to ensure that they do not make unjust liberalizing wars more likely, which means in

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24 Hoping that they will eventually fall apart cannot be the reason for tolerating decent societies, but it can be one consideration motivating citizens of just societies’ self-restraint.
part that they should avoid giving offense by proselytizing among the decent.
Interaction through trade and cultural exchanges will provide enough opportunity
for individuals in decent societies to see the benefits of liberalism and decide if they
want them. Fully just societies should restrict their activities to deciding if the other
people is well-ordered in the first place, in part by ascertaining if it guarantees a
right to discourse.

Rawls has more stringent conditions than Soper’s other two natural rights –
of personal security and formal equality. Well-treated slaves could never have
enough formal equality for Rawls to consider their government well-ordered, truly
representative, or legitimate. He rules out slavery explicitly: the basic human rights
to liberty and security include freedom from slavery, serfdom and forced occupation
(§8.2, p. 65). Soper can have a more relaxed definition of equality because he
wants to know only whether such slaves should obey the law. It is possible that
there would be obligations to obey at least some laws of unjust governments, but
that is not Rawls’ concern here. In any case, if a badly-ordered society granted its
members the right of discourse, then even its well-treated slaves would have some
ability to change the system that enslaves them. However, the existence of slavery
means that, for Rawls, the society is not immune from foreign influence, coercion
and intervention towards reform. Slaves may be obliged to obey the law, as
Soper believes, but other societies are not obliged to keep out, and may be obliged
to intervene, which is what concerns Rawls (§8.2, p. 66n5).

Soper thinks that his three natural rights (discourse, formal equality and
security) are occasionally compatible with sincerely held beliefs that obvious
injustices are somehow justified. For example, if it could be demonstrated that the
officials of South Africa during apartheid acted under a sincere belief not only that
racial purity was an important value, but that the specific laws and policies were not
disadvantageous or unfair to any groups, then it could be that that government was
legitimate, and that darker-skinned people had obligations to obey the law. (It is
manifestly not the case that most officials believed the policies to be in everyone’s

\[25\] I am not persuaded by Soper’s argument on this matter.
best interests, or that they treated even the least powerful individuals with respect as morally capable human beings, making this a disturbing and puzzling example for Soper to have used.)

For Rawls, on the other hand, that government would never have been legitimate (or well-ordered) because even if officials had been as sincere as Soper fantasized, most people were never adequately represented in the government, and had no other governments to turn to for relief (despite formal “homelands”). At best, the government would be considered burdened, not malicious, but nonetheless systematically violating human rights and in need of reform. Foreign interference of some type was justified, because the people was not self-determining and the government not sovereign.

As I indicated earlier, on page 35, one might think that Rawls borrows something simpler from Soper, an undemanding set of conditions for government legitimacy and citizens’ obligation to obey the law. The Right to Discourse is closely connected to Rawls’ idea of administrators and judges being forced to defend their actions as part of a common-good conception of justice. A government must demonstrate its good faith efforts to respect everyone, though not equally, as responsible and capable of making moral choices. If it does that, respects basic human rights (refuses to harm people in very important ways) and follows the rule of law, then the citizens have enough evidence that their government is legitimate and follows a common-good idea of justice. If so, then they have an obligation to obey the laws of their society, and to work within their system of laws to make any changes, such as introducing equality. Appealing for help to other societies would not be consistent with citizens’ obligations to obey the law, and so foreign peoples would not be able to interfere with the workings of a legitimate government. Accordingly, decent governments are considered legitimate and effectively sovereign, while able to offer their members substantially less in the way of self-government than I argue is required.26 Let us call this the common-good idea of justice argument for noninterference.

26 This point made clear by Josh Cohen.
Again, I note that sincere demonstrations of good-faith efforts by administrators to consider even the least influential citizen’s good in common with all others may well ground citizens’ obligations to obey the laws of their decent society. It may also provide liberal societies with a very good reason not to interfere to promote justice. However, this will not be a decisive reason in all cases.

First of all, obligation to obey the law does not commit citizens to work only within their government’s formal institutions to make changes. There are many examples of political action that neither constitute nor require breaking the law – boycotts, pickets, some strikes, letters to newspapers and so forth. These actions take place in civil society, not government itself, working to change the minds of people who can then go effect political change through normal means. Decent societies presume a stronger role for civil society groups within the political system, so these kinds of political action should be effective. I suppose one could reply that this is simply what the right of discourse looks like, and that if lawful measures were not enough, the society would not count as decent because it didn’t give sufficient right to discourse. Then foreign societies would be obliged to help, which could take the form of joining the boycotts. This may not be the best way to think about it (but in any case there are four more objections).

Second, the common-good idea of justice argument for nonintervention assumes that the foreign liberal society would be acting solely as an agent of the decent society’s citizens. But the liberal society may be obliged on its own understanding of justice to do something to help the decent society. It might be constrained to work within the decent society’s laws, but it could, for example, offer the least powerful certain advantages denied by their own society, like education, preferential trade relationships, even money or advisors. This is Philpott’s claim, that self-determination is something liberal-democracies value, like human rights or dignity, not just for their fellow citizens but for all people (Philpott 1995). It is pretty clear that Rawls would not agree with Philpott’s argument, but the point of this objection is that an obligation to obey the law, even when there are sincere efforts to respect everyone unequally, does not rule out all foreign interference.
Third, even if every law of the decent society were explicitly justified to the satisfaction even of the least powerful citizens, this would not show that when all the laws are taken together, there are not some effects, perhaps unintended, that are not justified. I am thinking of some of the residual inequalities admitted by formal equality alone – unjustified effects of one decision upon another, though each decision taken alone seems legitimate. The right to discourse as described by Soper only guarantees citizens a right to question each law in particular, not the entire body of laws.

Fourth, there is some reason to think that foreign interference could be a more effective influence on public opinion than the struggles of weak fellow citizens, even if the foreigners act purely as agents. The least powerful citizens have the least direct political access, and the most indirect representation in a consultation hierarchy. Even with the best intentions, such a system will not transmit their complaints with as much force or urgency as complaints of those higher-up. Foreign nationals and diplomats may well have more access to the top levels of the hierarchy, and more opportunity to explain the complaints. One could reply that if the weaker members of the society have so little influence on their fellow citizens, then the society is not decent. While this is a valid point, I think it likely that, in any case, influential foreigners could focus more attention on a problem than weaker fellow citizens, and that this could drastically reduce the time it takes to focus attention on equality.

Fifth, the liberal society can act as above, but on its own beliefs of fostering justice, not as agents, in an attempt to persuade the upper levels of the hierarchy of the injustice of their system. If the liberals send prestigious individuals or their own top government officials to give these explanations, they may well get more respect, and hence their arguments may get correspondingly more attention and serious thought, then if the same arguments were made by low-status members of the decent society. They could even make these arguments to the weak groups in the decent society, teaching them to realize their oppression is wrong. Rawls and many others warn of the dangers of this approach, with which I agree; however,
once again, sincere consideration and even obligation to obey the law do not seem
to rule this sort of intervention always out of bounds.

As I said earlier, common-good consideration plus demonstrations of
sincerity can go a long way towards obligating citizens to obey the law; for this
paper I shall stipulate that this is indeed enough.\(^7\) And it is certainly true that this
sort of respect of government for citizens and vice versa, as part of a not-terrible
system of laws and institutions, can provide a powerful reason for other societies
not to interfere. However, this is not enough to justify Rawls’ assertion that liberal
peoples should never interfere with decent ones. Here are five objections seem
pretty obvious.

The most reasonable conclusion is that he offers a stronger, parallel
argument to rule out intervention in decent societies all of the time. Actually, I
believe there are three parallel arguments linking human rights with
nonintervention. If Rawls did not intend all three then he should have, otherwise he
can only frown on liberalizing the decent, not forbid it. The first one is the universal
human obligation of each person to each other to avoid the most serious injuries. If
basic human rights are protected, then this individual obligation is not invoked, and
intervention is not required. The second one is the one linking the obligation to
obey the law with foreign nonintervention, which I argue is strong but not decisive.
The third, self-determination, is the strongest argument.

That argument is that decent peoples allow even the least powerful to be
genuinely represented, and to participate in governing their society. Where even
the least powerful has a substantial amount of influence in government, they also
have enough power and access to successfully press their political concerns for
themselves. The right of discourse guarantees that their concerns won’t be
ignored, basic human rights guarantee that they will not be too hungry or frightened
to press their claims. If they don’t need foreign help, they certainly cannot oblige
that sort of help, because it would demand a lot of time and other resources from

\(^7\) It is at least a very strong reason to obey even laws with which one disagrees.
the donor people. But in order to rule out intervention among decent people, we need to show that it is not optional, as well as not obliged.

This depends on two things: first, the idea that citizens should collectively determine their own destiny rather than be led by well-meaning foreigners, and second, the idea that the additional rights and responsibilities that the society enforces (in order to be decent) will enable enough participation that collective self-determination can be said to obtain. I have argued that Rawls defines a decent society as one that provides enough rights and responsibilities that the society is sufficiently self-determining, without otherwise specifying these additional rights.

What is so special about citizens – all people who find themselves living together within one national border – participating in collective self-government? There is not enough space to answer that here, but it can be thought of as one of the essential commitments of a liberal philosopher. Not only should society be governed by just rules, the citizens should make those rules for themselves. Whether one is skeptical that just rules can exist without direct government, or whether one values the transformative effect on the individual citizens, the values of political participation and accountable government underlie the views of Rawls, of Mill and Rousseau to whom he refers in *The Law of Peoples*, and most of the commentators who have engaged with Rawls’ ideas.

With self-determination understood as collective self-government, a people is well-equipped to reform itself without foreign help, which, if not needed, cannot be required. The idea of a right to discourse is used to distinguish the well-ordered among the nonliberal peoples, but it is not sufficient for making that distinction. Well-ordered peoples must also guarantee a host of other, more specific political rights peculiar to their own society that will flesh out the basic rights. Rawls doesn’t specify their content, but notes that decent or liberal, they will be demanding, and similar but not identical.
3. Two Objections and Rebuttals

The development of Rawls’ ideas of justice among societies is rather different from what many people expected given his earlier work on justice within a society. It is, at first, hard to reconcile his strict liberal egalitarianism amongst individual citizens with his toleration of – some would say unconcern for – inequality and illiberality among different peoples. I have tried to give a detailed account of his reasoning, relating concern for human rights, self-determination and the values of a liberal society. Much of the detail is concerned with his special – and somewhat unconventional – use of the terms “human rights” and “self-determination.

In this next section, I explore two misconceptions about what he could mean, one about the origin of human rights and the other about the meaning of self-determination. Both derive in part from confusing Rawls’ use of terms with their more common meanings in the literature. This leads critics to see his work as too narrow, ad hoc, and concerned primarily to defend the state system as we know it, and only secondarily with justice. These objections fall apart when one understands his terminology as I have described.

a. Human Rights and Decency Are Not Ad Hoc

Because of the brevity of The Law of Peoples, it is not immediately obvious how Rawls connects concern for basic human rights to legitimate national sovereignty. Some people have thought that the only way he could do this would be to establish first, that basic human rights are the only things urgent enough to obligate every individual, and second, that the best way for every individual to discharge her obligation is though her government.

Writing separately, Charles Beitz and Peter Jones think Rawls argues something like this, that his two-stage Original Position is simply a model of interaction among just countries, with human rights being morally prior to the model, asserted as common to the well-ordered, but not derived. One’s own government should guarantee individual human rights, but where it does not, other

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28 Deduced from the tone of book reviews and articles available in print, referenced beginning on page 200.
governments, on behalf of their citizens, have to step in. The content of the basic rights — what the well-ordered guarantee — would then be fixed before defining well-ordered political institutions. One could add or subtract basic rights without changing the argument about how to meet them.

They think that Rawls’ choice of basic human rights, a subset of the traditional list, is based on his own preferences, *ad hoc*, and not derived within the Law of Peoples. Any people that guarantees these rights is by definition well-ordered, and is consequently a member of the Society of Peoples, party to constructing the international institutions and rules of conduct so that members may not interfere in each other’s domestic affairs. This would be like starting from the premise that no member of the Society of Peoples may be interfered with, and then defining basic human rights as those rights that all member states happen to agree are important. But if human rights are defined by shared international institutions, they cannot apply to countries that are not part of the institutions. They also have no moral force apart from (or prior to) those institutions, so there is no reason to think that badly-ordered peoples are obligated, morally or politically, to protect human rights.

Because Beitz and Jones believe Rawls’ basic rights are not grounded in something more fundamental, they don’t see why he thinks them important, except for their clear benefit to individuals. But Rawls denies just governments have close ties to individuals elsewhere. They conclude that these rights could only be of concern to other peoples because states that violate them are also international threats.

This argument, they think, fails to capture the reasons why just peoples should not tolerate torture; obviously it ought to be concern for the victims. Beitz believes that a theory derived from a one-stage global original position would oppose human rights violations for the right reason, to prevent individual human suffering. The reason Rawls chose the indirect, less parsimonious approach seems, to Beitz and Jones, to have been solely in order to justify treating countries as separate schemes of social cooperation, not by problems of human rights.
violations themselves. This would also explain Rawls’ using a subset of the rights found in the UN declaration (Jones 1996; Beitz 2000).

Rawls says explicitly that this is not his strategy, and that his concept of human rights is neither exogenous, nor a second-hand individual concern. I have argued that Rawls does have a coherent definition of basic human rights that is not individualist, though it is consistent with individualism. That is, he offers reasons why human rights violations are properly political wrongs, as well as wrongs against the individuals harmed. He thinks human rights are a concern of liberal governments for other governments, supplementing universal concern, but not trumping it. Contra Beitz, this does not invalidate his two-stage approach (Beitz 2000, p680-682), nor does it drive him to assert primacy of “deep” cultural ties (p. 683).

Beitz and Jones think that liberal societies can recognize a family resemblance in each other. They are based on some of the same principles, offer their citizens substantial input and a wide range of political and civil rights. They differ mostly in their administrative details. Rawlsian decent societies share many characteristics with liberal ones, but are more distantly related. Nonetheless, liberal and decent societies can see that they all protect the basic human rights of their members (Jones 1996; Beitz 2000).

In Rawls’ argument, Beitz and Jones believe, liberal and decent societies can form an alliance – the Society of Peoples – because they are sufficiently similar to coexist peacefully. Other types of society are too different (be they violent or negligent) to be trusted in the same way. Hence liberal and decent societies think that their similar rights both demarcate the types of society that can get along and justify immunity from interference, interference being costly and dangerous for all parties, and thus to be avoided. As for the other types of society, there is no general rule on how to treat them. The problem is that as they have no opportunity to join the Society of Peoples, or to protest their exclusion, they cannot be bound by its laws, or criticized against its standards.

They raise a good objection to such an argument. However, Rawls does not make that argument.
The second original position includes representatives of peoples, not representatives of governments of peoples\(^\text{29}\) (Rawls 1999, §14.1 p. 94-95). To make this distinction clear, we need to understand what Rawls means by a “people” in the first place; it isn’t just jargon for “country-without-boundary-disputes.” We can get at the idea of a people as follows: Imagine a more-or-less bounded scheme of social cooperation (suspending cosmopolitan skepticism that any exist) – a country, territorially contiguous ethnic group, etc. Its real government may be indecent, or may not exist; certainly no real governments are fully well-ordered; Rawls asks us to abstract our ideas from the distortions imposed by real governments. The result is a people – a scheme of social cooperation that could conceivably have a just or decent government, but is logically separate from its government at any one time.\(^\text{30}\)

Each people sends a representative to the second original position. As someone who genuinely speaks for the people’s interest, not the interests of its leaders, that representative has no reason to preserve existing injustices, corruption or power scheming. She may have an interest in preserving features that define the people, such as religious or cultural traditions compatible with well-ordering (should any exist). Such traditions must allow (1) respect for basic human rights and (2) rule of law.

Earlier (on page 34), I argued that decency is incompatible with rule by force, so that official hierarchies must be truly consensual and responsive. Human rights free individuals to participate, at least to form and express reasonable challenges. They encourage rule of law by freeing people from exclusive focus on threats to their survival. Basic rights must be supplemented by a scheme of

\(^{29}\) Rawls’ terminology contributes to this confusion of a people and its government by writing of “just peoples” or “outlaw peoples.” The Law of Peoples is a principle of transition (§16.2, p.118), which implies that a people will remain a people during its transitions to ever more just governments.\(^{30}\) Earlier (beginning on page 37) I described a people as being “composed of individuals prepared to live together as one political society.” There are problems with the idea that the real world contains anything like a people even on this non-ethnic definition. Societies are not made of actively consenting adults. Rawls’ concept has a great many advantages over more stringent criteria of ethnicity, common language, common history and such. Among the advantages are the constant potential for redefining membership so as to include previously marginalized citizens. The important point here is that peoples are not the same as their governments in Rawls’ theory, even though his language is not always clear on the point.
economic, social and political rights specific to each society’s specific institutions, but not otherwise elaborated.

Rawls argues that representatives of all peoples would find no reason to reject his principles for a Society of Peoples. Peoples – not their governments – agree their interests are served by not tolerating outlaws, by excluding them from trade and otherwise interfering with outlaw governments’ abuses.31 Liberal and decent governments acknowledge this interest, and work towards it – this sort of accurate representation of its people is part of what makes a government well-ordered for Rawls. It follows (as argued beginning on page 44) that a government that violates human rights is opposing its members, not serving them.

All of these idealized peoples, including those whose real governments are unjust, would want to see well-ordered governments work to reform the others. This should be true even of members of outlaw peoples who would be worse off under an ostracized unjust government, or during a just war. Policies that isolate an outlaw government, and make it less stable serve its people’s interest. Those policies may have unacceptable costs, so that isolation per se isn’t required, but the goal of ending outlaw rule is in the interests of all peoples. While it is difficult to decide how to treat an outlaw government badly but the underlying people well, the important point is that the outlaw governments and unjust institutions are still obliged to guarantee respect for basic human rights, and when they don’t, well-ordered societies must do something (Scanlon 1979, p.90-91).

It makes sense that only outlaws could require forcible intervention. One can think of burdened peoples as willing to improve without coercion, and outlaws as resisting change, often violently. Because neither represents members’ opinions, either form of government may not know its members’ real concerns. Many outlaw leaders have reason to think that members’ interests are incompatible with their plans, and thus have reason to feel threatened by reform. Burdened leaders are not malicious in this way – if they were, they would be called outlaws. It follows that

31 He thinks they also agree that the duty of assistance to burdened peoples is limited to minimal subsistence and guarantees of human rights, and that there are no necessary obligations to poor well-ordered peoples (treaty obligations may or may not arise). I disagree in detail elsewhere in this dissertation.
burdened peoples need no unsolicited intervention; outlaws may, under extreme conditions. Some outlaw leaders don’t necessarily oppose their members’ interests, but do threaten well-ordered societies; interference there is a matter of self-defense.

Distinguishing peoples from their governments allows Rawls to specify criteria for well-ordering, and yet maintain – by argument, not assertion – that badly-ordered peoples are also bound to respect basic rights. Aggression is not in any people’s reasonable interests; though it may lead to short-term material reward, the benefits of peaceful trade are far more extensive (Rawls 1999, §5, p.44-54). If leaders act for their own personal gain, at the expense of the people, then the government is badly-ordered. The universal goal of self-determination can oblige well-ordered peoples to help the badly-ordered society improve. The more seriously a badly-ordered society harms its citizens, the less they are able to do for themselves, and the more well-ordered peoples must do to meet their obligation. Basic human rights are, in a sense, used to measure a people’s capacity for self-determination because they are, empirically, closely related (Scanlon 1979, p.86).

Jones and Beitz might object that Rawls doesn’t say anything about idealized peoples. He argues once from the point of view of liberal societies and once from that of decent societies. Peoples with unjust governments don’t enter into the second original position.

In reply, I note that there are no existing liberal or decent peoples. Contemporary constitutional democracies are outlaws by Rawls’ definition, for claiming traditional rights of sovereignty and using force other than for self-defense. Nonetheless these governments ought to model their foreign policies on the Law of Peoples, because even peoples with outlaw governments should recognize its principles and values. This law is part of a realistic utopia, “extend[ing] what are ordinarily thought of as the limits of practical political possibility” in ways that can guide the real world towards justice (Rawls 1999, Introduction, p.6). If he can extrapolate from the real world towards just and decent peoples and back, when no

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32 This seems to exclude benevolent absolutisms, since all unjust societies would either accept or reject assistance, be either burdened or outlaw, but that’s another matter.
societies are well-ordered, then why would he exclude from contemplation societies that remain outlaws while some are well-ordered?

The only reason would be to avoid the confusion that comes from a more abstract idea of a representative of a people. I doubt that he really avoids this confusion: the reader may have a faster intuition about what a people’s representative is, but it is flawed, based on too close a correspondence between a people and a nation or country. Rawls may avoid some complaints that peoples are problematic concepts, but only if readers confuse the second original position with the ongoing Society of Peoples, with real-world, game-theoretically rational (not reasonable) nations.

Rawls himself may exhibit a similar confusion when he tries to limit the Duty of Assistance. I see no reason for such limits. He mistakes the conditions needed to enable well-ordering for the conditions peoples would consider acceptable for the least well-off, or the least well-ordered of the at-least-decent societies. Certainly the duty should include everything Rawls specifies, but there are independent reasons to think it should include more. Rawls acknowledges this when he says that human rights are necessary but insufficient for decency (§10.2, p.80). An idealized people requires basic human rights to be well-ordered, but this says nothing about what else representatives of all peoples would think each other’s responsibility. The Society of Peoples requires all members to be well-ordered, but that is no reason to think this sets the upper limit of their material obligations each other.

Rawls allows that the Society of Peoples may develop treaty obligations among its members, but thinks that there is nothing we can say about their content in general (§16.1, p.115). There is no reason to think this either. Scanlon’s idea of nearly-universal obligations that rely on real-world evidence is helpful here. It may be true that a minimal, specifiable level of basic need satisfaction is needed to make a burdened people decent. It is probably not the case that a specific number of houses, or grains of rice, will immediately lead to well-ordered institutions. It is reasonable to think that additional resources (wealth, food, health) enable increasingly more attention to institutional design and practice. Experience
suggests decreasing marginal improvements to increases in resources, but it should be possible to describe approximately the level of need satisfaction that balances the gains to the poor against the costs to the more well-off. Indeed, there seems to be a good case for guaranteeing much more than the required minimum, so as to err on the side of well-ordering.

b. Self-Determination: No Apology For Status Quo

Because Rawls begins from a description of the world as composed of separate societies, and because his challenge is always to reform their governments, not question their borders, some critics believe that his view privileges existing states and their boundaries for no good theoretical reason (O'Neill 2001; Buchanan 2000). They think the obvious path to a just international society would involve a rational redrawing of national borders to match boundaries of peoples (understood as prior groups based on ethnicity, language, religion or common consent). Failing to do so can only be “justified” on shallow grounds, though in the noble aim of minimizing opportunities for war.

This criticism gets the relationship between decency, human rights and self-determination backwards. I argue that this results from misunderstanding Rawls’ use of the term self-determination, and to a lesser extent, the function of human rights and the nature of decency. Self-determination is not the same thing as secession. Self-determination occurs when every member of a society has genuine (if unequal) representation in a responsive government. In this way, groups can make their cases for secession within the society’s domestic institutions, so that among well-ordered societies it is not an international matter.

In his article “Rawls’s Law of Peoples: Rules for a Vanished Westphalian World” Allen Buchanan argues that considering a world composed only of more-or-less separate schemes of social cooperation is inadequate for extending the theory to our interdependent and mobile world. He offers two related criticisms of The Law of Peoples. First, he persuasively evaluates Rawls’ theory of international distributive justice; I do not discuss this argument further in this chapter. Second, he thinks that in reality “populations of states are not ‘peoples’ in Rawls’s sense
and are not likely to become so without massive, unjustifiable coercion, but rather are often conflicting collections of ‘peoples’ and other groups.” This leads him to conclude Rawls omits two important elements of his theory that limit its relevance and value for the real world: international distributive justice and intrastate violent conflicts (Buchanan 2000, p.701).

He thinks that Rawls is highly misleading, perhaps disingenuous, about peoples, using a word that commonly refers to ethnic groups in a way that implies a well-organized group with its own “territorially-based political institutions – what one would normally call states,” (p. 698) lacking only the right to go to war except in self-defense. This view is not far distant from the traditional Westphalian assumptions about states in international relations.

Buchanan believes that Rawlsian human rights are shockingly spare:

According to Rawls, the basic human rights include a right to material subsistence, a right against religious persecution, and a minimal right to liberty that rules out slavery, serfdom, and forced occupations. Rawls believes that to require any society to do more than respect these basic rights would be to be guilty of intolerance. (p. 707)

Thus a decent society is one in which members of religious or ethnic minorities may be excluded from certain jobs, even from jobs in multinational companies (p. 711), and may be treated rather badly, as long as they are kept alive, not tortured or forced to work at one thing. Criticism from abroad would be intolerant, “a violation of the right of self-determination of Rawlsian ‘peoples,’ and it is only peoples in this latter sense that have standing in international law according to Rawls’s theory” (p. 718).

That is, he thinks that Rawlsian international law cares only for the self-determination of the groups in charge, not for any oppressed groups within the society.

In Rawls's theory, principles are chosen by parties who represent politically unified groups within their own states; hence, there is no way of arguing the issues of intrastate pluralism within the confines of the theory. The theory provides no resources for defending the disputed assumption that individual human rights are sufficient. (p. 719)
He notes the argument is not that those groups do not have any right to self-determination, rather that this cannot be a matter of interstate law because such law is made, in the ideal case by representatives of all well-ordered states, and in the real case by actual states (p.717-718). In thinking that rules cannot apply to non-contracting parties, Buchanan’s objection resembles the Beitz-Jones one. 

The crux of what I call the Buchanan objection is that Rawls’ basic human rights are spare, because Rawls does not care much about self-determination. In his enthusiasm to limit the reasons for justified war he has expanded the realm of the tolerable too far. Rawls takes away traditional state sovereignty with one hand, claiming to be radically revising international relations theory, while he gives it back in the name of respect for well-ordered governments (p. 719-721).

I believe that in this, Buchanan is completely mistaken. For Rawls, the thing that makes a society decent is precisely that all its members have enough access to institutions that they can work from within peacefully to change their government without help from abroad. They do not have equal freedom or access, but everyone must have a lot of freedom and access; else the society is not well-ordered, but burdened or outlaw. Self-determination is extremely important to Rawls: it means more that all citizens choose their own well-ordered institutions than that the institutions be fully liberal. Self-determination means less war all around, not ever-increasing demands for secession; the examples from the real world that Buchanan has in mind (Eritrea, Kosovo, Christians in Sudan and Kurds in Iraq) are all of groups trying to get out from under governments that do not respect even their bare human rights. Rawls surely agrees that the world should not tolerate any of the four’s suffering, though he does not think that statehood by itself would be necessary or sufficient to end their suffering.

Buchanan’s view of The Law of Peoples is that very few human rights must be protected if a country is to be considered well-ordered. If that were true then Rawls would not believe in a general right of self-determination. Only peoples that happen already to be in charge of governments would have a right to continue ruling themselves, oppressing others within their borders, and were they ever conquered it would be right to help restore them to self-rule. In a plural society, as
long as the less-favored groups were neither tortured nor killed, nor persecuted for their religion, nor starved or enslaved, they would have no claim to better treatment that may be aired on the world stage. If the basic human rights were more extensive, Buchanan thinks there would be a stronger presumption of self-government or secession, and perhaps other peoples would be obliged to help the oppressed in their civil struggle. He thinks Rawls wants to limit the reasons for foreign intervention, so he limits the scope of things that can be their business, and thus waters down the content of basic human rights. All else must be tolerated.

Now that I have fleshed out Rawls’ bare bones theory, we can see that Buchanan and I disagree in two ways about the law of peoples. First, I believe he mistakes the relationships between self-determination and tolerance: decent peoples aren’t tolerated because their subjugated minorities have no right of self-determination (and thus aren’t deprived of such a right). Rather, because their minorities have both a right of self-determination (to participate and to have their concerns addressed) and effective (though unequal) representation in government, we tolerate their lapses from liberalism because they can choose to allow equality or greater autonomy for their minority groups at any time, without help. Not doing so must then reflect a preference for other values.

Second, Buchanan reads Rawls more pessimistically than I do, assuming his list of human rights refers to the least that he could possibly mean by his words. For example, when Rawls says a people may not be persecuted for their religion, Buchanan seems to think that he’d allow them to be persecuted for secular customs (Buchanan 2000, p. 718-719). To make sense of Rawls’ theory then, he is driven to conclude that Rawls’ arguments apply only to peoples-with-states, not to similar groups that find themselves ruled by others. He cannot see how a people could be substantively concerned for human rights elsewhere and not have that concern dominate their policy process. I consider this point first.

Since Rawls thinks peoples will remain largely self-contained, and should not spend much effort on foreign relations, we need to understand how he thinks that could happen without their being neglectful. One way would be to limit the basic human rights they should guard to life, death and religion. Another would
keep the longer list of human rights, but hold that often the risks of causing more harm through intervention are greater than those of standing idle. Scanlon stresses this point. Countries need to be very careful in dealings abroad not to be deluded into thinking that what they want would conveniently also be best for others. Countries also have unique features that mean that the same problem may require different solutions in different places. It is difficult to know whether one is being patronizing or insensitive or even overly sensitive when dealing with another culture, but these difficulties don’t absolve one of the responsibility to do something, even if the risks mean one dare not do much.

In other words, the list of basic human rights can be as extensive as I explained earlier, obligating a great deal from the well-ordered societies, while prudence means that in practice they should not do as much as possible, to avoid the riskier options. In the most urgent crises – slaughter, torture, famine – prudence is not appropriate; the risks of being unintentionally disrespectful to others are outweighed by the certainty of their dying otherwise. And Rawls does indeed think that all other peoples should step in when people are dying of mass violence or starvation (Rawls 1999, §4.1-4.2, pp. 35-38, §10.3, p.81). When the suffering is chronic however, there is room for a more thoughtful response, because an ongoing aid program that is unintentionally disrespectful may cause a great deal of harm.

Rawls unfortunately makes it easy to misunderstand what he means by “tolerance,” and this may in part be why Buchanan thinks the basic human rights include so little. Rather than lay out in detail at what point a society becomes decent or remains burdened or outlaw, Rawls describes an upper bound and a lower bound. The upper bound is Kazanstan, his unambiguously decent society, in which everyone is represented and can participate in government, although the very highest jobs are reserved for believers in the state religion. The lower bound is his list of basic human rights, without which a people could not possibly be well-ordered. Decent societies do far more than protect basic human rights, and are comfortably immune from interference. Outlaws and burdened peoples violate even basic rights, and are clearly subject to interference. The question is whether
peaceful diplomacy and material aid will be sufficient to allow reforms towards self-determination, or whether the famines or political repression are so severe and urgent, and the badly-ordered government so opposed to reform, that foreign governments need to use military force, or perhaps peacekeeping forces.

Rawls goes to great lengths in his argument to set the bar of decency high, much higher than it at first appears, and much higher than his critics believe. He also goes to great lengths to set the bar of intervention very low, so that only the worst countries will fall below the threshold and permit use of force. In between we have various degrees of toleration. When Rawls speaks openly of toleration he means toleration of decent societies, which takes the form of treating them as if they were liberal – giving them full respect, not advocating that they change their policies, not offering them incentives to change. But on the common meaning of the word “toleration” – to put up with – Rawls thinks that in practice liberal societies should put up with a fair amount of injustice and some violations of human rights in burdened and outlaw societies simply because liberal societies do not do all within their power to change them immediately, but rely on slower, more peaceful means. Unfortunately this contributes to the reader’s confusion, thinking that anything to be “put up with” must be what Rawls means by decent.

It would not be appropriate for a liberal society to devote all its resources to reforming the burdened or outlaw peoples, even if that were possible,\(^3\) so they will put up with quite a lot of behavior – violence or deprivation – that they don’t tolerate. Critics like Buchanan and Beitz find this offensive. Scanlon and Pogge more tolerantly warn that choosing what to put up with is often self-serving, not really a matter of prudence (Pogge 1992; Scanlon 1979).

As it happens, I think Rawls underestimates the amount of effort that would be required by justice tempered with prudence – our world is far too unjust, and even the most urgent cases are quite numerous.\(^4\) Scanlon, writing for the foreign

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\(^3\) Presumably a very altruistic liberal people could democratically agree to devote most of its effort to foreign aid, but Rawls doesn’t bother to consider this unlikely case.

\(^4\) I also think Rawls is too quick to dismiss chronic suffering as eliminable through just institutions alone, and that the law of peoples would prescribe more help than he believes it does. Buchanan’s
policy community, seemed implicitly to acknowledge that the problem was to decide how best to help out in at least some important cases and how to avoid choosing the wrong ones. Because Rawls claims to offer The Law of Peoples, he seems obliged to be more comprehensive. Unfortunately, he is not specific enough that one can say to what degree the charge that he ignores too much is relevant.

Rawls is specific enough that we can be certain of how he relates self-determination within and tolerance of decent societies. Soper’s argument helps us to see why extremely limited rights of expression in a society that wants to respect and represent even the least powerful citizens can lead to the kinds of participation and institutional changes that constitute self-determination. This is important because it allows a relatively un-free society the possibility of liberalization, and because it describes how contemporary constitutional democracies managed to get as far as they have without the help of a pre-existing just society to help. It gives Rawls, and his readers, cause for optimism. It also gives consolation for restraint: even if foreigners fail to help out, it doesn’t take much freedom for some individuals or groups to begin to improve the political situation within their own society.

Buchanan thinks Rawlsian human rights are “lean,” and Rawls relies on Soper’s argument, with its even leaner list, which makes Buchanan’s charge more plausible. However, Soper’s minimal list of rights needed to derive obedience to the law should not be confused with Rawls’ description of basic human rights, and his insistence that this list of basic rights covers only some of the rights any decent society will grant. Basic human rights are necessary but not sufficient for decency (Rawls 1999, §10.2, p.80); Rawls thinks there might be many possible bundles of additional rights that together would enable decency but that can’t be specified apart from their bundles and out of the context of specific institutions. This makes for some confusion, since the argument for tolerating decent societies necessarily focuses on the basic rights. In his description of Kazanistan, a fictional decent

objection is obviously related to my own, meaning I clearly believe that when his mistaken reading is corrected, there will be plenty of room for him to press his further claims.
consultation hierarchy, he illustrates one possible more expansive set of rights, freedoms and opportunities.

In a decent society, members think of themselves and each other as decent, responsible and rational, and they view their system of laws as legitimate and obligating. The officials who administer the laws sincerely and not unreasonably believe it is in accord with an idea of justice that takes everyone’s fundamental interest in justice (as they see it) into account. Members of the society have the right of dissent and the administrators have to give sincere, Soperian answers to dissenters. All members are treated as morally aware. (§8.2-8.3, pp. 64-68)

Everyone is seen as having a role to play in society as members of some distinct group. They are represented in the government as members of that group, and consulted, albeit not as equals. They have rights of dissent, and must be treated respectfully by the officials (§9.1, pp. 71-72).

Consider an example of an idealized apartheid-era South Africa. 35 Imagine it assigns every individual to a “race,” forbids intermarriage or socializing, encourages companies to limit jobs to certain groups and segregates residences and schools. However, it has an elected legislature with has one chamber for each race, each with distinct, non-trivial responsibilities for the whole, and for purposes of argument let us suppose that all this happens with relative peace, without human rights abuses, and with most people of all groups in agreement that the administrators of the system seems genuinely respectful though not equal. Would this be a decent consultation hierarchy?

Buchanan seems to think it would, to the detriment of the theory. Rawls would not think this decent, as evidenced by the following quotation:

Nor may a people protest their condemnation by the world society when their domestic institutions violate human rights, or limit the rights of minorities living among them. A people’s right to independence and self-determination is no shield from that condemnation, nor even from coercive intervention by other peoples in grave cases. (§4.2,p.38, emphasis added)

35 I find this example offensive, but that is the point – apartheid cannot be sanitized enough to render it acceptable to Rawls (or me). It was chosen because Soper also used South Africa, as discussed on page 54 above.
Possibly if the restrictions were very minor, limiting only applicants for some ceremonial roles, and if no one group were overwhelmingly better off than the rest, Rawls would consider it decent (but then it would be Kazanistan, not South Africa). Laws prohibiting socialization among groups of people violates at least the spirit of what Rawls thinks are the basic human rights, which is what I assume he means by “limit the rights of minorities.” But perhaps if intermarriage were not prohibited, though spouses were reclassified into the less-favored group, losing of power and privilege, the society might possibly be decent, though still more restrictive of individuals than Kazanistan as described.

The key feature for Rawls seems to be that individuals have substantial ability to choose their own reasonable (or decent) ways of life. Though some choices may limit one’s future options, outright punishment or extreme limits would be insufficiently respectful of the disfavored group, and of social dissenters from any group. Rawls thinks societies that allow much, though unequal freedom of conscience are “not unreasonable” (§9.2, p.74). In a liberal society public arguments cannot rely on religious or other premises because they are not part of the legitimate space of public reason (because one need not believe them in order to be a full equal citizen). In a decent society however, one can offer reasons of the form “[this will help maintain] a decent and rational Muslim people respecting the religious minorities within it” (§9.3, p.77).

Although members of other religions may not care about Muslim doctrines, they should be able to endorse the virtues of the decent, respectful and tolerant society to which they belong. This sort of society is self-determining not because all groups in the society think they have the best possible government. It is self-determining because it is responsive enough to all groups that they can use their legitimate influence to work entirely within the system towards greater equality or fewer restricted careers, or local autonomy. The absence of reformers cannot be due to threats or to lack of education or lack of opportunity to associate with others; if it were, then the society would not be decent. If there were active secession movements within a country, but they were ignored or mocked, then the society would not be offering the sort of sincere replies to dissent that decency requires.
And if the society is not decent, then it has no legitimate reason to resent outside interference. One way or the other, the reformers or separatists have a right to press their cases, within the society or with the aid of other peoples.

c. Decency, Self-Determination and Secession

Buchanan’s use of the term “self-determination” does not mean the same thing as Rawls’. While Rawls is concerned mostly with internal self-determination (effective citizen control of government), Buchanan is primarily concerned with external self-determination or “degree of autonomy vis à vis other peoples,” (Freeman 1996, p.748 referring to a distinction by; Cassese 1998). In some places (e.g. Buchanan 2000, p. 717; also Buchanan 1991b; Buchanan 1991a) he seems to mean that distinct ethnic, religious or other groups within a society have some right to limited autonomy or to secession more-or-less on demand, if their government meets certain criteria.

The theory of secession is an important but neglected element of the larger theory of opposition to political authority that includes the theories of revolution, of civil disobedience, and of emigration. The lack of a theory of secession is an especially serious defect for liberal theory... There is a moral right to secede, but it is a qualified right. Two of the chief qualifications are (a) that secession be consistent with the requirements of distributive justice as they apply to the resources the secessionists appropriate, and (b) that secession not deprive third parties (in particular the children and later descendants of the secessionists) of their fundamental rights and liberties. (Buchanan 1991b, p.342)

The future state must also be politically viable, so demands for secession need to have a territorial component, though territorial viability is not enough to justify the demand (p.328)

For Buchanan, demands for external self-determination – secession or autonomy – are illegitimate on their face unless significant internal self-determination is guaranteed. In fact, the criteria that legitimate a secession demand are very close to Rawls’ criteria for a decent society, for two reasons. First, Buchanan needs a way to decide when a “people” as a whole is making a demand, what he calls the problems of legitimate status and authentic voice (p.339-340).
Second, he does not want to legitimate demands for separate governments that would be abusive and unjust, to its own citizens, minority groups or foreigners. Serious injustice violates “one of the fundamental conditions of [a government’s] authority, including its control over territory, the requirement that it is to operate for mutual advantage,” (p.331). As in *The Law of Peoples*, the second point can work against either the existing state government or the proposed new one. That is, a demand to secede from an unjust government in order to form a good one is a valid demand, but the reverse is not.

The key difference is that Rawls does not think that any group of people has a prima facie right to self-government merely because it happens to want it. That would be quite disruptive, difficult to administer, and such a world would lack the peaceful continuity of responsibility for maintaining territory, public services and the like (Rawls 1999, §4.3, pp. 38-39). Rawls limits the right to secession, ruling out cases such as the U.S. Civil War where the Confederacy wanted to secede in order to continue slavery, a massive and clear violation of human rights. Groups have no right to make their own rules when those rules violate human rights (§4.2 p. 38 and p.38n45). A “people’s right to self-government” doesn’t mean it has the automatic right to exclude other people from participation, in order to form its own members-only state. It means that all of the members of the people have effective and substantial voice in whatever government under which they happen to live. In a liberal system it means they all have equal voice and impact, and in a decent system it means they all have a lot of impact.

They can use this influence to press their claims for autonomy, or even secession, although that may not be the best or agreed-upon solution. For example, rather than expand the authority of local governments, Kazanistan’s central government could instead be sensitive to local concerns expressed through the hierarchy, without weakening central control. Rawls does not see autonomy as an end in itself, or an unqualified political good. This is not simply because as a liberal he is not concerned with the collective good, for even among decent societies he does not think having its own government is necessarily better for every group. Rather, as he puts it, borders are always arbitrary, but the
government within each territory can be better and worse for its citizens and/or
cons titu tive associations. Self-government is no guarantee of justice, or decency,
so peoples need to offer specific reasons why, in each case, secession would be
the best thing. It would also need to offer reasons to the people who don’t secede
for abandoning the prior commitments, history, legacy of sharing economic
burdens and benefits. Presumably Rawls would agree with Buchanan and others
that the seceding society might need to compensate the society from which it
secedes for its investment and foregone revenues. Compensation can of course
require the opposite (Buchanan 1991b; Buchanan 1991a; Freeman 1996; Philpott
1995; Wellman 1995).

Because Rawls doesn’t describe the reasons peoples can use to press their
claims, and doesn’t seem to think some reasons are necessarily unanswerable,
Buchanan takes him to mean that it will be left to national power-politics to decide
on autonomy. That is simply wrong; if it were to be decided by power politics, that
alone would mean Rawls would consider it a matter of international concern.
Instead, Rawls considers secession to be a matter of proper politics, where both
sides must offer reasons that express concern for all involved, that are not
paternal, that violate no human rights, that do not conflict with sustainable
practices, and so forth. In this he agrees with Wellman, who says that peoples
have a primary right not to be treated unjustly, a secondary right to compensation
for past wrongs, and only a tertiary right to some political reorganization (e.g.
secession or devolution) if the first two are violated (Wellman 1995, p.148).

What of the sort of case that troubles Buchanan, such as a nonliberal group
demanding limited autonomy within a liberal state – including the “right” not to
educate girls, or not to teach evolution in schools, or to enforce dress codes, tithing
and so forth? Rawls tells us little about these cases in the new book; however, he
has given us guidelines for strategies of managing pluralism peacefully within a
liberal democracy, in A Theory of Justice and Political Liberalism. Depending on
the specific illiberal practices planned, he would object relatively more or less, so
schemes that promote the oppression or abuse of women are not acceptable
(Rawls 1999, §9.2, p.75). That seems to rule out refusing to educate them, though the case of dress codes is less clear.

Rawls also says nothing in general about the case of one people trying to secede from a decent people to institute its own liberal or decent government. We can infer, perhaps, from the requirement of sincere respect for all members, that a well-ordered people owes its members reasons for not allowing secession, and those reasons have to have the benefit of everyone, including the would-be noncitizens, as a goal. It’s not that Rawls thinks these are not matters about which other peoples should be concerned, rather, if the government is liberal or decent, and the secessionists also want liberal or decent institutions, the debate should be peaceful and respectful, and for this reason other peoples need not interfere. If the debate turns violent or repressive, of course, then the troubled people would no longer obviously be decent, and all bets are off.\textsuperscript{36}

\textbf{D. Conclusion: Basic Human Rights and Liberal Concern}

It is not that equal civil and political rights are not important, or that he thinks it fine that people in other societies lack these rights. They remain essential to justice. The problem is that a just state cannot simply impose reforms on another country and expect gratitude or stability. Resentment is more likely, and even without it, we should expect the other people to take a cargo cult approach to justice, reflecting that the values of equal respect and liberties have not really been incorporated.

The idea that liberalism imposed from outside tends to fail or insult is not new. Rawls’ prescription is that a liberal society can impose some demands on another country that will enable its citizens to explore, come to value, and establish their own well-ordered institutions. That is, by limiting the harms people suffer before reforms are enacted, we meet the most urgent requirements to protect

\textsuperscript{36} What about a case like ETA (Basque separatist movement in Spain), where there is a violent movement to secede from a peaceful constitutional democracy? Does the violence of the rebels make the polity at large badly-ordered? I doubt it, and suspect Rawls would consider such terrorism merely criminal, not especially international, but I am not sure. It might be that the international community would have an obligation to verify that the government is sincerely respecting the groups that the rebels claim to represent.
human rights. By encouraging the other country’s citizens to craft well-ordered institutions for themselves, we foster the sense that those institutions belong to those citizens, and are appropriate venues for addressing political questions peacefully and fairly. The lovely thing about limiting the initial demands to basic human rights is that decent societies can value the same set of rights, and help to promote them in badly-ordered societies.

Just and decent societies value basic human rights for similar reasons, though with different beliefs about human social possibilities. Liberals believe that equality of rights, respect and access is important because inequalities tend to expand and lead to exploitation of the less powerful citizens. They also often believe that unequal treatment leads to individual feelings of unworthiness, and other psychosocial harms. Thus, liberals should be profoundly skeptical that a decent society could exist for long. A respectful hierarchical society would either become exploitative, or it would liberalize. Rawls hints at this attitude in several places (§7.3, p.61; §10.1, p. 78-9; §17.1, p. 121-2), and his liberal critics express such skepticism more strongly.37

Decent countries on the other hand (should they exist) may well believe that basic human rights enable citizens to discover for themselves which shared social value or comprehensive doctrine adds meaning to their members’ lives, more than would liberal values. They think that collective self-determination can lead to something better than a Rawlsian polity. Basic human rights are critical because they enable self-determination, just as in a liberal society, and because they spare human beings some especially awful experiences. For all well-ordered societies, it is more important that others be liberal-or-decent than that the outcome of their deliberations be either liberal or decent.

The key is that since they can both agree on the value of self-determination understood as citizen control of government, and can recognize each other as self-determining, though they disagree about shared comprehensive doctrines, the theorist need not argue about the likely outcome of decent-but-illiberal institutions.

37 But if true, this doesn't mean that Rawls should eliminate the category of decent societies, it would simply mean that the category would be empty.
If domestic inequalities have unjust consequences for members of a decent society, then it is bound by its own understandings to liberalize, without outside help or coercion. If the consequences are all benign, then other, liberal societies would discover they have nothing to complain about, since the illiberality somehow isn’t causing harms. Either way, they need not interfere, and in fact, need not be more than idly concerned. This theoretical reassurance supplements pragmatic concerns of risking international instability, or worrying about more pressing problems such as outlaw or burdened societies.

Rawls’ inattention to full liberal citizenship rights in *The Law of Peoples* is not due to lack of concern, but to a quiet confidence that they will emerge naturally from the basic rights he does discuss, given what he knows about human social organizations.
III. Limits to Foreign Aid

A. Introduction: the Duty of Assistance to the Burdened

In the previous chapter, I argued that if a liberal’s ultimate concern is that everyone have a fair opportunity to participate meaningfully in political and public life, and if there is to be more than one well-ordered society, then liberals ought to ensure that each country is properly self-determining.

First, so that no human being should suffer undue harms, there is a universal obligation to guarantee basic human rights of subsistence and security. Second, because everyone ought to be a full member of some self-determining polity, just societies are obliged both to help ensure that all countries become liberal or decent, and not to interfere in the politics of decent societies. It is important to have substantial representation, participation and accountability. Third, concern for everyone’s well-being beyond what is required by human right and self-determination, is the business of each well-ordered society to address for itself.

What this means, however, is that a kind of particularism (different obligations within a well-ordered society than between countries) follows from cosmopolitan premises of universal human respect and equal dignity. Within a just society, these obligations lead to very specific concerns for equality of resources; a way to ensure equal standing and respect. It is not obvious that there is no such concern between countries, or between people in different countries, or indeed, that something as morally arbitrary as place of birth could justify vast inequalities anywhere. There have been a great many unconvincing attempts to limit international obligations, and it is only with great reluctance – and important differences – that I join their ranks. Limits arise from respect for the difficulty of the task and recognition of the many ways in which countries are tempted to grab power.

In this chapter, I discuss how we should treat countries that have inept or corrupt governments, with contradictory laws enforced inconsistently. In such countries the burdens of misrule fall disproportionately on the poor, who may be
shockingly, desperately poor. Even if one believes that a country’s basic problem is political, corrupt government’s main consequence is often poverty severe enough to keep much of the population from participating in political reform.

What John Rawls calls ‘burdened societies’ are those that lack good government, honest and efficient institutions, or both. Such societies need political help to become well-ordered, and may be more or less eager to have such assistance. They may or may not be able to assure their members the minimum of food, water and shelter to which they have a basic human right. Other countries must offer material aid as needed to meet the minimum, but this duty of assistance is the only redistributive obligation that applies to all societies at all times (Rawls 1999). Why is material assistance to foreigners so sharply limited, when even Rawls acknowledges that there is a large gap between what is required as a human right and the amount that a person typically needs in order to live a decent life?

We can distinguish two major views in the literature, with liberals in each. All liberals take the ultimate goal of justice to be something like “enabling a universal human capacity to live a life with dignity, autonomy or other human flourishing.” In one view, the work of justice is to specify forms of collective self-government and self-sufficiency, which, if done well, enables individuals to work on ultimate ends of their own choosing. This requires careful attention to political arrangements and legitimate subjects of public policy. The second view believes that self-determination is an important part of justice, but not the whole. Their goal is met by enhancing the well-being of all individuals, typically by allocating resources and opportunities.

This disagreement — whether self-determination or resource allocation — is more than a disagreement about tactics, but less than a major philosophical divide. *The Law of Peoples* takes the first approach, and I defend a rather modified version of that view here.

The distinction is similar, but not identical, to the distinction between cosmopolitan and particularist views of international justice. Cosmopolitans believe that justice is a subject for the whole world, because liberal theory takes as its
subjects individual human beings, not groups based on historically contingent and contested boundaries between countries, dialects or races. If justice requires attention to inequalities of resources, opportunities or outcomes, then that requirement would seem to apply among all humans irrespective of citizenship. If it requires attention to political organization, fair mechanisms of accountability and public deliberation, then these issues are relevant for everyone everywhere. Although this doesn’t mean there is only one right answer, or that there ought to be one world government, it does mean that just countries can’t depend upon, or be indifferent to, injustice elsewhere (Shue 1980; Pogge 2001a; Pogge 2001c; Pogge 1992; Pogge 2002; O’Neill 1993; Nussbaum forthcoming/2001/2002; Nussbaum 2001; Nussbaum 2000b; Nussbaum 1999; Nussbaum 1997; Cohen 1993; Caney 2001b; Caney 2001a; Beitz 1979a; Beitz 1979b; Beitz 2001; Barry 1989; Buchanan 2000; Buchanan 1991a; Waldron 2000).

Particularists instead believe that there can be special obligations to compatriots in addition to, or perhaps sometimes trumping, universal obligations. One’s own government is not simply the local administrator of a scheme of global justice, but something more meaningful. Various meaningful elements have been suggested, including: genetics or culture as a source of identity, the nation as a source of individual benefit needing repayment, a social network of favors and obligations, and the like. (Kymlicka and Norman 1994; Kymlicka 1995; Taylor 1995c; Taylor 1995a; Taylor 1995b; Walzer 1994; Walzer 1997; Miller 1988; O'Neill 1988; Shue 1988; Goodin 1988; Miller 1998; Nathanson 1988).

There is a lot of overlap between the two classification schemes. Some prominent cosmopolitans also think the focus of global justice should be the extraordinary economic injustices of the real world, enormous inequalities within and between countries. Democratization alone does not end chronic hunger or mass migration, and the scale of the problems demands direct attention (e.g. Barry, Beitz, Nussbaum, Pogge). In reply, particularists have noted reasons for thinking that one should first eliminate poverty locally, in one’s own country, before looking abroad, either on efficiency grounds or in virtue of obligations created by a shared government, history and culture (Goodin, D. Miller, R. Miller, Walzer).
However, the cosmopolitan/particularist distinction does not quite capture the approach taken in *The Law of Peoples*, nor the peculiar fight Rawls picks in §16.2 with the redistributive schemes of Beitz (and more equivocally, with Pogge’s).

A more useful contrast is between theories of *limited* obligations abroad and theories of *unlimited* obligations. Rawls agrees with the cosmopolitans that shared institutions, and the need for governing them consistently, can ground obligations to the other people compelled to use those institutions. However, Rawls doesn’t agree that the global network of trade and commerce imposes this kind of compulsion, because it impacts individuals indirectly, mediated by their own national government, banks and markets.\(^3\) International obligations are thus limited.

Each country ought to be well-ordered, and each one should help the others become so, says Rawls. That means just societies are obliged to guarantee the basic human rights of people everywhere, including active intervention to provide subsistence and security\(^3\) for people who are starving, homeless or under threat. But this obligation will be met when all countries have just-or-decent governments that are (by definition) able to (and do) guarantee the basic rights of all of their population. At that point, citizens of each country will be able to engage in common domestic projects to allocate wealth and resources as they consider fair.

Well-ordered countries are not allowed to take economic advantage of each other, and they cannot rely on another country’s lax regulation for their own profit.

\(^3\) In making this sharp distinction, he ignores some ways in which international or transnational factors affect individuals directly. I suspect that he would justify this by saying that a just society is accountable enough, and has enough active participation that each government would have to mediate between its citizens and institutions like the World Bank, transnational employers or the International Criminal Court (i.e. only badly-ordered governments leave their citizens vulnerable to direct impact). Because I find this disappointingly circular, however, I endorse a modified position: to the extent that countries mediate between their members and the wider world, then it is appropriate for relevant decisions to be made at the country-wide level; to the extent that a decision affects the wider world, it must be made globally. Viewed in this way, Rawls and I disagree about what facts would obtain in a just world, but not so much about the consequences of those facts. In the next chapter I argue against Rawls, that some matters will necessarily require international cooperation, and that this is not as destructive of the autonomy of well-ordered societies as he fears.

\(^3\) The phrase ‘subsistence and security’ encompasses the material needed to survive (food, water, shelter, basic hygiene) and security against physical and psychological violence. The latter include more than guarantees that officials won’t inflict harm, government and (its foreign assistants) must also provide some positive protections against private-sector violence.
Under these conditions, Rawls asserts, there will be no desperately poor people in any countries, nor will any countries be unable to sustain their populations. There will thus be no need for ongoing redistribution of resources or money, and no obligations to do so, outside of what countries choose for themselves through fair markets. International obligations are thus limited. Within a country, under a shared collective government, obligations are more demanding. For example, Rawls’ Difference Principle is an unlimited obligation, in the sense that no matter how wealthy the least-well-off become, wealth inequalities are only justified when they lead to the maximum benefit for the least-well-off members of the society. The principle is justified by the requirements of participating actively, as an equal, in ongoing political and other public projects.

Individuals in different countries rarely work together in the way that fellow-citizens do in a Rawlsian democracy. (That is, it is not inconsistent with *A Theory of Justice* that countries could work together internationally as citizens do domestically, but Rawls rejects the possibility.) If countries are autonomous in this way – constrained by each other, but not collaborating closely – then limited obligations give each well-ordered society scope for collective self-determination. His scheme allows these obligations to result in great disparities among countries.

What precisely distinguishes limited from unlimited obligations? Within a just-or-decent country, people must be concerned with relative well-being – whether they have equal opportunities, rights and respect compared with their fellow-citizens, and what considerations might justify inequalities within their system. Because people are actively involved in self-government, they are concerned both with things that allow them to participate effectively, and with the subjects (and outcomes) of those collectively-made policies.

The role of a theory of justice (or decency) is to define the enabling conditions and other parameters within which governments can work together indefinitely. That is, the enabling conditions are limited – the limit is the point at which justice is enabled. Justice (or decency) itself requires attention to the actual deliberations and decisions, and is an ongoing concern – unlimited in time and subject. There are good reasons to leave such attention to the members of the
society itself: they are stakeholders, with local knowledge, members (at least residents) are most directly affected by the policies made and rejected; this is the subject of section III.B below of this chapter.

Figure III.1: Foreign obligations can be modeled as (1) limited or (2) unlimited, depending on the tightness of the feedback loop and clarity of the goal. In diagram (1), other societies provide for the basic needs of a country’s citizens directly, and measures whether they have been met, at which point such material aid can cease. The ultimate goal of foreign aid is the society’s self-determination, not everyone’s well-being; self-determination can be achieved long before individual well-being is sated (if it is even satiable). In (2), other societies provide undifferentiated primary goods (like money), which are used both to meet basic needs, and to acquire other components of individual well-being, the ultimate goal of justice in this view. Other countries cannot limit the society’s use of aid to meeting basic needs (e.g. can’t prevent diversion of funds from the neediest). One cannot easily tell when help is no longer needed, because well-being is much less satiable than self-determination. Model (1) is more targeted than (2) in that the information it collects about basic needs and self-determination is more directly linked to the aid it provides.
Figure III.1 includes diagrams of a limited and an unlimited model of international obligations; the first illustrates the one argued for in this dissertation, and the second is the ‘cosmopolitan’ model that Rawls argues against in §16.2. The goals of the first are self-determination and self-sufficiency, which are the political and material enabling conditions under which a society is well-ordered. At that point, the pump of justice is primed and ready to function on its own. In contrast, the goal of the unlimited model is the well-being of all people in the society in question. An advocate of this scheme is not content with merely priming the pump of justice, he wants to ensure that it is functioning properly, over the right subjects, and having no adverse unintended consequences. He might reason that justice isn’t simply about doing things in the right way, but in following through to the ends. The advocate of limited obligations argues that if justice abroad needs to be micromanaged, it isn’t really justice, and it isn’t really foreign; that much attention would be government from afar, not assistance.

To limit aid successfully, one should set specific goals of aid (more specific than ‘self-determination’) in order to measure progress toward those goals, and to determine when aid should cease. This is both symbolic (to demonstrate the difference between aid and empire) and practical (to help monitor progress and/or change policy to make it more effective). Limiting aid is not meant to change the ultimate goal; namely, self-sufficiency and self-government. Call these specific goals of aid ‘targets’ to distinguish them from the ultimate goals of the obligation of justice.

The choice of target helps determine how feasibly a model has been limited, as can also be seen in Figure 1. In the first model, outside help is given by other countries to meet people’s basic material needs until the recipient is self-sustaining. Starvation, exposure, and fear of these leave people vulnerable to further abuse and disease, and often forces unsustainable behavior in order for them to survive (for example, eating what should be seed for the next year’s crops). Primary goods like money can be used to meet basic needs, but also for other, less-urgent elements of well-being. Well-being more generally, and the capacity to make decisions about one’s own well-being are key elements of a well-
ordered political system, one I call properly self-determining. Unfortunately, in the real world we frequently fail to meet some people's basic needs even if some others happen to enjoy supplemental benefits. If this is unjust and indecent, and if it is the temporary responsibility of other countries to make up the shortfall, then it will help to redefine the target in such a way that allows the troubled society to meet basic needs with little diverted.

In the second model, other countries give primary goods like money. These can be used for basic needs and for supplemental well-being. Because the ultimate goal of justice in model (2) is well-being, however, one cannot claim that money spent on general well-being is being diverted; one would have to give basic needs priority. A model (2) theory offers no mechanism for limiting the amount of resources the outside country devotes to its foreign affairs. Even if it only wants to meet basic needs, the form of such aid – money – is too fungible to be targeted so closely. Some aid will be diverted at all levels, from the family that buys a luxury while their food supply remains insecure, to the official who takes a bribe before distributing the aid. Second-guessing such choices is both impractical and offensively intrusive. As long as some basic needs remain unmet, more primary goods are required, even if it is increasingly unlikely that the new cash would be spent on subsistence for the increasingly rare person in need.

In the first model, however, the outside country tries to give less fungible means of meeting people's basic needs themselves – food and seeds, water and purification plants, legal and technical assistance, etc. This has two benefits: it is less easily diverted, by definition, and the needs being monitored are directly alleviated by the goods provided. Visually, the feedback loop of information is shorter, directly relevant to supply of the right good, and thus adjacent to it. The loop in the second is longer, with alternative paths for the money that do not feed back. Basic needs are satiable, while well-being more generally is probably not.

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40 There is a large literature discussing both the informational requirements of any scheme to redistribute resources extensively in the name of individual well-being. Such requirements are typically both impossible (knowing everyone's true and complete preferences) and disrespectfully intrusive. (Julius 2003; Anderson 1999; Blake 2001; Scheffler 2003; Wolff 1998).
Model one is thus both *limited* and has clear *targets*, while model two is neither. Rawls speaks approvingly of both limits and targets, but his own view is that money is a suitable form of foreign aid. In this chapter, I argue that this is not enough – a scheme that is properly limited must also give aid in less easily diverted forms. It seems contradictory at first that in order to limit one’s foreign aid one must be more involved in distributing the aid. To understand the reasons for this, we must move beyond the diagram.

In section III.B.3 of this chapter, I discuss two reasons for limiting the obligation of international redistribution. Although it is materially limited, it seems to make substantial demands of time and effort. This is an illusion, an erroneous way of drawing on real-world experience. Money is fungible, but only when there are reasonably well-functioning markets, where government reliably enforces contracts, and where the necessary goods are actually available. These are components of well-ordering, and they underlie the view that burdened societies need assistance to reform politically more than they need primary goods. But until institutions work well enough, money alone is insufficient; other countries have to bring their own organization, and enforce honest and competent administration of programs to meet basic needs. In section III.C, I show that most of the basic human needs have fairly specific natural targets. This means the informational requirements of meeting the targets will not be as intrusive or comprehensive as those required when giving only money.

**B. Limits Are Important**

Burdened societies lack both decent government, and well-ordered, well-functioning institutions; without them, their citizens may not be able to live decent lives. Even if everyone in such countries is wealthy, their use of that wealth within their borders may be limited by law or custom. Real countries of interest, however, have large segments of their populations living in dire poverty, hunger, ignorance and disease. In this chapter, then, I focus on obligations the well-ordered have to countries that are both burdened and poor, including countries where poverty is
more a matter of distribution than barrenness. These countries invoke both parts of
the duty of assistance—political reforms and poverty relief.41

Rawls argues that the material part of the duty of assistance should be
limited, that its role is primarily to guarantee to all the means of staying alive, so
that people can put some effort into something other than their survival. Its
secondary role is to enable everyone to participate in reforming their society,
without fear for their lives or families. The international community is to give the
burdened society the tools to reform itself, but is not to fix things from outside
(§15.2 p.106-107).

Note two things about this: first, the limit to aid, namely that point where
individuals can participate without risking their lives or health. This takes a limited
amount of food, clean water, shelter, sanitation and basic security rights. These are
easy to describe and feasible to provide, even from abroad. Second, the limited
duty is not a scheme for ongoing redistribution between countries, and arguments
for duty of assistance, which is about political enabling, would not justify anything
like a global difference principle.42 Such an argument would look to the ‘global
basic structure’ (GBS) within which economic, social and political interactions occur
and are regulated; this not the domain of the duty of assistance.

As a separate matter, Rawls asserts that there is no GBS comprehensive
enough to justify any unlimited redistribution among countries, and that this is
good. Many disagree descriptively, pointing to the ubiquity of global trade and
investment, transnational corporations, and dependence on foreign goods and
services as evidence of a coercive structure that should be made just. For
example, Buchanan argues that states would need both economic self-sufficiency
and distributional autonomy (the ability to set economic policy without e.g. capital

41 The discussion here does not include outlaw nations, which threaten other countries and/or their
own citizens, and actively resist reforms.
42 In the domestic case, political enabling is the role of the basic liberties, and of fair equality of
opportunity, and both of these have priority over the Difference Principle. That is not because the
Difference Principle is not a central pillar of Rawls’ just society, but because it has a different
justification, and one that relies in part on people already having extensive basic liberties, while the
reverse is not true. It is reasonable to expect that in the international arena, enabling political
participation would also have a simpler justifying argument than would redistribution. Rawls’
rejection of any such arguments is a different matter, and considerably less well defended.
flight) to be said to determine economic policies for themselves, and especially poor countries lack one or both (Buchanan 2000).43

I disagree normatively, whether or not the web of international trade is already restrictive enough to require ongoing redistribution among countries.44 International institutions should be governed by participants, and through the process of regulation, they may collectively invoke some redistributive obligations among themselves. Collective self-government cannot be bypassed, it links interaction and obligation, and is that piece of a relationship that keeps transactions fair and peaceful. One can assert that by definition a just society always acts fairly abroad, but fairness is indeterminate among largely isolated states. They need a context of repeated interactions both to agree on a common idea of what constitutes fairness and to ascertain that the other countries are well-ordered based on their acting fairly. This is discussed at length in the next chapter.

Whatever the international constraints, there are good reasons to leave considerable scope for each country to act independently on matters whose stakeholders are all within the country; there is still room for a limited duty of assistance. With too much regulation from abroad, or from a transnational governing body, there would be nothing for the societies to determine for themselves. For a state to be nontrivially self-determining, the obligations it imposes on other countries must be limited.45

Interference can be engineered to end at the right moment if it has clear targets that can be seen to be met near the time they are actually met. If there is a close connection between well-ordered institutions and efficiency, then well-ordering makes a society able to meet its population’s basic needs, and it would

43 For a variety of good arguments, see also (Beitz 1979b; Beitz 2000; Brilmayer 2000; Caney 2002; Caney 2001b; Gosepath 2001; Mandle 2000; Nussbaum 2002b; Pogge 2002)
44 Buchanan, Beitz, Pogge and others are right, of course, that the constraints of international trade may show that some schemes, perhaps existing ones, themselves constitute unjust redistribution; whether or not any redistribution is required, unjust forms ought to end (Rawls says the same). My point is diagnostic, not prescriptive.
45 That is, even if there are some other obligations of material redistribution among countries, in virtue of some shared governing institutions, these obligations will also be limited, and closely linked to the issues that those institutions’ regulate. One could only derive an unlimited obligation, like Beitz’s global difference principle, if most collective self-determination occurred at the global level.
need no more from abroad. The targets of such aid may give individuals more than they strictly need. A target may be vague – justice can prescribe ‘adequate’ food or shelter in all cases, but leave it to locals to determine what that means in each instance. Similarly, a target may demand a lot from well-ordered societies; nonetheless, there is a material target if the amounts required are determined by basic human needs (and general facts about the world), regardless of how much more the well-ordered have for themselves.°

To approve of limited material obligations to other countries, one need not agree with Rawls that domestic political reforms are more important than the distributional ones; although I am inclined to think so,° good arguments exist on both sides of the question.

There are interesting implications of the idea that political reforms encourage limits to foreign aid, which I now explore. I will defend the notion of having clear limits to foreign aid, without committing myself to the specific target (subsistence) that Rawls chooses. In the section following this I explore what the targets of aid should be, and how we should approach the issue in practice.

In this section, I discuss two reasons for setting clear, feasible targets to material aid under the duty of assistance. One is to underscore the need for nonmaterial obligations of justice, because once people’s basic needs are met, without well-ordered institutions, people often cannot make effective use of primary goods, in three related ways, discussed in turn. The other reason to emphasize clear targets is to limit the amount of involvement in the affairs of another society, whose people are not represented in, and have no say in, the interfering society’s government and policymaking processes. First I give a brief description of which targets seem most plausible; their justification appears in section III.C.

° A targeted principle is a concern for absolute well-being, not well-being relative to others; it is about sufficiency, not equality, in the language of (Anderson 1999; Blake 2001; Julius 2003; Scheffler 2003; Wolff 1998).

°° I agree with Rawls and Cohen that as the amount available to the least well-off grows (relative to what they can do with their resources), further redistribution – equality for its own sake – becomes much less urgent, and less clearly valuable. Unless, of course, the gap between wealth and fabulous wealth causes political imbalance, or disrespect for the absolutely wealthy but relatively poor (Rawls 1999, §16.2, p.119; Cohen 2001, esp. p.370n10, 382-3)
1. Five Material Targets that Limit Foreign Obligations

We can specify some needs as general enough to apply to all humans in view of fairly objective facts. Certainly, people have erred in attempting this, incorrectly attributing all sorts of objectionable things to ‘humanity’ from a natural aristocracy to species-wide sinfulness, with appalling consequences. This history should make us cautious, but it is not reason to ignore general facts such as: all humans need to eat, drink, sleep and breathe in order to live, they can be killed or tortured rather easily, and the like. Although difficult to put into words precisely, these facts about humanity inform a set of basic human rights. In the previous chapter, I argued, following Rawls, that they can be described approximately as rights to subsistence and security, interpreted generously, rights against extreme and avoidable suffering.

Some of these rights cannot be assured with finite quantities of things: that people die cannot be postponed indefinitely. Deaths from specific causes, like murder, can be minimized, and can be expressed as a basic need for security, guaranteed collectively against those who would violate it. This, and others like it, are needs for basic political and civil rights, guaranteed ultimately by a well-ordered polity, though enforceable from abroad or by non-government actors (with difficulty) while reforms take place. The duty of assistance requires everyone to be guaranteed physical and mental security against violence, which means the state does not itself violate human rights, and that it enforces prohibitions against private violence, in families and communities.\(^{48}\)

Other basic rights can be assured with finite quantities of things that help people to avoid death and severe suffering (where possible). Call these basic (material) needs, and the things that they require basic goods. I suggest five obvious choices: food, clean water, shelter, education (books, teachers, schools, etc.) and health (sanitation, vaccines, medicines, nursing, etc.). There may be other basic goods, or it may help to decompose education or health into even more

\(^{48}\) The well-ordered state prevents private-sector violence even when it is used in defense of a political or cultural practice with some other value. This sets a floor to the ways in which a decent society can depart from justice while remaining well-ordered (as discussed in the previous chapter).
basic quantities. My selection follows human rights practice, and the lead of Henry Shue, who calls these subsistence rights “the most fundamental core of the so-called ‘economic rights,’” (Shue 1980, p.5); Rawls also bases his argument on Shue’s analysis. The specific selection is meant to get the discussion started, and I hope that a reader who disagrees with the details could agree with the general approach.

I am not suggesting that things like food should never be for sale, either where there are surpluses or as a means of feeding the hungry. The point of distinguishing basic goods is that to confuse giving the goods themselves with giving money leads us to overestimate the onerousness of the obligation, especially where markets for basic goods are unreliable.\(^4\) It also leads us to underestimate the persistence of official disorder, neglect and petty tyranny, that both retard government reforms and waste foreign aid.

It seems likely that the more that basic needs are met, the more we should expect money to be diverted; this is not a model that uses feedback loops to limit the obligations. If the obligation depends more closely on meeting basic needs, by forcing attention to distribution of the basic goods themselves, then the information on use determines what is still needed, a model with useful limits set by specific targets.

That is, if we think of aid as money, then it is hard to distinguish aid to the needy from distributive justice in general. But if there is a fairly bright line that distinguishes enough from excess, then there it is easy to distinguish aid to relieve need from redistribution for other reasons, say, to show equal respect. And if that bright line is not too close to bare subsistence, then it appears reasonable (neither miserly nor gratuitous). Combining this with a political justification of having some limits to aid, gives a reasonable specification of how to meet the duty of assistance; next I offer two justifications, the first can be understood in three overlapping ways.

Some difficult questions will remain for implementing such a program, which might

\(^{49}\) This is reminiscent of the argument in (Walzer 1983), although his was about distribution within a single society, not internationally. In this chapter I am arguing for provision of basic minimum amounts as an obligation, leaving the mechanism open, and allowing market sale of any surplus once everyone has a sufficient minimum.
in the end best be accomplished by giving cash or the needed goods themselves, but this will be an improvement on a model warped by intuitions of insatiability.

2. Need Nonmaterial Components of Justice and Well-Being

Material aid is limited, in part, to underscore the importance of the nonmaterial requirements of justice and well-being; they three important features. First, it simply cannot be true that people need distributive justice before they can secure political rights for themselves. That would fly in the face of human experience. It may be true, as Rawls argues repeatedly, that without distributive justice, a society would not be able to sustain the respect and self-respect needed for equal political liberties. That, however, is an argument about institutional stability, not their creation, which is at issue here. Distributive justice is usually thought to be something that people discuss, legislate and implement for themselves through their well-ordered institutions. It should be done quickly, of course, before economic inequalities corrupt the political process, but political justice is generally a precondition for the economic variety. If the political obligations to other countries are limited, then their economic components must also be limited: they are obligations to enable, not to constitute, justice.

Second, without well-ordered institutions (such as markets, or honest, representative government) some people are unable to make effective use of primary goods. Without rule of law – clear and consistent rules, reliably interpreted and enforced – even simple tasks like buying and selling land become very problematic. Corruption increases transaction costs, and makes outcomes uncertain. This invites private efforts (such as intimidation and bribery) to make them more predictable, which also makes them less fair and less flexible. Those of us who enjoy consistent rule-of-law may take it for granted, and assume that markets are all alike; instead they are often distorted and inefficient.

Third, Rawls is concerned with the independence and justice of societies because some very important components of individual well-being are unavoidably social and political. To function in a society one needs more than negative liberty
and a minimum wage. Some elements of individual well-being, like the abilities to be part of a family, to worship with others, or to be represented in government necessarily involve other people, not as instruments but as partners. To run a business, for example, requires some rights and privileges, material, opportunities, and good relationships with other people – suppliers, customers, partners and employees, as well as neighbors.

A person’s well-being depends on these relationships, which are largely contained and regulated within a single society. The international web of trade can influence or constrain these rules, perhaps dramatically, but it is usually mediated by local social institutions, formal and informal. The well-being of each person thus depends on the justice of their own institutions as well as their own material wealth.

I doubt that most people would dispute these points, but their importance is often minimized, and their implications lost to the debates on international obligations. Rawls himself only emphasizes the first. Accordingly, I will now discuss them in turn.

a. Political Justice Enables Economic

Rawls wants people to secure justice for themselves. Through collaboration they demonstrate their concern for each other and for their unique and valuable culture. Citizens want to be collectively autonomous; even decent societies, which do not give each person equal regard or power, must value each person’s non-negligible contribution to their common life, or else they are not decent (§7.3, p.61; §11.3, pp.84-5; §15.4, pp.111-2).

The aim of collective self-determination is to secure members’ well-being as they themselves understand it. To do this, its members need basic human rights, rule of law and mutual respect – the conditions of well-ordering. Well-being is far more expansive, and specific than mere well-ordering however. It includes the web

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50 Often these relationships are contained within a much smaller unit than a whole society, such as a village or city.
51 I understand decency to be a demanding standard, allowing far less subordination than many others believe, and defend this view in my dissertation (but not here).
of relationships within which individuals operate, the choices they make about where and how to live, which arts and industries to pursue, and other minutiae of life. Many cultural values cannot pass the test of well-ordering, but others will, and some of the failed ones might be revised. This cannot be done well from outside the society, it requires a familiarity with prior practices and beliefs.

In other words, other well-ordered societies should help a country become just or decent, at which point it can look after its members' well-being more effectively. Without justice (or decency), it is unlikely that a country could be appropriately concerned for its members' well-being. Outsiders might share a general concern for everyone's well-being, but they are unlikely to appreciate the details of what that means locally, especially if those details have not been explicitly worked out.

To believe otherwise, one must presume that local autonomy about these questions is neither necessary nor desirable. Rawls calls that a 'cosmopolitan' concern for individual well-being rather than the justice of societies (§16.3, pp.119-20), as in the second model from Figure III.1 (on page 88 above). It focuses on individual well-being because it under-rates the importance of local variation in values. Such straw-man cosmopolitans under-rate the importance of local variation in values: since liberal-democratic values are deemed universal, it must be easy to ensure them from abroad (§11, pp.82-5).52

**b. Use of Wealth Depends on Rule of Law**

In a well-ordered society, if Alice builds houses and Bob grows food, they take for granted that they can exchange houses for food, or sell both for money, so that they all have the amounts they need or want. They could also exchange their own goods for Carol's paintings or dinner at Dave's restaurant. Knowing this, we assume that assuring the basic necessities is a matter of giving everyone some amount of money, and letting all buy the things they need for themselves, in the ratios they choose. That is more efficient than central planning at addressing small

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52 Of course, that does not follow, but none of the cosmopolitans against whom Rawls argues hold this.
variations in need and taste, and is more respectful because it gives individuals more control over intimate matters like food and living arrangements.

However, these exchanges can only happen in a functioning market, which is part of the institutional background of a society. They require some degree of well-functioning institutions, though not full well-ordering. There is no reason to presume they exist in a badly-ordered society, especially a burdened society, which by definition has incompetent (perhaps obsolete) or corrupt institutions.

In many real countries some basic transactions are difficult, expensive, unenforced, or forbidden to some groups of people.

In the Philippines, to formalize a squatter's house built on state-owned land can require 168 steps involving 53 public and private agencies and taking 13 to 25 years. In Egypt, to obtain permission to build a house on land zoned for agriculture takes six to 11 years. If you build first and then try to become legal, you risk having your home demolished and spending time in jail. In Malawi, the bureaucracy that administers property law is, in the words of an official report, "riddled with jurisdictional overlaps and internal conflicts", and "often the cause of delays, errors of judgment, lack of co-ordination, rampant corruption and dereliction of duty." (2001)

When people cannot rely on the government to defend their rights to property, there is little potential rent left in it. To realize any proceeds, some tropical residents must clear forests and otherwise destroy the sustainable value of their land (Mendelsohn 1994). When government does not enforce property laws consistently, as when officials are corrupt or unaccountable, people tend to sell or lease property only to family members (Gough 1998). Insecure property rights also discourage government investment and increase rent-seeking, further reducing the impact of money (Keefer and Knack 2002).

Access and rights to land determine to a large extent the availability of health care, roads, schools and other essential services, as well as access to certain jobs (Lalloo 1998). Even large sums of money wouldn't enable someone to get health care where none was available – at best money could enable one to

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53 Note the condition is consistent application of laws, not as demanding as fair application or fair laws. Burdened societies may fail even this weaker requirement for functioning markets.
move, but that is not the same thing. Purchasing power is also limited when goods like food cannot be transported easily, due to lack of roads and bridges (1998, §4.3).

Even where there is some government protection of markets, without basic literacy, a person cannot tell if the 'title' to the land he bought is real; without good record-keeping and government protection, it will be unenforceable and thus worthless either way (Bryant 1998). The local daily price of food sometimes rises along with its supply, so that the poorest remain unable to buy food even when there is plenty to spare. What they need is not money (from a one-time sale) so much as a steady income in order to keep pace with the spot market (Gaiha 1997). Without government enforcement of contracts, people will only sell things they can carry, in person, even if prices are better elsewhere (2001). And of course, laws (and privately-enforced customs) often simply forbid women and other disfavored groups from making contracts, owning land, working or traveling freely.

So having a surplus of some form of wealth - such as land, extra food, useful skills – often does not make people better able to meet their other needs, unless the government is looking after their interests and giving them effective civil law protection. Government must also not prevent people from meeting their own needs (Sen and Drèze 1989; Shue 1980). This has two implications: first, even for those with money and some political power, transactions are expensive and time-consuming in burdened societies. This encourages emigration and illegal shortcuts instead of political reforms. Economic interests would be well-served by political reforms, but empirically, are rarely enough to motivate those reforms. Rawls is

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54 An extraordinary sum of money might enable an individual to bypass the government and provide the public good privately – build a clinic and recruit doctors, for example. An extraordinary amount of persuasiveness and luck might even attract a foreign charity to provide it. However these are (1) not common, to say the least, and (2) not really examples of using a primary good to buy the different things that meet an individual's basic needs.

55 The very poorest are not able to use markets well, because hunger prevents their competing effectively, makes deferred income untenable, and keeps them vulnerable to price fluctuations. The World Food Programme does not advocate market-based food aid when markets are weak in these ways (1998, §4.1-§4.4).

56 Though there are some efforts at democratization (at the village level) as a means to poverty relief (Swamy 2001).
right to emphasize the nonmaterial ingredients needed for poverty relief, growth and prosperity.

Second, these structural problems make it much harder to meet the most basic needs of the very poor. Put another way, unless the society is well-ordered, there is no point in talking about ‘primary goods’ like money when the purpose is to meet everyone’s most basic needs, because absent well-ordering, basic needs cannot easily be exchanged one for another or for money. Where Alice cannot rent half of her house to buy food, a surplus of one necessity cannot help to satisfy a different basic need. We can compare them in conversation, but not trade them in practice.

Therefore, if we believe that everyone’s basic needs should be met as a matter of human rights, then we ought to focus our attention on each basic need itself (see subsection III.C.1 and III.C.2 below). Furthermore, if we want the convenience of giving money, then first we must ensure that they have effective good government to maintain the markets in which money is useful. Remember that when we speak of poor, badly-governed countries, what is often needed is not local currency but the currency of a stable, wealthy country backed by its government and private institutions. That is, even money is not always exchangeable for other money. The non-material components of individual well-being are critically important, much more so than mere money, at least once people have enough material to stay alive. This is the proper focus of a liberal society’s attention.

c. Individual Well-Being Requires Social Justice

This underscores another observation: Basic human needs are simultaneously social, political and material. That is what Rawls means when he says “What must be realized is that merely dispensing funds will not suffice to rectify basic political and social injustices (though money is often essential)” (§15.3, p.108-9). Money matters, but it requires a web of social and political institutions in order to function.
Similarly, shipping food or tents to a badly governed area will not help unless there is a network for distributing them, which can be imposed from without, but at great cost and not for long. Effective, local organizations are needed to alleviate the problems. In addition, it is not enough to have there be teachers, judges, firefighters and police, there must be the funds to pay them to do their jobs, and to monitor and ensure that they are doing their jobs properly (Nussbaum 2000a, p.192). Providers of social services also need training, and access to material resources – books, water, buildings – which may not be available in the local area at any price. And of course, material deprivation often follows specific political prohibitions, on growing certain crops, making items or living in an area; meeting those material needs mostly requires ending the penalties (Shue 1980; Sen and Drèze 1989; Sen 1981).

The three aspects of basic needs can be seen clearly in the plight of a poor woman. In order to provide for her family she needs to be able (physically/materially) to work, there must be a paying job available (social/civic), and other people must not prevent her from working or punish her for trying (legal/political). Omit any of these, and the problem – her inability to work – remains (Nussbaum 2000b; Nussbaum 1999; Nussbaum 1993).

Of course, if the society is well-ordered, then by definition there is protected access to work, an economy that provides jobs without exploitation, and some economic security for everyone. If these socioeconomic protections are substantial, then the society demonstrates at least a decent respect for all of its members. Even the poorest and least powerful have the tools needed to pursue any further redistribution through their own routine politics. At that point, it is no longer the business of people in other countries – further interference would actually reduce those citizens’ influence.

3. **Limit Involvement in Other People’s Affairs**

It is also important to limit foreign aid in order to limit each country’s involvement in other countries’ affairs. Foreign governments should be wary of
meddling in the affairs of another society, because it detracts from that society's autonomy.

The particularist literature includes different explanations for the permissibility of favoring compatriots over the rest of humanity. Some argue that obligations come from the mutual benefits that often, though not always, bind fellow citizens. Others argue that national borders provide useful ways to allocate general duties to take care of one another; when a country fails to care for some of its citizens, the general obligation reattaches to everyone else. Still others feel that as standards and prices, needs, desires and opportunities vary so much among countries (or at least between rich and poor), one owes fellow citizens at least budgetary priority over foreigners, although poverty relief (at home and abroad) in some form should take priority over other, optional uses of the money.\(^57\)

Michael Blake argues instead that for citizens to be obliged to obey the laws of their country, laws that are coercively enforced, those laws have to include a regime of distributive justice. Otherwise, they are a mere scheme of force, not obligation.

[I]ndividuals who share a legal system also share liability to a coercive legal system. The legal system is coercive, and thus stands in prima facie conflict with the liberal principle of autonomy. Since we cannot eliminate the state, given the (paradoxical) importance of government for the protection of autonomy, we seek a means by which the content of that legal system might be justified through hypothetical consent to all those who live lives the dimensions of which are defined within that legal system. The legal system coercively defines what resources flow to which activities; the latter fact seems to provide one relevant criterion on which consent might be given or withheld. (Blake 2001, p.281-2)

That is, besides prohibiting violent crime, every society needs a complex system of laws, standards and institutions under which individuals interact. These are legislated, somewhat arbitrarily from among what is permitted, but they are upheld by the state’s monopoly of legitimate coercive force. A detailed code of laws

\(^{57}\) These positions and others are discussed in an exchange on “duties beyond borders” in the July 1888 issue of *Ethics*, especially (Miller 1988; O'Neill 1988; Shue 1988; Goodin 1988). See also (Miller 1998; Nathanson 1988).
enables citizens to act autonomously with others, for individual and mutual benefit. That is, one justification for the system of laws is the distributive benefits of having it. But this means that it must offer benefits to all citizens in order to justify coercive enforcement against violators. It must do more than clarify and impose entitlements, it must first choose fair entitlements, the system of which no one should be able to reject on reasonable grounds.

In other words, a country is not (merely) free to give these benefits, it must give them in order to oblige citizens to obey its laws. International law does not need to meet these same criteria, however, because it does not directly oblige individuals in the same ways. International law regulates what nations may do, and to a much lesser extent, what international organizations and corporations may do. In virtue of this, restrictions on the content of international law concern its treatment of countries (and the protection of basic human rights, which is a universal obligation).

But if a self-governing population has to practice distributive justice in order to be well-ordered, then the contrapositive should also be true. Extensive redistribution (beyond basic needs) should only happen among people who participate in making the relevant laws. It is the familiar rallying cry: “No taxation without representation.”

That is, just country A could decide, democratically and unilaterally, to give some of its surplus wealth to the citizens of well-ordered country B, for some egalitarian reasons, though the B’s basic needs were met. Done once, it might be

58 David Held argues that increasingly often, international law does regulate individual behavior, and holds individuals to account regardless of countries’ protestations of sovereignty, for example through the International Criminal Court, various war crimes tribunals and the like. At the moment, the vast majority of human beings have no dealings with these bodies, and see no conflict between obeying the law of their state and international law (Held 1997; Held 2002a; Held 2002b).

59 Blake acknowledges that noncitizens - tourists, for example - are generally obliged to comply with a country’s laws, and that this obligation will have to be justified by something other than co-membership or reciprocity over long periods (Blake (forthcoming); Blake 2003). He gives no hint of what strategy to take, and thus allows the possibility that it would apply to citizens as well, removing the difference between redistribution among compatriots and foreigners. However, to take that seriously we would first need an argument to evaluate. It is clear though that his remarks on compatriots are not meant to exclude long-time residents, guest-workers and other categories countries develop to restrict benefits.

60 A similar point will also be raised in (Blake (forthcoming)).
harmless and appreciated. As a standing policy, however, the B's would want a say in how the amounts were determined. There are grounds (possibly not decisive) for thinking the B's have a right to participate in decisions related to their windfall, even if they had enough to be well-ordered were the aid suddenly to cease.

One of two things could happen. Either countries A and B would begin to coordinate their policies, allowing citizens of both to participate together on common questions like redistribution. The more extensive the economic coordination, the more decisionmaking should be shared. Rawls rules this out because, for independent reasons, he fears it would lead to tyrannical or ineffective world government.\(^{61}\)

Alternatively, country A might effectively have two classes of citizens: full citizens of A, who lived within A's borders, paid taxes, received services, and voted, and dependents who were full citizens of B, paid no taxes to A, and received one form of aid, but no other services. This seems more dangerous for A's democracy than the alternative. Granted, most B's would not be residents of A, and would not need, pay for or receive everyday services such as roads and police protection, but they would be sharing in a substantial benefit, coercively enforced at least against the taxpayers of A. The A's and B's have unequal duties, unequal benefits and unequal power over their policy, and it is a logical leap to claim that these inequalities necessarily balance. (With the right kind of international institutions, however, the inequalities might be made to balance.\(^{62}\))

This does not seem as bad as the more familiar case, where country A demands tribute from its subordinate B (a colony, protectorate, or perhaps an economic partner with little power to set fair terms of trade). We think that demanding redistribution from people who have neither voice nor vote in the policy

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61 I argue in the next chapter that he is too quick to dismiss the possibility for some shared governance in proportion to the ties among individuals across societies. He has a point, but full independence is not as critical as he thinks, nor are the alternatives as stark as he paints.
62 What if a wealthy country unilaterally imposed a tax on its international trade or currency flows (or some similar scheme), with the proceeds earmarked for the poorest countries? At first glance this would avoid the objection of creating two classes of citizens, since it is a tax imposed between citizens and foreigners, and can be thought of as not primarily on the citizen. Multilateral versions of these taxes are discussed in (Pogge 2002; Pogge 1992; Pogge 1994; Mandle 2000; Zanetti 2001).
is wrong. The wrongness does not lie in their being less wealthy (though that may also be wrong), but in their inability to participate in decisions that centrally affect both.

The wrongness is independent of the direction of cash flow, because redistribution is justified (or not) before we know whether A pays B. In the second original position, peoples do not know whether they are rich or poor, or whether their relative position changes over time. As we know they will reject any obligation that might require a burdened society to pay a well-ordered one, we know that there cannot be a general obligation of ongoing redistribution among countries. Political justice – as collective self-determination of policy – should not be sacrificed to economic egalitarian ends. This argument is not effective against all redistribution – that which is necessary to enable political justice (or at least decency) is in fact obliged, and that obligation is derived in the second original position (as is its limit, self-determination).

The problem is that for the A’s to effectively reduce inequalities between the two countries, they need intimate knowledge of B’s economic and political choices. The logistics would take much of A’s government’s time and effort, materially affecting citizens of both countries. Those citizens have a right to participate. They have reasonable interests even if the rational benefits of non-participation are significant. Extra money at the price of non-participation is a choice that well-ordered societies may not offer.

Some argue that, because redistribution requires detailed information about people’s preferences and abilities, it would be impermissibly intrusive to implement. My claim is more easily defended, namely, that measuring and rectifying the inequalities requires enough government involvement in individual lives that both recipients and donors have the right to participate in these decisions. For example, before citizens of B could be compensated for being less well-off in some way, some decisions would have to be made about the relevant way to quantify it, some agents assigned (hired, managed, paid) to make the measurements, collect the tax and hand out the compensation, with suitable safeguards on privacy and the like. This cannot happen by magic – it will take organized groups of people, working
under some rule of law, to implement any redistribution from individuals to individuals. Even in the simplest form, it will require enough human attention, with consequent potential for abuse or error, that one cannot claim that the citizens of B merely get a windfall, with no attendant rights. They are part of an administrative bureaucracy, and have rights of participation in the relevant decisions, which curbs the autonomy of each society. The trick is to do it in a way that enhances collective self-determination (perhaps of a different collective) rather than tyranny or balkanization.

C. What to Give Under the Duty of Assistance

In the previous section, I offered three different explanations of why an obligation to help other countries reform their governments is best understood to require limited material assistance. Foreign aid ought to have some clear targets, to assure some minimal level of individual well-being so that people can not merely survive, but manage their own affairs. Further redistribution requires common self-determination, so to the extent that countries are independent, aid under the duty of assistance has a finite objective. It is thus important to determine what that target should be, a matter to which I now turn.

In The Law of Peoples, Rawls describes the target of the duty of assistance as guaranteeing everyone’s basic human right to subsistence and security; everyone must have a secure supply of the things they need to stay alive and reasonably healthy, so that they can turn their attention to other matters. It would not be right to expect people to risk starvation or beating in order to interact with their fellow citizens, for example, to take a job, petition the government, or express an opinion, Following Shue’s lead, expressed in greater detail, in (Shue 1980). In

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63 One might even make the stronger claim, that if any redistribution is a matter of justice, then both donor and recipient, as well as their fellows, have to be parties to the discussions and authorize the implementation. Only in the case of charity, or other voluntary acts, might we say that recipients have no rights to participate. I am not making this case here, however.

64 That many people are prepared to risk death, eviction, starvation and other punishments for their efforts to reform their national government does not make it fair for other countries to require these sorts of sacrifices. These basic human rights delimit the political obligations of other societies. It is at once a demanding condition (considering the amount of such violence in the world), and a limited
view of the enormous problems of hunger and assault in the world, this is a very demanding standard. When compared to major theoretical alternatives to the law of peoples, however – a universal or inter-people difference principle, or universal equality of resources – guaranteed subsistence looks miserly.65

The target of aid needs to be at once feasible, without requiring unreasonable effort or resources from independent countries, and generous enough that the recipients have no cause to complain of the donors’ inhumanity. Whether the obligation seems plausible or offensive depends on whether this balance can be found; therefore we must explore the content of the duty of assistance in more detail than is offered in The Law of Peoples before we can assess its adequacy. In this section, I will offer a specification of the duty that does strike this balance; it is different from Rawls’ brief descriptions, but consistent with his demands. The difference is that, for the purpose of meeting basic needs, assistance cannot mean giving money either to the burdened society’s troubled government or to its individual members or families.

The emphasis in the duty of assistance is on political reforms because people need reliable, well-ordered background institutions in order to make effective use of primary goods. But if we give the needed goods themselves, they have different distributional properties than does money, often including a natural target that is more generous than bare subsistence, yet reasonable to require of others. First I give three reasons for disaggregating primary goods rather than considering their equivalent amount of money. I then discuss five such basic goods, food, water, shelter, education and health that are plausibly required under the duty of assistance. The latter two raise some difficulties, which I then address.

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65 One could argue that, in fact, Rawls sets a higher target than subsistence. Much more than subsistence is necessary for well-ordering, for example, and well-ordering leads to such greater efficiencies and profit that he clearly believes that subsistence plus well-ordering equals prosperity. However, it is more interesting to ask instead, what targets are required by justice, irrespective of his beliefs.
1. Why Not to Give Money

There are three reasons to think that the duty of assistance is not an obligation to give money to leaders of another country. First, as explained earlier, money is not useful when markets fail, contracts and property rights are unenforced, or goods are not available. Second, people with access to money in a badly-ordered country often use it to abuse others (not always maliciously), and just societies are meant to prevent such abuse, not facilitate it. Money also distorts the way people think about issues of right and need (e.g. when speaking of a ‘need’ for another’s subservience). This is especially troubling in a burdened society, where people are unaccustomed to well-ordering, and may not realize how damaging this can be to basic human rights and respect.

Third and most important, because money is a bad proxy for the things that meet people’s basic needs, the desire for and utility of money are very different from the desires for and utilities of goods like food, clean water, shelter, education and medicine. Specifically, the need for (e.g.) food is somewhat satiable, it has a target that is rather easy to determine; there is no such target for money, for it is too easily spent on other things. Our intuitions about feasibility and intrusiveness are based on the properties of money, which leads us astray. To determine the content of the duty of assistance, whose goal is that every person be able to participate in his or her own just or decent government, we need to consider each of the basic goods separately.

In the next three subsections, I briefly explore these three reasons; then I turn to the alternative understanding of the content of the duty of assistance.

a. Without Well-Ordering, Markets Fail the Poor

In section III.B.2.b above I offered evidence that markets often fail in burdened societies. Bad governments do not enforce contracts consistently, and create convoluted, unequal and expensive bureaucratic procedures that stymie what should be routine transactions, such as selling land, building a house, starting a small business. Food prices are set by artificially sustained monopolies, and illiteracy and corruption often mean that contracts themselves are worthless unless
backed by bribes and political power. Local currency may be untrustworthy, while use of foreign currency may be illegal. These problems are common.

Having useful skills or a surplus of land or food often does not make people better able to meet their other needs, unless the government is looking after their interests and giving them effective civil law protection. Unless a society is well-ordered, there is little point in talking about fungible “primary goods” like money in order to meet everyone’s most basic needs, because absent well-ordering, a surplus of one necessity may not help to satisfy a different basic need.

If we believe that everyone’s basic needs must be met by universal human right, then we must aim at meeting each basic need itself. If one prefers to give money for some reason, then first one must ensure that the needy have effective good government to maintain the markets in which money is useful.

b. Misuses of Money Retard Well-ordering

Money can also be misused, helping some people to abuse others’ human rights, or more insidiously, to encourage norms of behavior that work against well-ordering. There is an intuition that giving money to a poor nation would allow its government to meet its urgent needs with the greatest possible flexibility, enabling officials to take into account local complications and limit the inefficiency of foreign oversight. Unfortunately money’s flexibility means that it can be diverted for private gain, wasted on inefficient schemes, and used for purposes that are profoundly dehumanizing to at least some citizens, sometimes unintentionally. All of these make well-ordering less likely, not more so, and as such are not legitimate ways of meeting obligations under the duty of assistance. That will require the kind of foreign oversight that, though it has its own potential abuses, links countries in a way that would require some common governance if permanent; there are natural targets of such oversight that allow foreign influence to be temporary.

Some uses of money are incompatible with justice and decency. People can use money, or promises and threats of how they might, to acquire disproportionate political power; this can be legal, as when a business threatens to cut jobs unless government grants tax relief, or it can be illegal, as when an official is bribed.
(When discussing a burdened society there is no reason to think that what is legal is also right.) In addition to bribery, officials can steal funds (or goods), hire incompetents or otherwise render the collective use of foreign aid much less effective, for someone’s personal gain. These threaten the goal of reforming the society’s institutions; part of the process of giving foreign aid should reduce these threats. That is, even if aid comes in the form of cash, its use should be restricted, and monitored by the donor country. These are to act as a sort of political scaffolding, to help the burdened institutions act as if they were well-ordered, while safeguards are put in place.

Money can also be misused on a large scale to the detriment of political reforms, by popularizing norms of disrespect, sometimes unintended. This is especially harmful in burdened societies because their citizens may lack institutional mechanisms by which to challenge injustice for themselves. In a self-determining society, individuals can seek redress, participate in public discussions, and lobby peacefully for change. In a burdened society, with no public tradition of substantial respect for the disfavored, anything that encourages less respect for them also makes it that much harder to promote institutions that require more respect.

What uses of money might work against well-ordering? There are some things that we think should not be for sale. The canonical example is selling oneself into slavery, but individuals also should not sell their own or another’s: sexual services, blood, organs, gestational services, children, or votes, to name a few. Countries should not sell or mortgage: the capacity to grow enough food to feed the population, permanent rights to nonrenewable resources, important rights and liberties of some or all of the population, signatures on treaties, and the like.66

66 In the international arena there is an additional complication: who has the right to buy or sell in the name of the country as a whole? It has been proposed that the international community not recognize leaders of badly-ordered societies as legitimate agents. They would not be permitted to sell mineral rights or leases, for example, and once they were overthrown, the newly democratic country would not have to repay debts acquired by the previous illegitimate government (Kremer and Jayachandran 2002; Pogge 2000; Pogge 2001b). There are problems with this proposal, but the underlying issue is valid. However, I do not discuss it here.
Various reasons have been proposed for regulating, or blocking, such sales based on the damage they would cause to the society as a whole. One is the unacceptable consequences for democracy if some people are allowed to sell their votes, or sell themselves into slavery. Another is the impact on the environment if individuals (or by extension, countries) can sell their opposition to another’s pollution. That damage is real, but it fails to capture some important reasons why we think these transactions are wrong.

There is something wrong about slavery besides its consequences for democracy, namely, that slavery turns a human being – an important, moral equal – into a mere commodity, deprived of human, civil and political rights (Walzer 1983; Radin 1987; Andre 1992). Radin argues that using the language of the market inappropriately is “antagonistic to the interests of personhood,” (Radin, p.1879). It encourages comparison of the “benefit” to a rapist and the “cost” to the victim on the same scale, eliding matters of human right (Radin, p.1884); the same logic applies at a larger scale, e.g. over competing uses of land between groups of people.

Such dehumanization encourages the thought that one can be compensated for suffering, without changing the social or political environment that facilitates the original harm. It is not a coincidence that the corrupting effect of language works to the direct disadvantage of the already disadvantaged, rather, it is an attempt by those who have some power to change their country’s laws to rationalize not making the effort. The need for this cognitive dissonance increases as others’ suffering is recognized, i.e. as reforms toward well-ordering begin. It leads to strange inversions of ends and means – human beings become merely means towards the social end of material prosperity defined without reference to who prospers (Anand and Sen 1996, p.30). This is as much a problem between rich and poor countries as it is between rich and poor within a single country (Anderson 1999; Scheffler 2003).

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67 One could certainly distinguish many facets of dehumanization, but it is useful here to consider them together, whether one calls it dehumanization, commodification or objectification.
There is a pernicious interaction between the idea that some things should not be commodified and the fact that there are diminishing returns of happiness to increasing amounts of money. That is, thinking of the various harms to the poor and powerless in monetary terms also encourages the relatively more wealthy to imagine the harm they would suffer from a loss of the same amount of money, which is of course considerably less harm than the poor would suffer. This makes their problems seem even less important to those in more of a position to help them. Rawls has repeatedly argued against schemes that reduce all values to monetary values — it is one of his complaints against utilitarianism in *A Theory of Justice* and it is one of his complaints against cosmopolitan-egalitarians in *The Law of Peoples*. He must be quite sympathetic to the idea that excessive concern with monetary compensation — even for the best of motives — not only misses the point, but is profoundly disrespectful of persons and peoples, damaging to our non-monetary values.

**c. Bad Proxy leads to Bad Estimates**

So far, I have argued that basic needs cannot reliably be met with money alone; also needed is a host of organizational support to ensure the money is used appropriately. Well-ordered institutions are needed to ensure three things: that goods people need are available to everyone at sustainable prices; that things that should not be for sale (e.g. bodies, votes, policies) are not sold; and that the aid is used successfully, not stolen or wasted. Imported well-ordering is costly (perhaps dwarfing the money actually used on the other people’s basic needs). It is also comprehensive-enough authority that it too must be well-ordered, including both peoples in decisions about aid targets and alternatives. Cosmopolitans need to offer an argument for such links between peoples, with correspondingly limited autonomy, and cannot view foreign aid as a simple tax and transfer with little interference.  

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68 Possibly among well-ordered societies a simple flat tax and transfer, as Beitz and Pogge have suggested, would be possible, with minimal interference in what each society does with their net wealth. If they are well-ordered, however, then by Rawls' understanding, they don’t need the
In other words, by imagining foreign aid as a simple hand-over of money, we err in calculating the amounts required, because we use a bad model of the process of meeting needs. Sections III.B.2 and III.B.3 implied that this model underestimates the costs. Here I suggest that for the problem of meeting basic needs, money's properties lead to overestimating the cost of foreign aid, making any argument for limited aid appear miserly.¹ In our intuitions about what is likely or feasible become warped when we think of allocating fungible primary goods (as in the second model in Figure III.1, on page 88 above) rather than the specific things people need, like food and shelter (as in the first model). Estimates can be biased by these intuitions in either direction, because money and the things needed have different properties. Arguments premised on differing estimates settle nothing and irritate each other's proponents.

Money is (assumed to be) desired instrumentally, because it is widely fungible, completely alienable (bearing neither cachet nor taint from previous owners), desired insatiably and with diminishing returns of satisfaction as greater quantities are obtained. But of course, the things that meet basic needs lack some or all of these properties. The desires for food, clean water and medicine are satiable, as is shelter; the first two are desired partly instrumentally, because they meet basic needs, and partly for satisfaction in themselves. Shelter, water, sanitation may retain some qualities imparted by previous users that can be removed with different amounts of effort. Some public health needs (e.g. knowledge, medicines and vaccines) may not incur diminishing returns to scale, but instead often have a narrow range of effectiveness: too little medicine, or too few people vaccinated, and disease progresses with little change; once above some threshold there is little benefit in having more.

money, and this would be a fully voluntary scheme to link the fates of the various societies. It is not obvious that peoples would choose to link their fates - to insure against bad outcomes of autonomous choice of priorities - in this way, but not in a more substantive way, giving each voice in the others' decisions that influence their own welfare.

¹ In the end, giving money (and making sure it is used properly) may be the best way to meet people's basic needs, because the alternatives have other problems. However, using money as a 'black box' that predictably and efficiently allocates goods as needed, anywhere, distorts the analysis.
Joseph Raz asserts that basic human needs and "the ideals at the foundation of morality and politics are all diminishing and satiable principles," (Raz 1986, p.241). That is, the important things – basic liberties, lack of hunger and so on – happen to have the property that the amount people inherently need (which may vary from person to person within finite (and reasonable) limits), to meet a threshold of satisfaction, is easily specified and provided. Beyond basic needs, people may have less satiable desires for the same physical goods, for example, they may want extra water for fountains or industries, but it is easy to tell them apart. Raz distinguishes a count of pleasures from happiness as a state of being in a particular period of time, such that additional pleasurable events might be very nice, but would not make a person happier. Happiness is satiable, though pleasure is not; one can achieve happiness with a sufficient number of pleasures, just as one can assure against hunger with a sufficient quantity of food, without denying the common desire for better quality or different food.

There is no natural target for allocating a sum of money, in part because there is no basic need for money, and no way to assure that a sum of money is used only to meet basic needs. When allocating money, we impose a norm from outside, based on some idea of what might be fair. Equal shares is such an external principle, stemming from the thought that giving an arbitrary amount to a person doesn’t diminish their (theoretically unending) desire for more, though all realize there will be diminishing marginal returns to further amounts; equality maximizes total pleasure under some rough-and-ready, but artificial and abstract, principles of interpersonal comparison.

In contrast, we don’t have to impose an external norm of egalitarian distribution for the basic necessities, because bringing everyone to sufficiency

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Raz’ discussion appears to have a lot in common with Rawls’ approach. They are in agreement on the importance of thresholds, and Rawls’ dismissal of international material assistance beyond the threshold as misguided could be understood as accepting that the impact of more aid cannot coherently be measured or compared. I feel, although without specific evidence, that Raz’ argument is too abstract for Rawls’ taste, too reliant on a fortuitous and unexplained moral fact that fundamentals are all satiable or diminishing. Rawls goes to great pains to argue from, on the one hand, requirements of human reason and dignity, and on the other, historical evidence about actual societies. Raz’ alleged fact would require explanation, either in terms of human physiology and psychology, or else a detailed exploration of each of the moral fundamentals.
doesn’t require it in the way that dividing a sum of money would. Not all needs will require equal shares, but a satiable need will oblige a finite supply. An principle for distribution inherent in each basic good would be easier to explain and to accept than would an externally imposed norm, especially when the donor and recipient have different moral associations to equality. An intrinsic principle, if really intrinsic in a way obvious to people from different cultures will not be feared as a moral free-rider on an economic benefit.

But if the basic needs each have an inbuilt notion of what is enough for each person, and money does not, then when we try to imagine a plan to give everyone what they need by giving them money, then we incorrectly assume that those people will never be satisfied. Consider the distribution of food to a starving population. The worry is, although they might eat the first supplies of food in order to stay alive, the assumption that some will be tempted to sell the rest, and use the money for things that they don’t need. Then, of course, they would expect to be given more food for the next day, in a cycle of extortion. The solution seems to some to be to give people the bare minimum needed to keep them alive, and hope that this discourages them from selling it.

Unfortunately, this problem can only arise where there is a fairly reliable market for the food surplus, a market in which money would be generally useful; otherwise there would be no reason to prefer cash, holding food would be more secure (and producing food more secure still). And as noted earlier, markets may fail in a burdened society. The persistent problem of diverting humanitarian aid for profit typically occurs early in the distribution and transportation hierarchy, before most people have access to it; it is not usually a problem of individuals selling part of their personal supply. The black market for food is sustained because it is the

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71 There are a number of problems with the "worry model" which as with many worries, gains plausibility from lack of close examination. There is always some risk that a humanitarian will be somewhat exploited, but that need not void the obligation to give humanitarian aid (Singer 1972).

72 When this occurs, it is often the case that the family feeds the (valued) males and starves some females. Food aid can be given in such a way as to minimize these harms, including feeding the women and girls in public, offering extra amounts to the families of girls sent to schools, and so forth (___ 2002a). The point, though, is that it is not an economically rational, free decision by one individual to forego a little food for a little luxury. Rather it is some individuals benefiting at the
only way for many people to get enough of the aid supplies. It will be neither an open market nor a predictable one; unless demand outstrips supply (while many are seen to starve), some customers are able to wait for the next shipment of aid, which might not get stolen, or for the next local harvest. Supplies accompanied by honest distribution networks, admittedly difficult (but no less obligatory), would help a great deal. A black market is rarely pure, free or efficient, and prices bear little relation to production costs.

This distortion cuts both ways – by imagining the aid is fully fungible, we fail to appreciate the extraordinary impact of the aid on the needy country’s economy, and problems it can cause. The Red Cross tries to expect everything from inflation to depressed prices for exports, that skew the labor market by expanding the shadow (non-tax-paying) economy. These happen without malice, but one should also expect some in the society to either steal or control the distribution of aid as ways of gaining power. Aid is not merely an infusion of cash, it includes distribution networks with employees (creating good but temporary jobs), temporary guarantees that the money will be there, perhaps in foreign currency, and other deformations of the local economy and the government’s autonomy (Davies 2000; Hall 2002).

Observations like these reinforce the point that lack of well-ordered (or even reasonably efficient) institutions is the primary problem that burdened societies face. Individuals within them may have a more immediate problem of lacking food, but any longer-term solution to the food problem requires solving the primary problem.

I raise this to emphasize that theorizing about “giving aid” or “redistributing resources” from one country to another, without attention to detail, will lead to many errors. One is to risk sounding selfish for suggesting limits to aid, another is to ignore the complications that aid introduces. Another risk is to ignore the impact of aid on both the existing networks of corruption and in encouraging new ones. Yet expense of others, and as such is a matter of justice, not individual liberty. Therefore, donors can impose constraints, and enforce them until the local society itself ensures everyone’s basic rights.
another is to ignore the impact of starvation and poverty on the possibility of having well-ordered institutions.

Accordingly, I suggest that we forget for the moment that any form of aid to burdened societies will cost money to the well-ordered wealthy countries, while we think about the properties of each basic good individually.

2. Five Basic Goods and Their Targets – Different Problems

I limit the discussion of basic needs to those that are met with finite amounts of material; those things are correspondingly called basic goods. For some needs it is easy to specify goods and amounts, others are more complicated, but there is a distinction between the basics and the more complex and diverse goods that people can use in building a decent life for themselves. I do not offer a list of thick goods such as Martha Nussbaum’s basic capabilities (e.g. Nussbaum 2002a; Nussbaum 2001; Nussbaum 2000b; Nussbaum forthcoming/2001/2002) even though these are ultimately what determine whether a society is at least decent, because there are many possible variations of a list of basic capabilities. Each basic capability is a complex of social, psychological, political and material goods, yet I believe that they all rely on a much shorter, thinner list of basic goods, in finite quantities. In other words, my list might be imperfectly specified, but it is intended to cover only the finite material underpinnings of other people’s longer lists.

a. Food, Water, Shelter Have Obvious Targets

Each person’s need for food is satiable, and not very demanding. Although everyone has different caloric and nutritional requirements, it is not difficult to decide if there is enough food in a given place to meet everyone’s basic needs. It is also not beyond the ability of the world’s wealthier countries to bring them food in the short term, and to stabilize both sustainable agriculture and adequate markets in the future, so that they will have food security (and even saleable surplus). Granted, many people’s desires for food – better quality, more exotic – are much less satiable than their needs, but these are desires for surplus, for something that
could be exchanged for money, given a market. Above the threshold of need, food is a commodity, but below it food is a basic good that has a well-defined target, which, moreover, seems appropriately humanitarian.\textsuperscript{73}

Similarly, each person’s need for clean water is quite limited, enough to drink and keep clean. If the society is expected to grow food for itself, then there might also be a collective need for enough water to grow enough food to meet everyone’s basic needs. Properties of the need for water differ from those of food needs because different crops and livestock require different amounts of water, and one can imagine refusing to count some wasteful practices as part of basic needs, if there are reasonable alternatives.\textsuperscript{74} Nonetheless, we can distinguish the basic need for clean water from the commodity of surplus water, and the basic need is limited by fairly objective information about human physiology, climate, plant and animal biology and so forth. There are different ways of providing clean water, such as teaching conservation, improving waste disposal, building desalination plants, to name a few. The benefits and consequences of each may make for difficult decisions, but the difficulty will not be a lack of a target.\textsuperscript{75}

Water itself is also different, and should be distinguished from, food. Access to clean water is more of a public good than an individual one, in that it is (usually) most easily provided to a whole community whether or not each member contributes; also, depletion of water is a classic case of widespread abuse of a public good. For this reason too, it is not helpful to imagine giving everyone some money and having them buy clean water for themselves. If the society is well-ordered but poor, one might give money to the government, or an authorized utility,

\textsuperscript{73} There is room to argue about whether another country is obliged to feed, for example, pets and farm animals, provide food for religious rituals and so on; however, the quantities required for these uses as well will be limited, and also not very demanding, and thus should not cause problems.

\textsuperscript{74} For example, there are more and less efficient irrigation schemes, and meeting a basic need may include irrigation infrastructure, subject to intersubjective justification, etc. For another example, crops like tobacco that cannot be used to meet other basic needs don’t contribute to a basic need for water; plants whose purpose is filtering waste and purifying the water would count.

\textsuperscript{75} Disputes over access to clean water often fuel international disputes. This will constrain possible alternatives if well-ordered societies are to be peaceful and not provoke conflicts. Again, though, this constraint is not because the need for clean water is insatiable or lacks a target, but because other considerations become relevant (perhaps unjustly); it is politically difficult, not analytically confusing.
and have it provide water to the residents. In a burdened society, however, we cannot assume that local institutions will be able to do this for themselves, and so we cannot delegate the task, but must consider the people's need for water directly. Again though, beyond the threshold of well-ordering and beyond the basic minimum, money can be a useful way to trade water rights, which accords with the insights we form in fairly-well-ordered, well-off countries.

The need for shelter is a different sort of need from those for food and water, because the minimum amount and quality of indoor space each person needs varies so with culture, climate and taste. Because people are mobile to different degrees, given differences in public transportation, individual desperation, road quality, age, health and laws, the fact that some shelter is available some distance away may or may not legitimately count towards meeting the obligation. Also relevant are the quality of the food, water and public services near the proposed home, and whether there are opportunities to work. Shelter is a distinct need, but its adequacy will always depend on the context of other basic goods.

International responsibility comes into force most obviously after a disaster, when masses of people are suddenly left homeless or are forced to move. As important, but less easily described, is the concern owed to a society where there is so much inequality that many people are forced to live in inadequate surroundings, often illegally, without clean air, water or waste disposal. That is, inadequate shelter in one place is often a consequence of other unmet basic needs – lack of food or paying jobs, or lack of human rights protection – in other places where there is enough housing.

The need for shelter may most easily be addressed (in the long term) by providing enough money to buy, rent or build adequate housing, as long as there are no legal obstacles such as apartheid, or restrictions on refugee movement, and if there are no extralegal efforts to coerce people to leave. These exceptions imply that the society is an outlaw rather than burdened, and that the obligations it imposes are obligations to change the unjust laws, not merely to offer money. However, I ignore the special problems of societies that are both burdened and outlaw; Rawls does not discuss them either.
does this mean ensuring low-cost housing, or higher wages, or something else – since the goal of foreign aid is that the society become able to provide for itself. The point remains that we cannot always rely on a burdened society to allow money to be used efficiently to provide for critical services, be they markets, food, water or decent homes.

**b. Education and Health Lack Clear Thresholds**

There appears (at first) to be no natural target of sufficiency for the basic goods of health and education. What is “good enough” health in terms of relative freedom from disease, when there is so much natural variation even among people with identical and excellent medical care and environments? We may be troubled about the vast inequalities in lifespan, or in years of healthy life, both within and among societies, and we may be further troubled at the close correlation between individual wealth (or place of birth) and years of healthy life. However, there is no analogy of healthy-enough or long-enough life to the idea of “adequate nutrition”. The analogy fails both because of extreme individual variation under similar conditions, and because we have no idea of a sufficient length of life – plus or minus twenty years (say) is too big a number about which to hedge.

We can say the same about eradicating diseases – is it enough to eliminate smallpox, or should polio and AIDS disappear as well? Is it acceptable to give priority to diseases (like polio or measles) that infect both rich and poor countries, as a public good within wealthy states that happens to benefit others, or should the duty to the burdened include eradicating their worst problems first (like malaria or cholera)? Given that many treatments do not yet exist, there is no clear target of research funding; if a cure were found, there would still be no clear target of ‘enough aid each year’ when eradication will take many years.

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77 There are various measures created to measure the disease burden and associated loss of life and health in different places. Some compare actual lifespan, some life expectancy, all are measures of population health and disability, all show enormous disparities between rich and poor countries, and between rich and poor within many countries. Various measures are explained and contrasted in (Mullahy 2000), available online at [http://papers.nber.org/papers/w7895](http://papers.nber.org/papers/w7895).

78 Although there is some evidence of something like a natural end to life, that medical care could not postpone indefinitely, which might be thought to set an upper bound to an obligation, it would not be a realistic target to limit our obligation.
There is a similar problem for education. Illiteracy limits opportunities available to many people, not just for employment, but for holding property, participating in civic and political life, and so forth. The same goes for lack of other basic skills like math and vocational training. Experience suggests that while some learning is of immediate and dramatic benefit to nearly everyone, whatever their situation, education beyond that point will not always lead to a better job, more political participation or social bases of self-respect. Anyone writing a Ph.D. dissertation surely believes in the value of extensive schooling, but this is part of an individual life plan, not a general need whatever else one wishes to do. Unfortunately for a theory that demands clear targets, the amount of education that everyone needs seems to depend on mutable facts about the society and the world, with much individual variation as well.

Education is different from health care in that I can think of no reason why, if a debilitating disease could be eliminated (with no side-effects), or if healthy lives could be extended, this should not happen for everyone. It is hard to imagine anyone rejecting these goods categorically for themselves (though individuals might refuse treatment for personal reasons). In contrast, there are many reasons to think that there is an optimal amount of education, beyond which opportunity costs outweighed benefits except for some specific purposes. This optimum will vary for different personalities, societies, levels of technology and so forth, and it is not likely ever to be easy to discern this level, but it should not be impossible.

So there are at least two different problems with no clear targets of aid:

1. Some threshold exists but is hard to detect
2. No threshold exists absent a specific context (of what is possible, for example)

Education is of the first sort, and some public health issues are examples of the second. The first need not be thought not such a strange category, however,

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80 This is merely the Sen and Nussbaum argument for providing capabilities, not achievements; having the real opportunity to live, or read, is a matter of respect that people legitimately demand even when they do not want to learn, or take the medicine.
because political rights are like this. While there is not complete agreement on which rights are required by justice, there is definitely a broad consensus on the general shape of such rights, with much quibbling in the margins, e.g. over which rights are primary and which derivative.

This means that the lack of a clear target to education, plus a belief that it will have a target, is not such a burden for political theory. Determining the amount of education people need, and so the amount a society needs to remain well-ordered, can be left to local judgment in each case. That is not to imply that a just or decent society could get away with doing very little, or spending very little, to help educate the burdened, but instead implies that just and decent societies can be trusted to choose an appropriate target, when they have information that we here lack.

One can say the same about issues of individual and public health care. There the lack of an absolute or natural target for aid means that, from the point of view of the general theory, nothing more specific can be said. Such decisions must be left to the legislative stage, where each well-ordered society can decide for itself, in consultation with people in burdened societies, which targets to set and how aggressively to pursue them given the specific details of their world.

Some general remarks about obligations of health and education, given the properties of those goods, are in order here.

As mentioned in section III.B.2.b above, people cannot look after their own interests unless they have basic literacy – for example, they need to be able to read and understand their contracts in order to see what they have agreed to do. Some other basic education is also important if people are to qualify for any but the most menial jobs. Education is something of a public good, though it could be restricted to paying customers more easily than some other public goods. However, unlike water, education is not a scarce resource – giving it to one person does not require another to be deprived of it. In fact, the more educated one’s community, the more benefits for each member and even some nonmembers, as one’s neighbors become politically more engaged, command larger incomes, and increasingly are able to do more for each other.
Education is not a material need, which is one reason why it is not scarce. However, it is in many ways more like material needs than more political needs (e.g. for laws to protect bodily integrity or the right to vote) or social needs (e.g. the need for respect). Education is social in this way, but the skills learned are useful beyond one’s neighborhood, and are more like discrete commodities than laws are like commodities. We know that in the real world, despite well-ordered institutions and participatory government, there is widespread illiteracy and lack of opportunities for schooling among the poor, sometimes because the government is too poor to provide it. Education is more closely linked to material resources than are political goods like regular elections or rights of assembly.

Of course, it is not so easy to specify a minimum standard of education that would be enough to allow people to read contracts and instructions, to budget their income and qualify for a “minimally decent job.” Education is not the sort of thing that comes with inherent targets, it would appear. There are some conventional measures, like years of schooling, that are often used to assess educational adequacy, but given the variations in quality and availability, this is inadequate, as well as arbitrary. In the next section, I offer a target that, while neither inherent to education nor ideal, would represent a vast improvement over typical conditions in a poor, burdened society.

Basic health also lacks a target. It can be subdivided into: preventive public health (sanitation, vaccination), medical care for illnesses, drugs, reproductive health. It also includes access to the basic goods of food, clean water and shelter, and security against violent assaults. However, these sub-categories are not independent in the way that food is independent of shelter, and it is not worth disaggregating it further for this discussion.

Some aspects of public health, such as eliminating diseases like smallpox, polio or malaria, are very much international public goods – not just public goods for the community that gets the vaccines, but goods for citizens of the countries far away that provide the aid (Kremer and Jayachandran 2002; Feachem and Medlin 2002). Similarly, lethal diseases like AIDS are global ‘public bads’, killing off the most productive people first, destabilizing each society and encouraging war.
Conflict encourages the virus to mutate faster, and soldiers spread it more rapidly, especially when rape is a tactic (Singer 2002b; Dasgupta and Mäler 2001). All of these have direct impact on distant societies as well as neighboring ones.

Providing a global public good can be seen as an obligation both to the immediately-needy society (or its citizens) and to one’s own (Feachem and Medlin 2002). Much of the work needed to produce these goods requires large sums of money, but most of that is spent in the (rich, well-ordered) countries with research facilities, not in the needy ones. Intermediate palliative assistance is plausibly required as a matter of alleviating human suffering and of stabilizing burdened states, but as with education, there does not seem to be a natural target of ‘enough’ short of eliminating the diseases altogether. Cases like this may present the greatest trouble for a theory of international obligation.

There is a partial solution, a target that would represent a vast improvement, yet be a reasonable demand on other societies, although the proposal remains vulnerable to the charge of insufficiency. By guaranteeing the other basic human rights – security, food, water, shelter – we meet a lower bound to the target of international aid: while obligations might be more extensive, they will be at least this demanding.

For example, life expectancy in sub-Saharan Africa has plummeted because of AIDS, exacerbated by vicious wars, leading in turn to even worse conduct during those wars, and destabilizing governments which makes wars more likely. Peace becomes less profitable as people spend more time sick and caring for the sick. It is fairly easy to see that social and political factors are making the problem of infection many times worse, and spreading it to other countries. Social and political improvements are thus possible even in the absence of prevention and treatment, which as it happens are also possible. The provisional target need not be ‘eradicating AIDS’ but can be more modest – working to end the wars, providing subsistence and security for orphans and for the sick, and similar goals.

Because many of these causes of health inequality are also causes of other objectionable inequalities, the theory already obliges remedies, so this lower bound, though demanding, will not be outrageously more demanding than if we
omitted health from the list (___ 2002b). For example, where women are kept illiterate and not allowed to work, they often die young and from preventable causes like starvation, early marriage (and pregnancy), and lack of sanitation. With a commitment to universal basic nutrition and literacy, and to a system of basic social and political rights, much of women’s excess mortality would be rectified without further effort. Not all of it, and I do not mean to suggest that it is a trivial task, merely that the lack of a target does not make the obligation much more burdensome than we have already allowed it to be.

This is only a partial solution in another way – there are many other problems and questions of health in different countries that this strategy will not touch: priorities of medical research, protocols for testing treatments, or determining acceptable side-effects. In part this is because the ethical problems are much larger than any one piece of medical research could address by itself.

However, there is room to provide a clear, unambiguous benefit, while making well-ordering more likely, or more stable, without focusing excessive amounts of a just society’s efforts abroad, or tempting it to create new empires. The plausibility of a claim that less-than-equal concern is justified will rest on the absolute plight of those left least well-off. That is, in this case, to the extent that providing enough of the basic goods with natural targets does remedy the shocking inequalities in health, we will be more satisfied with the lower bound proposed here.

D. Conclusion

In this chapter, I argued that there are good reasons to think political obligations are primarily political; the more extensive and intrusive they are, the more all parties to them ought to share in the political decisions involved in meeting the obligations. Discussions of international redistribution, by focusing on the duties of wealthy liberal democracies to the poor elsewhere, often fail to appreciate that even beneficiaries ought to be represented, ideally as equals, in political processes that involve them.
Compensation without representation is just as troubling as taxation without representation, for several reasons. It is hard to design a benefit without substantial, detailed input from the needy, and it is also hard to know what may have been neglected. Political theorists are properly dismissive of claims to take seriously the opinions of people who have no power. If one has derived the obligation through an original position, where representatives agree on their obligations while ignorant of their own wealth or level of development, then they are also ignorant of the direction of the flow of foreign aid – they do not know whether they would be donors or recipients. But then they do not know if they will be obliged to pay money without any say in its use, or to receive it. In either case, it would be foolish to endorse an obligation that didn’t give all parties power in implementing it.

Therefore, I endorse Rawls’ design of the duty of assistance primarily to give all people sufficient political power in governing some state that they are the authors of policies on redistribution that affect them. This is key to their being able to determine their life plans, because without power to decide on the nature of contracts, the extent of taxes, and rights and obligations of relationships, people are easily separated from their wealth. It is not that it would hurt to give them money, it is that it would not help them securely. They may have a more urgent need for material goods than for political rights, but rights are more important.

There are two possible directions one could follow. One might say that material obligations between countries were strong, and therefore they ought to form some federal, international governing body, in which all would be voting members. Rawls refuses to consider this option, because he believes that any such body would take power, become a world government, and then become either tyrannical or senile. This forces him to choose the alternative, insisting that redistributive obligations between countries are strictly limited to ensuring minimal subsistence and security for all. I choose a middle path, arguing that there are good reasons to have targets of aid, but that they need not be minimal; in the next chapter I argue that obligations can be more demanding insofar as the parties share power in the institutions that regulate or distribute the goods.
To establish that liberal justice requires targets for foreign material aid is not to say what those targets ought to be. Intuitively, objections about the existence of targets gain force when the targets are very low, allowing only a very poor quality of life. The more generous targets are, the less we feel that their mere existence is harmful. Recall, it is when parties share power that it is important that no one lose self-respect, because that leads to loss of power, or loss of effectiveness to wield power. When people do not share power, the risks are less immediate; self-esteem does not have a differential political component, and so inequalities are not politically dangerous. They may be bad for other reasons, but as the absolute well-being is more generous, we have less reason to disapprove of inequality for its own sake.

Accordingly, I turned to the question of what the targets ought to be, and argue that if we consider the goods that meet people's basic needs (the ones that help meet their human rights to subsistence and security), we discover that there is an inherent amount of the material things that people need. They may enjoy having more than that quantity, or want to be able to sell surplus to buy other nonessentials, but there is a limit to each basic need that we can use to set a reasonable, generous yet fixed target for foreign aid. There are some difficulties, but overall it gives a workable limit to obligations for good political reasons.

Limiting obligations is not about preventing the poor from having money, rather, it is about insisting that people have political rights and power, for otherwise their wealth is precarious and easily stolen. If one has cosmopolitan sensibilities, and finds the idea of international inequalities to be unjustifiable, then one must be committed to a strong form of global federalism, or shared decisionmaking on transnational issues that affect distributions of opportunities and wealth. This body need not supersede individual countries, and need not have jurisdiction over all matters, but where its members have meaningful access to participate, they have the collective authority to regulate distribution of wealth beyond the targets set by the duty of assistance.
IV. Limits to Independence

A. Introduction

Should there be the limits to a just-or-decent country’s autonomy, or would sovereign states always work out a cooperative solution, that all accept as fair and just, to any global problem, without formal limits? Although just-or-decent countries are committed to finding such solutions to common predicaments, I argue that there is a class of problem for which good will and commitment to reasons all can find fair is not enough to ensure stable agreement and compliance. Under such circumstances, peaceful cooperation can be secured by changing the horizon of commitment; actors demonstrate fairness through systematic cooperation on many issues, so that even extreme costs and benefits of any one agreement are fair within the larger context. International justice requires more than the will to treat other countries fairly, with equal respect; it also requires stronger institutions, with authority to issue binding decisions on the (small) class of problems that are otherwise intractable. Done properly, it gives countries and their negotiators reason to join agreements that may be costly, it gives their citizens good reasons to comply with such agreements, and to continue complying even when domestic opponents of the original agreement come to power.

If countries are to be bound over time to the terms of treaties signed in the past, this constrains democratic (or decent) decisionmaking within the society. How much citizens’ plans should be constrained by international agreements, especially when there are many details that will have been unforeseen at the time of the agreement, is thus an important question. A theory of justice between countries ought to give principles by which we can begin to answer this.

As written, John Rawls’ book *The Law of Peoples* does not do this – its principles sometimes lead to deep, basic conflict between countries on questions of allocating costs fairly when fairness is not already in their rational interest. With small (but dramatic) changes, the Law of Peoples can lead countries to choose one set of principles for themselves, and apply them consistently and fairly.
Consistency, respect and concern in application give sufficient reason for cooperation against one’s rational advantage, when several schemes with different cost distributions are equally reasonable. The Society of Peoples should be stronger and more independent, with more power on narrower matters, than Rawls envisions, averting the domination he fears while enabling the peace he seeks.

So far in this dissertation I have endorsed the ideal of substantial independence for well-ordered societies, whose obligations to other countries are largely confined to helping them to become self-sufficient and self-determining. However, autonomy is not autism. Some political problems – global collective action problems – require countries to work together, without immediate incentives of profit, however much they might prefer to work alone. In order to coordinate successfully, when costs are high and nonuniform, I argue that they need more than a general disposition to cooperate. They need to demonstrate their fairness and ongoing cooperation in a way that others can recognize (and verify). This can be done internationally as it is domestically, with a well-designed body of representatives whose democratic decisions are binding on member countries, in ways that limit the independence of their domestic democratic decisions. Its authority is limited because so much is done already, in a just-or-decent way, in each domestic government; we avoid duplication and so guard against accumulation of power. How much global governance is best, and how to minimize the risks to democracy, are the subject of this chapter.

Well-ordered societies, treating each other as equals, might prefer not to have such binding ties abroad, for many reasons. First, such independence leaves space for each country’s collective self-determination, so that citizens can set important priorities for themselves, make long-term choices about savings, research and infrastructure, and otherwise balance wealth and sacrifices across generations. This would be much harder if they also had to budget for

81 That is, when collective self-determination is understood as when all citizens have substantial voice and influence in their government, in setting agendas, and when all have the power to hold their government to account. It is a weak version of democracy (without equality, but with substantial power and respect even for the least powerful), or a demanding (and I argue correct) interpretation of decency as described by John Rawls.
redistribution, in each time period, between countries with different priorities and histories. Second, leaving such a lot of space for different social choices limits each country’s meddling in others’ affairs. History teaches that even well-intentioned meddling is often a source of harm and grievance, even a cause of war. Third, if there were one world government, it would be quite powerful. Rawls believes that with no comparable entity to balance its power, such government would tend to become dictatorial; furthermore, it would be difficult for such a large agent to remain responsive to local issues, and thus it would tend to become ineffective in different places (Rawls 1999).

Fourth, he believes that independence is self-limiting. Independent countries with just or decent governments appreciate that peaceful trade is mutually profitable, more profitable than any would experience if they were isolated, and far more than any could gain from war or treachery. Rawls believes this means well-ordered societies have a powerful incentive not merely to be peaceful, but to work together on any other problems that might arise. It might not happen spontaneously, but some statesmen in well-ordered societies would realize the need, and would encourage their compatriots, through domestic politics and eloquent speech, to recognize the mutual benefits of cooperation.

Unfortunately, that is not enough to ensure peaceful collaboration in all instances. Benefits of trade will directly motivate cooperation only when there are direct (and considerable) benefits to each country for cooperating – it is a rational advantage, after all. When profit is not so clear, Rawls relies on a deus ex machina to reach the desired outcome. A statesman arises and explains the less direct reasons to his less visionary compatriots (§14.2). Sometimes there is no statesman when needed, and then injustice results (§14.4), but this is the best he thinks we can expect (§18.1).

In a collective-action dilemma each country finds it in its rational interest to draw more than what they might agree was a fair share, but the consequence of too many doing so is to raise the costs to all, dramatically, usually by depleting the future value of the resource. When it is easy to know both what each ‘fair share’ amounts to, and when all observe how much each uses, then it is easier to secure
actual compliance with the 'fair' scheme; it is rational to follow a reasonable scheme as long as others do, and universal compliance is rationally preferred to the likely alternatives. The fortuitous uniqueness of the reasonable approach allows convergence on a plan to which all agree is fair. However, many dilemmas are not so easily tamed; when there is more than one reasonable approach, with different implications for cost allocation, there is no reasonable argument for following one over another – reason does not resolve the rational conflict, it simply adds moral weight to each side's argument.

Global warming poses such an intractable collective-action problem. Without immediate and somewhat costly action, by all (or nearly all) countries, to curb emissions of 'greenhouse' gases, climates around the world will change, in many cases, dramatically. The actual impact (storms, flooding, desertification, etc.) will vary from place to place, as will the costs, although the risks are global. Countries begin from radically unequal resources, facing qualitatively different physical hazards and likely sociopolitical consequences. They also have different histories of pollution and pollution control, and different abilities to enforce any controls in practice.

It is possible to specify a sustainable level of total gas emissions for the world per year. It is not clear what would constitute a "fair" allocation of those emissions among different countries. Success of such an endeavor depends on near-universal compliance – it is not enough for countries to agree to a regime, they would have to get their citizens and firms to comply in practice. Complicating matters, there are great incentives to ignore caps on pollution: it is cheaper to ignore them and there are domestic political advantages to privileging citizens over global interests. These incentives motivate defection at all levels – individuals, firms, local governments, national leaders face pressures not to comply in the face of vague but catastrophic worries.

82 The mechanisms by which the culprit gases heat the atmosphere are not the same as that by which a greenhouse is kept warmer than the surrounding air. Still, this is a common and useful term for them.
Rawls' proposal for a voluntary scheme to address the problem might work, if there were a convergent solution, one way of allocating the costs of pollution control (and opportunities to emit some greenhouse gas), that all agreed was fair. For all countries to view the proposal as reasonable, and worthy of compliance in the face of rational pressures to defect, they must first agree that solution is fair. However, there are at least three sets of principles for allocating costs among countries, that have equally good claims to be reasonable.

In these situations, humans rationalize – we choose a set of reasonable principles that happens to align with our rational interests, but use the language of reason as a justification. This universal tendency gives good grounds for suspecting others are simply choosing ‘reasonable norms’ that just happen to align with their rational interests, and for accusing them of bad faith, lacking a disposition to cooperate as equals. Sincerity, offering reasons they believe others can accept as fair, or the converse of rationalization, is a necessary condition for the Society of Peoples, grounding their rejection of war for rational advantage (§3.3, p.35). Uncertain of each other’s fairness, peoples cannot trust one another to remain peaceful, even when all of them are so inclined, unless they can distinguish reasonableness from rationalization.

There is a better way to ensure reasonable cooperation even when rational actors would think it dangerous. Considerations of fair play and equal respect over time are predicated on the belief that an arbitrarily chosen set of rules for making decisions, which at any one time will benefit some more than others, will not systematically advantage one group. This is particularly important when the stakes are high, for then people are committed to accepting future losses by committing to accept today’s gains. Consistency of reason gives today’s loser good reason to comply with the agreement, by demonstrating that the choice of reason remains independent of rational advantage, sometimes advancing it and other times not.

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83 Though they need not find it fair for the same reasons, they must agree that it is not unfair.
84 Literature on rationalization and the role of individual judgments of fairness is mentioned and briefly summarized in (Earle 2004, especially p.179n7).
Observation of others’ consistency – good faith – gives one good reason to converge on a single standard of reason, and to interpret and apply it consistently.

Having a stronger Society of Peoples, with some authority to issue binding decisions, properly constituted, will have at least two other benefits. First, it gives citizens of member countries reason not to reject treaty commitments signed by earlier governments, even when they were able to do so through their domestic politics, if of course, the Society of Peoples were properly responsive to their concerns and appeals. That is, if the Society had enough structure and authority to address appeals by reinterpreting treaty provisions to be in line with fairness – to correct implementation when it turned out that the reasonable happened to disadvantage some people systematically (though inadvertently) – then it would be worth it to everyone to work within the Society to repair agreements. Without such ability, the disadvantaged would think it reasonable to scrap the document and start over. This would also be the case if the Society had the power but failed to use it appropriately.

Second, it offers a way to secure the compliance of burdened and outlaw states on plans in their reasonable but not rational interests, offers their citizens some practice in well-ordered politics globally before they acquire it domestically, and offers the world hope for continuity of cooperation as the badly-ordered countries become just or decent.

In the next section I summarize Rawls’ vision of a just international order, where well-ordered states are sovereign, bound only by their explicit consent and the obligation to protect basic human rights. Next, I show that this is inadequate for problems like global climate change, because conflicting proposals have equally good claims to be reasonable and fair, though allocating costs differently. I then propose changes to his theory so as to limit the dangers he fears, while addressing critical policy challenges by first stipulating agreed-upon, binding standards of fairness.
B. Rawls and International Justice

In *The Law of Peoples* John Rawls argues for an international order in which states are fully sovereign only if they meet some conditions of justice. Notably, they renounce aggression against other countries, guarantee human rights and rule of law to all of their populations, and accept responsibility for promoting and protecting human rights in unjustly-governed countries. Well-ordered societies are those governed justly enough - they include fully just societies and those that are merely decent; they should treat one another fairly, as equals, in international matters.

In chapter II (Human Rights, Self-Determination and Decency) I argued that the bar of decency is set quite high, that decent governments must genuinely represent and be accountable to all citizens, and give each one a great deal of opportunity to participate in society. However, in a decent society everyone need not have equal access, opportunities and responsibility, as long as even the least powerful have a great deal, and as long as the inequalities of power do not lead to systematic mistreatment or other abuses of any of the citizens. This society is decent, I argued, because even the least powerful citizens have the tools with which to pursue greater equality within their society, without using violence or fearing for their physical or mental safety. It is a society committed to reason, not force, even though it may allow public justifications to favor one religion. A just society cannot privilege any religion (or similar doctrine), but a decent one may, as long as no one is forced to practice that religion or barred from others. When everyone can participate in public reason and politics, the society is considered self-determining.

Just and decent societies stand in contrast to the badly-ordered countries. Outlaw nations are malicious: they may violate human rights, steal public assets, threaten other countries and resist reforms, often violently. Burdened societies are more inept than malicious, they may have outdated institutions that cannot cope with current pressures, or they may have weak authority and no enforcement of laws. They may be poor or undeveloped, or have many citizens living in poverty, but burdened does not always mean poor, though its inefficiency implies that
political reforms alone would make the society dramatically more wealthy. A benevolent absolutism is run by a dictator, and does not institutionalize respect for human, political or civil rights, although it happens not to violate them at the moment.

Everyone ought to live in a well-ordered society, where they can participate in collective decisions about public policies. This means that well-ordered societies are obliged to help reform other governments, and not to institute some overarching world government, for two reasons. First, different things are important to different groups of people, and all ought to have the opportunity to pursue their preferences locally. Pluralism is a good thing; even if many things people do would not be compatible with well-ordering, many others would. Second, Rawls believes that world government would inevitably lead to tyranny (because with no similarly-powerful competitor, any abuses or mistakes would go unchecked and multiply) or, if hobbled to prevent that, to global balkanization, as a nominal authority with no power could get nothing accomplished.

Thus he imagines a world of just-or-decent states with exclusive authority to set and implement policy within their borders, forming loose cooperative associations to facilitate fair trade and coordinate foreign policy towards any badly-ordered societies, which are not treated as equals. One would be a reformed UN, described as a Society of (well-ordered) Peoples, another might coordinate mutual defense along the lines of NATO, and a third would coordinate tariffs and laws governing commerce.

The key point is that none of these associations’ decisions are binding, except by consent of each well-ordered society’s government. That is, states do not delegate authority to these groups and there are no non-state actors in the system with any authority. The member states are committed to treating one another fairly as equals, in ways that enable them to cooperate effectively (§1.1, pp.11-12). The mutual benefits of peace and trade among just-or-decent peoples are powerful enough to induce spontaneous cooperation. This is sustained via moral learning, as past cooperation gives reason to trust one another in the future,
and as people observe the continued flourishing of citizens in other well-ordered societies (§5.1, p.44-5).

Within a single society, Rawls does not expect that individual and group behavior always works, spontaneously, for mutual benefit consistent with social justice or decency. Although the sphere of competence for the Society of Peoples is limited to things peoples cannot do alone, yet want to do, this does not mean that these actions will be easy, or that each country will agree on the best way to proceed.

There is a straightforward way to ensure that the international realm will interfere as little as possible with each country’s self-determination, and it does not require that the international realm have no authority at all. Instead, we limit the range of issues over which its decisions are binding, limit its ability to enforce decisions, and ensure that its decisions are themselves informed and representative, with procedural safeguards like rights of appeal.

In the absence of some such international institution, the separate countries would have to negotiate from scratch on each issue, like pollution control, or patent harmonization, and then each state would have to approve each resulting agreement. There would be no mechanisms for allowing the asymmetric benefits and costs of several treaties to balance each other, no straightforward linkages. If states were sovereign in this way, their citizens could rethink their participation in any such treaty regime at any time. When there is more than one reasonable interpretation of whether that treaty is fair, citizens could adhere to a treaty for as long as it met their rational interests, then when circumstances change, they could rationalize (to each other or themselves) rejecting it on grounds that seem equally reasonable to the alternatives.

While well-ordering requires fulfilling treaty obligations, the weight of domestic public reason would then land on the side of rejecting it. By modifying Rawls’ particularism slightly, I make his aims of peaceful cooperation and reforming badly-ordered governments more likely. The strategy is to make sure there is enough of a global basic structure – a Society of Peoples with some authority –
that there is additional weight on the side of keeping treaties even when it requires
sacrifice.

In the next section, I describe the environmental issue of global climate change which displays these challenges in a particularly salient light. First I
summarize the relevant features of the problem, and then the Kyoto Protocol
addressing global climate change that was negotiated successfully, and ratified by
many countries, though rejected by the US. Next I offer three interpretations of
fairness, that treat countries as equal in different but equally reasonable ways, with
different policy implications, and show that Rawls gives no guidance on choosing
among them.

C. Global Warming and the Kyoto Protocol

According to the Intergovernmental Panel on Climate Change (IPCC), the
release of carbon dioxide, methane, nitrous oxide, and various halocarbons, from
combustion, industry and even high-intensity farming has increased enormously in
the last century. This has caused the average global temperature to increase,
raising sea levels, extending the range of tropical diseases and storms, altering
rainfall patterns and thus farming potential, to name a few effects. As global climate
change continues, it is likely to have more adverse consequences for humans and
other species alike, though the impact will vary from place to place.

1. Relevant Features of Climate Change

Because these gases persist in the atmosphere for many years, past
emissions will continue to cause harm in the future. This cumulative effect makes
the problem more urgent. The atmosphere mixes globally: emissions from one
country travel all over, and cause systematic changes worldwide, though they will

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85 The consensus of the Intergovernmental Panel on Climate Change on persistence of greenhouse
gases varies with some key assumptions, on existing levels of other gases, possible carbon sinks,
and the like ((IPCC) 2001, ch. 3 and ch.4.1.1 esp. Table 4.1). In a useful summary, CO₂ lasts from
five to 200 years (there are different ways in which it leaves the atmosphere), Methane remains for
12 years, nitrous oxide lasts for 114 years, and some halocarbons persist for centuries or millennia;
see Table 1 of the Technical Summary, available online and for download at:
http://www.grida.no/climate/ipcc_tar/vol4/english/086.htm There is an excellent discussion of the
physics, economics and politics of the question in (Schelling 1992)
have different impacts in different places. For example, rising temperature melts polar ice, raising sea levels all over. However, it is local geography that determines whether an area will flood, and political consequences depend on how populated the flood zone is, what happens when those people move inland. Rising temperatures also result in more storms, but the location and timing of each storm is itself unpredictable – all are at (varying) risk, not all are hit.

Different countries produce very different amounts of greenhouse gases, and have done so for different lengths of time. Countries vary in how easily they can install cleaner technologies, mandate and enforce pollution controls, in their abilities to absorb the costs of storm damage, flooding, desertification, spread of tropical diseases, and the like. As climate changes, populations are increasingly forced to migrate, within and between states, which causes other problems like disease, crowding and violence.

In other words, individual polluters cannot be linked to individual effects, and while risks are spread out (but not uniform), actual devastation is much more discrete. Countries vary tremendously in all relevant aspects of damage, causes, vulnerabilities, adaptability and actual experiences; they are linked by nonlinear, global interactions of factors that are difficult to measure accurately (Cannibal and Winnard 2001; Singer 2002a; Schelling 1992).

The burden to be shared is large, there are no accepted standards of fairness, nations differ greatly in their dependence on fossil fuels, and any regime to be taken seriously has to promise to survive a long time. (Schelling 1997, p.10)

Their fates are linked, whatever their preferences or political rights to autonomy.

2. The Kyoto Protocol

In 1994 the United Nations Framework Convention on Climate Change began to address anthropogenic climate change. This included some institutions – agencies and rules for operation – and three classes of countries. Wealthy developed countries were obliged both to cut their own pollution and help subsidize efforts of the poor ones (economies in transition from communism have a grace period before they would be considered wealthy).
The convention’s objective is to reduce emissions to a sustainable level that avoids the worst environmental disasters, yet is compatible with food security and economic development. It has three principles to guide its efforts:

1. Equity and common but differentiated responsibilities, which reflect the reality that, although climate change is a global issue and must be tackled as such, industrialized countries have historically contributed most to the problem and have more resources with which to remedy it. Developing countries, for their part, are more vulnerable to adverse effects and their capacity to respond is likely to be lower.

2. A precautionary approach, or recognition that though many uncertainties surround climate change, waiting for certainty before taking action, or precautionary measures, runs the risk of being too late to avert the worst impacts. The Convention notes that "where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures."

3. A recognition that development and climate change are interlinked and that patterns of energy consumption, land use and demographic growth are key drivers of both. The Convention sees sustainable economic growth and development as essential ingredients of successful policies to tackle climate change. It also calls for policies and measures dealing with climate change to be cost-effective, delivering global benefits at the lowest possible cost. ((UNFCCC), Depledge et al. 2003, p.6)

Parties to the convention have committed to work towards wider adoption and development of cleaner technologies, and management of carbon sinks, monitored by the Conference of Parties (COP), which meets annually to negotiate new commitments and evaluate its implementation.

The 1997 Kyoto Protocol (and the 2001 Marrakech Accords that clarify it) sets specific emissions targets for industrialized members of the UNFCCC. Its targets are legally binding (on countries that ratify the protocol), it establishes an “adaptation fund” to help developing countries, and details measurement, reporting and accounting procedures to ensure uniform good data on progress. The protocol establishes a Compliance Committee to address complications and violations of the agreements. Data on compliance and progress are made public, because transparency underpins accountability ((UNFCCC) 2003).
D. Fairness and Equal Respect are not Unique

1. Fairness, Reasons and The Law of Peoples

When a problem arises that requires multinational coordination, well-ordered societies are expected to work together to reach an equitable and effective solution. Being well-ordered means that they are prepared to treat each other fairly. The standards of fairness they use are those appropriate to the extreme diversity among well-ordered peoples (which is greater than that within any single society). They are developed in the second original position (§4.4-5, esp. p.40-42), and are “effective in shaping the larger schemes of their cooperation,” (§1.1, pp.11-12).

Just and decent societies offer each other fair terms for political and social cooperation, even when they have the power to drive a harder bargain. Fair, in this context, means that they offer each other reasons for those terms that they sincerely believe other peoples could accept, reasons that treat them as equal parties, though perhaps differently situated. A well-ordered society offers such reasons because doing so embodies proper respect for other societies, and because to do otherwise would not be consistent with their own democratic (or decent) domestic institutions (§3.3, p.35). This balances the conditions of reciprocity between citizens of one society against the conditions of reciprocity between societies (§6.3, p.57), and is meant to ensure that a people keeps its treaty commitments even when it “might profit by violating them,” (§3.3, p.35).

This idea of fairness through reasonableness seems to rule out the possibility of a country acting for its own rational advantage without regard for others, as that would not a be reason others could believe treats them equally. There is another possible source of discord, however, if there is more than one proposal that would treat other countries fairly in this way, as equal partners, but that have drastically different distributions of costs and benefits among all of the countries.

86 It is, of course, a realist reason that other countries might find quite plausible, useful or the best they could expect. Such considerations treat all other countries as equally other, but not as equal parties with the initiator. An international order of this kind might be stable and peaceful, but it would not be so for the right reasons. Rawls argues against this sort of state-first politics in §2 and §5.
In other words, if there are several plans that are equally reasonable, but not equally rational, and if there is no Pareto-superior alternative among them (considered rationally), then reasonable considerations cannot be decisive. But if the sets of reasons appeal to qualitatively different matters in treating the countries fairly, then human beings are prone to use rational considerations to choose among the reasonable ones. This rationalization need not be malicious or devious, but it is common. It is also dangerous, lacking the stability and solidarity-building qualities that Rawls relies on to support a peaceful world order.

Given the diversity of reasonable views among well-ordered societies, and their different material, social and physical needs and strengths, we should expect some variation in norms of fairness. Dissimilar peoples will find different matters especially relevant to their being regarded as equals, and other matters more peripheral. They would suggest and be more receptive to different strategies for applying them to specific political problems. That is, we should expect more than set of reasons to have equally good claims to be reasonable, in virtue of qualities that are hard to compare. For example, a decent society’s comprehensive doctrine with specific implications for human duties to the physical world may clash with another’s traditional practices, and globally mandated policy may be difficult to implement where such matters are regulated locally and deliberatively. (One can imagine criteria that are not equally reasonable, such as ones that violate basic human rights, but well-ordered societies agree to reject those.)

The point is, insisting that countries only offer proposals that they can defend with a certain kind of reasons (that they sincerely believe others could accept, because the others can tell that the proposal treats them as equal partners) will not narrow the field to one proposal. At that point, we need a further means for peoples to choose among them, in a way that respects them all as equal partners, and in addition, demonstrates that the choice is not really a post-hoc rationalization of power politics.

Explicit demonstration of underlying reasonableness is not required in the Law of Peoples because it is clear from the content of treaties and agreements well-ordered peoples make. It becomes necessary in some cases because such
inference is only possible when reasonableness (or not) is decisive. But continued trust that other countries will continue to comply with a decision is predicated on the (demonstrated) reasonableness of the other countries. Otherwise, one does not know whether collaborating countries that are benefiting from cooperation at the moment would continue to do so if the benefits were to end. Especially countries that pay the early costs need to discern whether they are being played for suckers. Citizens of such a country have no reason to comply with such plans made by their government unless they have reassurance on this score, their government, after all, is supposed to protect their interests. Some reliable proof of sincerity, or durability of cooperation, is needed to maintain the balance between reciprocity within a society (among its citizens) and reciprocity between countries (see above).

To show that this is not an idle or abstract concern, I now turn to the very concrete issue of how to address global climate change collectively and fairly. Here are three different families of reasons that peoples might use to craft a proposal that each could sincerely believe others would believe treats them fairly, as equal partners, to reduce carbon emissions. That there is more than one means that, although peoples might sincerely believe that each one was intended to treat them as equals, nevertheless, it fails to treat them as equals in the right way. A country could believe it was formed in good faith, and in a way that might be acceptable, but happens not to be, in part because another proposal is better. When several are reasonable, choice is not simply based on what they include, but also on what is omitted, and the relative importance of the two; their relative importance is not universally agreed, however.

After the three reasonable arguments, I discuss some strategies for choosing among equally reasonable plans, which are, sadly, not always possible. Next, I suggest some small but significant changes to the Law of Peoples that allow peoples to agree on some single plan, with demonstrations of reasonableness and commitment for the long-term, even though that plan may not be uniquely or unambiguously best.
2. Three Sets of Reasons

Given that climate change will affect the whole world in different ways, and that net carbon emissions are empirically tied to prosperity, the challenge is to find a way to reduce emissions while allocating the burdens fairly. Unfortunately it is not clear what it would mean to treat countries fairly as equals when the burdens they face are qualitatively different, and given the enormous inequalities in wealth and technology among them. Or rather, there are some very different, yet perfectly clear ways to understand the words "the equality of and equal rights of all peoples" (Rawls 1999, §4.4, p.41), reasonable arguments for each, and no reason to think all peoples would agree on one interpretation.

The way one defines a problem often determines the general approach one will take to solve it. Beginning from the premise that countries (or peoples) are the sole actors in these matters, there are three ways to characterize the approaches to take with policy elements each suggests. The reader is left to imagine specific plans corresponding to these approaches that are equally good.

(1) Backward-Looking Reasoning: One might argue that the problem of climate change is urgent today because of historical carbon emissions from, and deforestation in, the developed world. Our industries and vehicles caused most of the damage we see, and will linger to cause more. Backward-looking (BL) reasoning holds countries equally responsible, now and in the future, for all of the pollution they have ever produced, leaving the richer, developed countries with most of the financial burden right now.

87 Rawls takes peoples to be the sole actors, in the sense that NGOs and transnational corporations aren't members of the Society of Peoples. Peoples are the highest level of legal authority, and they regulate trade, industry and such among themselves via treaties. If we want to see what his law of peoples might say about concrete issues like climate change, we should follow his model, and not consider corporate or individual interests directly. Even if we did, however, grouping arguments by these categories might be of use.

88 A stronger version of a BL argument holds that between industrialization and empire-building, the developed world has polluted far more than its fair share — others could not match their levels without worldwide catastrophe. This constitutes theft, first of opportunities for development, and second of health, forests, water, arable land, and stability through damage from climate change. This would be used to justify punitive damages against the culpable parties (countries, corporations, or their inheritors), either financial or demands for apologies or more extreme national humiliation.
A treaty based on BL arguments might have all countries contribute to a general fund in proportion to their past pollution. The money could be used in part to compensate peoples for damage from storms, flooding and drought, and in part for investment in cleaner technologies and carbon sinks. Payments to the fund should be large enough that adopting cleaner technologies becomes cheaper than retaining dirty ones, to encourage replacement and keep total emissions to some sustainable level.

BL treats countries as equal in holding them equally liable for their pollution over all time, though differently burdened today.\(^8^9\) They are treated fairly in that, although the damage from climate change would occur in discrete locations, the costs of that damage would be borne by all polluters everywhere. Conveniently (and rightly), these extra costs would land on countries that have acquired tremendous wealth from the same ventures as caused the pollution, oftentimes those states best able to pay today.

BL reasoning could also take the form of demands for punishment, in addition to compensation or restitution, either in money or in less material terms – apologies, for instance. This might be especially appropriate in a case where a country had done great damage to a former colony. Such arguments could help settle the difficult question of which current government inherits the obligation and/or residual profit.

(2) Forward-Looking Reasoning: One might argue that because pollution has only recently been recognized to be a problem, it is not fair to hold countries responsible for what they did innocently. Forward-looking (FL) reasoning defines the climate change problem as one of reducing current and future emissions so as to minimize future damage. It treats countries equally in making them equal parties to the agreement, and equally responsible for their own current and future emissions. For example, an FL treaty might set a global cap, divide it equally

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Similar complaints do arise in politics, but my argument doesn't require BL reasoning to be limited to this extreme understanding of liability.\(^8^9\) There are questions about whether country caps are simply equal or normalized per capita, or to land area (and given that population and territory change over time, which moment determines the cap). Because these issues are common to all three classes of reasoning, I bracket them here.
among countries, and allow them to trade pollution rights. This gives the less
developed countries something valuable to trade, and they could use the revenue
to develop more cleanly; richer countries could pay a premium to continue their
above-average energy consumption, and thereby avoid sudden deprivation.
Countries would be fundamentally (politically, morally) equal, yet a fair market in
pollution rights would allow them to account for different circumstances and needs
fairly (in that transactions would be to mutual advantage).

Rawls argues that well-ordered peoples are in general forward-looking. In
part this is because recriminations provoke resentment and even war, and in part
because there is so much scope for vast improvement in the near future that past
damage is irrelevant to future well-being. If technology and coordination would be
enough to save the world from disaster, then an FL solution might be the one he
would favor.

(3) Political Contract Reasoning: One might instead understand the
problem as purely political: there is a classic tragedy of the commons; addressing it
requires global cooperation. Equality means that all countries are political equals,
equal parties to the negotiations on treaties about climate change. Fairness means
that no countries get special deals or retroactive condemnation without explicit
justification to the rest. This political, or contractarian, understanding is closest to
what Rawls describes (§4.4-§4.5) as appropriate for (representatives of) free and
equal peoples: bound only by their ideas of fairness and mutual respect, any
arrangements they make are, by definition, fair and just.

There are two possible readings of the contractarian argument, a narrow
and a broad. On the narrow reading, the problem to be solved does not exist until
countries agree that it is a problem. Thus, they cannot be held liable for polluting
before it was agreed to be a collective problem. This would lead to a more nearly
equal distribution of responsibility today, within the global pollution cap. Whether
that means that all countries would be permitted the same volume of emissions
(per country, person or acre), or whether they would all be expected to cut
emissions by the same percentage, would be up to the negotiators. On the narrow
reading, however, the individual circumstances of each country would not be taken
into account. For example, the fact that some countries have colder climates and need more fuel for winter heating would not justify allowing them a proportionally larger amount of pollution; Canada and Russia would have to choose between heat and industry, where countries in more temperate zones would not.

On the broader reading of the contract approach, free and equal peoples negotiating these treaties would be permitted to consider individual circumstances, as well as both FL and BL arguments, when apportioning pollution permits among countries. As long as the negotiations were not coercive (as real ones can be), and as long as all countries were genuinely respected as equals, then any solution they derived would be fair and just, whatever it turned out to contain. If peoples agreed to compensate former colonies for delayed industrialization, or to demand rebuilding of forests cleared centuries ago, or insisted that the richer nations apologize for popularizing automobiles, then those backward-looking conditions would become legitimate, binding obligations. If peoples agreed to a forward-looking fund and financial incentives to cut emissions further, or to allow for cold-weather-related uses of fuel when setting quotas, then those items would be part of the contract. These obligations would be justified only by the treaty itself however, not by the FL or BL arguments that persuaded signatories to it.

**How to Choose Among Them**

Just and decent societies would be able to acknowledge that, in the thin sense Rawls demands, all of these could be fair: they could be offered by a country that sincerely finds them fair and equal, and sincerely believes others could as well. This might be enough to keep a proposal from causing insult, but it is not enough to ensure that other peoples would accept that all proposals are fair in a more concrete sense – that any of them would be acceptable, simply because they are offered in good faith. They might think so, but there is no guarantee.

Think of it another way. The relationship between one’s conception of what equal respect (or fairness) includes and excludes, and what would be reasonable for a country to sacrifice towards a common end, is bi-directional. A currently poor country trying to determine what it means to be an equal partner with wealthier ones might find wealth disparities to be evidence of historical injustice with
lingering, compensable effects, suggesting a BL family of reasonable policies. Treating that country with equal respect seems to require at least taking seriously their claim that poverty implies injury.

Of course, it might be that a country’s representatives don’t think citizens will accept the sacrifices called for, or don’t think they will accept them if others suffer less, and they seek a more righteous justification for easing their burdens. This seems quite unlike a respect claim, but highly relevant to the negotiations because it balances domestic democratic concerns with international equality ones. Or it might be that a country’s representatives simply prefer to drive a harder bargain, and use the language of whichever set of reasons would happen to advance their material interests.

It is not possible to tell which is happening simply from the reasons peoples advance, in favor of a policy or against a different one, whether they are sincere. The last option is something a well-ordered society could not do, so Rawls doesn’t consider the impact this might have on international agreements. If we are interested in the ideal theory as a guide to policymaking in the real world, however, then we cannot take well-ordering for granted. If peaceful and effective agreements require sincere treatment with equal respect, then we need to determine sincerity and other obstacles to long-term agreements.

3. Clever Ways to Reach Agreement (that don’t work)

If only there were an unambiguously best way to characterize fairness, then perhaps we could discover criteria that would allow us to choose a best set of reasonable considerations – what facts were relevant and irrelevant when determining a country’s obligations. This would not make agreement or compliance trivial, but at least seeking such agreements would not give the world further reasons for bitter conflict. How might we choose among these reasonable interpretations of what equal respect of other peoples entails, in virtue of these different factors? A consequentialist might judge all of these proposals by their likely effectiveness, including the probability of enough countries adopting (and enforcing) each that it could succeed. This is Peter Singer’s strategy. He describes
four approaches to combating global warming and discusses their logic, effectiveness and likelihood of widespread adoption. The one most likely to succeed, all things considered, is ‘fair’ in that it alone best meets objective criteria on which all could agree, whether or not all do (Singer 2002a).

Such an easy resolution is not available to Rawls, because his understanding of international justice is more nuanced. He agrees that one major reason for holding peoples accountable for the size of their populations and for sustainable self-sufficient economic practices is indeed the consequences for the future. That is, the unsustainable alternative would eventually give a society reason to demand resources from others, or to go to war to get them (Rawls 1999, §4.2, p.38). With extreme, widespread mismanagement of resources, the world might eventually be unable to support all of the people alive on it, and then the circumstances of justice would no longer obtain – war of all against all would be reasonable where reason could not save us. But very few plans are guaranteed to cause such disaster, and short of that, plans must be evaluated on their relevant details, on which there may be no agreement. This is not something that could help us to choose a single best principle of burden-sharing.

Thomas Schelling suggests various ways of recasting the problem, as one of providing a public good rather than limiting a public bad. He encourages governments to count all amelioration of climate change as a direct benefit for themselves, and to disregard what others might consider free-riding. Subsidizing other countries’ pollution control is usually perceived as benefiting them at cost to one’s own nation, but because global warming is insensitive to where the emissions occur (or are curbed), it is economically rational for each country to spend its resources where they would make the greatest impact on pollution.

Such expenses aren’t (or aren’t simply) foreign aid, perhaps to an undeserving nation, they should be seen as efficient means of realizing national goals. If a country (like the US) can transform its understanding of its interests in reducing greenhouse gas emissions, then it would be less sensitive to the possibility of ‘being suckered’ on a treaty. This, he thinks, would promote cooperation, build trust and make conflict over coordination less likely. He believes
that this is the best we can do in the real world, in the short term, which is his domain of interest. Redefining the problem as one of enlightened self-interest, rather than a tragedy of global commons is one way to build trust and cooperation where little exists. However, this is not an easy process (Schelling 1984; Schelling 1992).

He also offers the complication that all three sets of reasons offered in the previous subsection are equally unfair. Two observations underpin his claim: the enormous disparities in wealth across the globe, and the fact that vulnerability to the impacts of climate change is inversely related to development (that is, development helps insulate the population and economy by making them less dependent on agriculture and weather\textsuperscript{90}). It may help more people more thoroughly to spend the money now as development aid, with immediate benefits, than to spend it gradually on greenhouse gas abatement, with delayed benefits. That is, even if there were a general consensus on what fairness required, it might not help choose among distributions of costs of emissions control, but instead introduce new alternatives over which countries could fight (Schelling 2000).

If there were a global consensus on which considerations would constitute equal respect, and which were always irrelevant, this might help the parties to decide that one of the reasonable views was most consistent with that shared sense. Instead of an objective standard of fairness, this would be a convergence of opinions, an intersubjective standard, perhaps more plausible. Arguments towards this convergence would create, or uncover, another dimension of reasonableness to each family of reasons, a dimension on which one might be noticeably better than the others – or not. There is no such intersubjective standard in Rawls’ theory, but with some modification, there could be; this is the approach taken in this chapter.

\textsuperscript{90} This may be a gross oversimplification. Given the uncertainties about the extent of climate change and its effects on the supply of clean water around the globe, one might think his proposal gambles on advanced technology (and indoor factories) to vanquish any potential disasters. The ethics of assuming such a risk for our descendants are questionable, but Schelling’s point about the ethical implications of deferring aid to the very poor remain relevant.
One way to understand why this consensus doesn't emerge within The Law of Peoples is that Rawls' method begins by stipulating terms of fairness:

[T]he social contract idea models an idea about which considerations are irrelevant in arguments for fair principles for free and equal persons that is given before the construction of the original position. (Cohen 2003, p.90)

The international original position similarly models fairness between equal societies, less tightly bound than are citizens of a single society. In an original position, the veil of ignorance blocks all criteria that one thinks ought to be irrelevant; for the international case this rules out factors such as size of territory, moment in history, or resource base.

In this way, a veil of ignorance is a place-holder for logically prior considerations of fairness – it allows us to stipulate the parties are fair without first deciding in detail what fairness means, partly because we do not automatically agree on what it ought to be without discussing it explicitly. That is, “what we would regard – you and I, here and now – as fair conditions under which the parties... are to specify the Law of Peoples, guided by appropriate reasons,” (Rawls 1999 §3.2, p.32), may well conceal some disagreements between us. Those disagreements must be resolved before we can describe the Society of Peoples and its balance between national autonomy and universal peace and sustainability in detail – or what reasonable peoples might consider relevant to allocating costs of emissions control. Because Rawls did not do this in detail, we don't actually know what principles they would have considered fair, although the imaginary participants would have a better, if incomplete, idea.

Incomplete because it is likely that some of the disagreements will not surface until after the parties know their rational interests. This means that we cannot use information about the contents of the international original position to deduce the underlying fair principles about what is irrelevant to negotiations between equal countries differently situated.

I am not saying that climate change treaties would be negotiated in the second original position. Rather, one might legitimately seek clues from the description of the second original position to what well-ordered societies would and
would not consider relevant, in the hope that some of the sets of reasonable proposals would be ruled out of bounds. While we can use this to distinguish some proposals as unreasonable – inconsistent with equal respect among countries – it is not enough to guarantee a unique best set of reasons.\(^9\)

### 4. Reasons for Conflict

Where reason is not decisive, and rational interests lead different parties to advocate distinct-but-equally-reasonable plans, then Rawls’ conditions under which well-ordered societies negotiate may lead to deadlock rather than peaceful cooperation. Even if they are prepared to continue negotiations, in the hope of changing minds, the human propensity for rationalization of material interests means that parties to the negotiation cannot tell if others are acting in good faith – as well-ordered societies – unless they explicitly argue for a plan that is not in their rational interests. Under those circumstances, a well-ordered society’s representatives would not be able to guarantee compliance from their citizens, whose obligation to support treaties made in their name are predicated on the representatives acting in certain ways. Citizens might choose to comply with treaties they would not have authorized, for reasons of honor, solidarity, guilt, etc. (or they might be altruistic), but we cannot count on that, in the real world or in the Law of Peoples (even as adapted so far).

Within the latter, only mutual recognition of well-ordering and reasonableness would guarantee a mutual commitment to peaceful cooperation. They are easy to recognize when choosing among plans with positive, though unequal, profits, where a people foregoes slightly greater gains from unilateral action in order to realize an ongoing stream of gains from cooperation that would otherwise be unavailable. When the thing to be allocated includes real costs for

\(^9\) I am not sure whether it would have been possible to disambiguate reason if the original position had been described in more detail, or with somewhat different content. On the one hand, it seems eminently possible to give a more explicit characterization of irrelevancies that would prove more useful in practice. On the other hand, it seems likely that before some issues arise, peoples have no idea what considerations would not be relevant – fairness cannot be prior to the construction of the problem to be solved fairly. Over time, I lean more towards the latter belief, but fortunately it does not need to be settled here.
some and benefits for others, and when people have only limited ability to reapportion them, then there is reason for jealousy and suspicion of motives (or at least, reason to doubt the durability of professed cooperation).

In the extreme, these do not simply get in the way of peaceful cooperation, they can introduce conflict, at two levels. First, countries (or their representatives) may differ over the way costs are measured (what counts as a relevant reason has implications for which costs are recognized) and allocated among the countries of the world. The category includes costs from: installing cleaner technologies, profits foregone from limiting production, costs from storm damage, desertification, flooding and the like, and domestic political problems as these costs are not uniform among citizens either. Such diverse sources of loss mean small disagreements about what is relevant can result in large differences in calculations of advantage, which makes it harder for parties to address each others’ concerns and grievances.

Second, the structure of the conflict, where near-universal compliance over a long time is needed to make a difference, and where reasonable considerations will not help reach agreement, they may even make matters worse. That is, peoples are expected to make decisions on reasonable grounds, but the structure of the problem creates great pressure to use reason disingenuously (or at least, it pressures representatives to deceive themselves about their motives or likelihood of their compatriots’ compliance). The situation becomes one not merely of deadlock but of suspicion, deception and disappointment. These can be good reasons for conflict in themselves, and by creating distrust, they make any conflict harder to defuse through reasonableness alone. At the worst, these countries are in a worse position than if they had been pursuing credible realpolitik all along.

Some describe why Rawls’ approach to reasonableness can only go so far, or even promote fairly deep conflict, by saying that his notion of fairness (or reasonableness) is too ‘thin’ to support the kind of cooperation he wants.\textsuperscript{92} There are different versions of this claim, which I will note in brief. In one version,

\textsuperscript{92} This discussion of thin and thick theories encouraged by Loren King (himself thin but never thick).
suggested in *The Law of Peoples*, there can be no ‘thicker’ norms of fairness until countries first have substantial experience both of trusting one another, and of visionary statesmen leading their populations to greater fellow-feeling around the world. Agreement is much to be desired, but simply might not be possible for a long time. Eventually, through small steps of mutual cooperation, the Society of Peoples will become more cosmopolitan in sentiment and more ambitious cooperation will be possible. Perhaps climate change treaties could not be possible in the early stages, when so many countries are not well-ordered.

In Erin Kelly's version, the thought that there could be a thin reasonableness is simply mistaken. Within a country, Rawls' labors to limit the scope of public reason to specific subject matters of common interest, in order to enable an overlapping consensus among people who would not agree on others. If the results meet specific minimum standards of justice or decency, it will have succeeded (Kelly 2001). But closer examination suggests to Seyla Benhabib that this is "institutionally unstable and analytically untenable." The matters on which there is strong disagreement are not easily distinguished (by subject matter for instance), nor is it clear what fair adjudication of concrete clashes might rely on – nothing is gained in practice by restricting the scope of public reason\(^9\) (Benhabib 2002, ch.5 (quote from p.111)). A similar case could be made for the international, thinner, concept of reasons appropriate to just and decent peoples.

Yet another version has it that thin norms indicate agreement on a general concept that is made explicit in incompatible ways by the various groups. For instance, all countries agree that they all ought to be treated as equal partners, but disagree over what criteria that entails and forbids. This suggests grounds for initial agreement and strategies for reconciling disagreement over the details. This parallels Rawls' overall strategy, where first fairness is imagined at the most abstract level, the original position, and once norms emerge from that, the argument is meant to proceed to levels of greater and greater specificity consistent with justice.

\(^9\) But see the discussion that begins three paragraphs ahead.
Michael Walzer thinks that the observed thin global commonalities are actually secondary to the various thicker understandings in each country, not logically prior. That is, he thinks consensus around thin concepts is by analogy, not homology, and that the thicker concepts need bear no relationship to one another but coincidence, which is only as thick as the thin version we observe (Walzer 1994). The implication here is that cooperation would not lead to cosmopolitanism unless some of the less popular thick notions (and perhaps the cultures that reproduce them) are first eliminated – not a good strategy for reducing conflict.

Michael Ignatieff offers a similarly pessimistic view of a slightly different subject: a thin theory of human rights. They are useful ideals, derived by abstracting heavily from specific cultural values, and in analogy (or effort to find commonality) with comparable efforts in other cultures. However, as useful constructs, he thinks we should not be surprised to find they conflict, one right with one another, and within the ‘same’ right described by different people. Promoting peace requires papering over the differences, working together on concrete projects, and hoping practices evolve to be more alike, making rights conflicts less severe and dangerous (Ignatieff 2001).

To some degree, Benhabib’s and Ignatieff’s suspicions about the nature of human judgments of fairness are borne out by the experimental literature on fairness, agreement and perceptions of justice. Prior commonalities – evidence of a shared goal – can encourage parties to trust one another, which creates opportunities for stakeholder involvement and the development of cooperative means to achieve the common goal. Parties form their judgment of whether the process is fair (and of whether the other participants are fair) from evidence collected throughout, fairness is context sensitive (Earle 2004, summarizes the recent literature). Such malleability is not consistent with Walzer’s view that thick cultural meanings are more real or authentic, than the thin illusion of correspondence. Once developed, the new shared conception can be as compelling and deeply held as earlier local ones – good news for advancing human rights peacefully.
What these views have in common is a sense that cooperation has to be built, slowly, and cannot be imposed by mere act of will. Rawls may hold out the most hope for cooperative intentions manifested in equal respect, but even he relies on the statesman to shepherd his citizens along. In the next section, I explore in some more detail what it means to build cooperation, and what it would require. Because of the demanding prerequisites of perceived fairness, trust and cooperation, it makes sense not to recreate this context anew for each international problem. Instead, we should build the right sort of international institution, so that it can serve as a basis for judgments of fairness as well as policy coordination. With the appropriate features, such an approach has hope of crafting cooperative, reasonable and sustainable resolutions to tragedies of the global commons.

E. An Institutional Context of Fairness

A commitment to make binding decisions through specific procedures that all parties agree are fair can make it reasonable for members to abide by those decisions. This makes it reasonable to expect others to comply with future binding decisions made through those procedures, before discovering what those decisions will be, or even before they consider the possible alternatives. It doesn’t guarantee that those decisions will be fair, or seem fair to all parties, but it gives them all reason to trust that, over time, costs and benefits will be distributed fairly among the participants – it gives ‘cover’ for continued participation on reasonable grounds, even when the reasonableness of any one decision may be contested. This gives principals reason to comply with decisions that hurt them, if made by their agents through fair procedures, rather than to recall the agents and disavow the agreement.

It seems like a promising approach to solving a global collective action problem requiring both cooperation among countries and compliance from their citizens. Can it be made to work?

In a just domestic society, people are (thought to be) obliged to comply with collective decisions, even ones with which they disagree, because otherwise a complex society involving large numbers of people could not be managed
effectively. That is, even if one denies that there is an obligation to obey laws, there are good reasons for people to comply with political decisions made on their behalf, under some appropriate constraints. Any one decision is unlikely to be bad enough to make the inconvenience (or paralysis) of seeking unanimous agreement worthwhile. So the convenience and efficiency of delegation, and the complexity of society, combine to give a powerful motive for authorizing representatives to make such choices, among acceptable alternatives, while restraining their abilities to abuse this authority. If this is done well, citizens have very good reason to presume that laws merit compliance, and will allow considerable room for government policy within its jurisdiction.  

We delegate some power to government, to organize policies and make laws, and limit its power via some well-known strategies: restrict the subjects that may be regulated, diffuse authority among many different office-holders, ensure every person is represented (equally so in a democracy, but substantially even in a decent society), clearly delineate the responsibilities of each office and procedures for interaction among agencies, hold officials accountable to the rest of society, and ensure that basic human rights and dignity are always respected. (That these qualities make a government tolerable is discussed at length in The Law of Peoples and in chapter II of this dissertation.)

We accept that such decisions are fair enough if they are made via a fair procedure — one designed not to produce policies that are systematically unfair — and if in each instance the policy is not itself blatantly (or excessively) unfair. That is, the procedures are constrained to produce results that are just (or decent) enough, often enough, that the public has good reason to accept each one if it is, on its face, fair. People are also free to offer reasons against each rule, which then gives the rest good reason to reconsider it carefully, and perhaps refuse to comply

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94 I want this argument not to depend on there being an obligation to obey the law, for two reasons. First, so that it will generalize easily to an international realm, without a single body of law, that generally fails to meet domestic conditions for obligation (e.g. reciprocity, community, or consent). Second, I don’t want to commit to an obligation to obey; with Flathman and Simmons I’d rather argue for something weaker — such strong reasons to comply that we expect compliance — which does most of the same work, but accommodates civil disobedience more elegantly (Simmons 1993; Simmons 1996; Flathman 1998).
even before it is revoked. Fair procedures are not a guarantor of fair decisions, but they are a powerful heuristic that citizens can use to make everyday political judgments.

One constraint on such procedures is accountability: there must be adequate channels for appealing laws and judgments, bringing charges against abusers of office, removing incompetent officials, promoting new candidates for office, including oneself. These deter, correct and punish unfairness. Another constraint is that the decisions ought to be justified through public reason to all members of the society, not merely proclaimed or imposed. This, in turn, implies a requirement of transparency, giving citizens enough information about facts and reasons that they are able to evaluate arguments and policies, and can effectively hold officials accountable. Another restriction is that there ought not to be any group of people that is systematically on the losing side of most policy arguments; this gives all citizens reason of reciprocity to comply with a rule they might prefer to oppose, expecting that when they win another policy argument, the others will comply with that rule.\footnote{This last condition is not an absolute requirement, for one can easily imagine groups of people so committed to intolerable policies that a just or decent society would not be able to accommodate them; they would lose, systematically, in crafting public policy. (They would not, I think, be systematically burdened by tax or loyalty oaths or the like, though their subculture would not be given equal chance to flourish within a just society.) The hope is that though these groups would have some unreasonable views, they also have some reasonable ones -- perhaps on mundane matters of administration -- and the reasonable set would be large enough to ground a norm of reciprocity and shared community welfare. Alternatively, one might hope that the group members might grow more reasonable over time. This topic is discussed at some length in (Rawls 1971, §35; Rawls 1993, Lecture II; Rawls 1999, p.177-8).}

Described in such general terms, these principles for constraining government apply to both just and decent societies, not merely to democracies. They change the unit over which fairness is evaluated from each decision or law to the ongoing process of accumulating laws and decisions -- the institutions. People might disagree about whether each act is fair (or fair enough, or completely wrongheaded), but compliance is justified because (1) the past and future stream of decisions is fair enough, on balance, to compensate for the expected disappointments, (2) safeguards are good enough that disappointments
themselves are not intolerably unjust and (3) safeguards give members the tools to reverse injustices. The worst that could happen (under these somewhat ideal conditions) would be perpetual interest-group infighting on political matters, alternating their victories and defeats often enough to justify continued compliance to the overall structure of law. A happier possibility would be a rich participatory democracy, with reasoned public deliberation on how to advance each person's interests equally and respectfully.

The above description is general enough that it can apply to organizations that are not what we think of as governments. That is, governments are the ultimate coercive legal authority over their territory; they are to be considered legitimate (and thus (nearly) sovereign) if they create rules and administer that authority in certain ways, i.e. democratically or decently. But other organizations can be democratic or decent as well – clubs, parties, religious communities, professional organizations, charities and regulatory bodies can be constituted so as to be accountable, transparent, participatory and based on reasoned argument. (Conversely, government bodies with very little power, small town government, for example, can be highly coercive without being democratic or effective.)

It is not merely the fact that individual members face high exit costs, or are coerced by police powers that drives them to comply with the law. Compliance is justified to individual members by their experience that the rules are made fairly, with their interests in mind, with their participation, in democratic or decent institutions. But this means that a body can have authority, and have its decisions routinely accepted, even if it has very little direct power to coerce member states or individuals.

Why is this important? Rawls does not want the Society of Peoples to be much like a government because governments tend to expand their authority, use their limited coercive power to acquire more, without the consent of the governed. He believes that without external checks, world government would turn tyrannical, or, if given too little power, would be ignored. But if we can separate a

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Although to fully justify coercion, a body may have to be democratic (Blake 2001; see also Franck 1992; Fung 2003b; King 2003; Miller 1983).
government's coordinating and administrative functions from its power to coerce compliance through threats, then we can prescribe extensive coordination and administration with little fear of tyrants.

This involves a two-level scheme of justification. To justify ordinary administrative interpretations of rules, and rules or laws themselves, use a procedural justificatory strategy. If the rules or interpretations are made through procedures commonly accepted as fair and legitimate, and if the decisions are not manifestly unfair, and if no one has raised a serious, reasoned challenge that the rule or decision is unfair, then all are justified in treating the decision as legitimate, and in expecting all to comply with it. When someone raises a reasoned challenge, of course, it has to be addressed, publicly, and if the rule cannot be justified explicitly, it might no longer be legitimate. But procedural trustworthiness is itself a ground for compliance, so the Society of Peoples can be, like a regular government, the legitimate administrator of its rules. If appropriately constituted (e.g. with constitutionally distinct internal bodies), it can be the legitimate legislator as well. Make it well-ordered, and its actions are prima facie justified and fair.

However, for use of coercive power on a large scale, prima facie legitimacy is not enough. This will require something much more demanding, such as broad consensus among members, and perhaps a great deal of argument that all lesser means of achieving compliance have been tried. This appears to be the standard to which UN and NATO military action has recently been held (though my argument doesn't rest on this characterization). The military link suggests a means of drawing the line that determines whether compliance should follow the mere announcement of a decision. One such guideline is the ease of reversibility: coercion that doesn't ruin the party punished can be reversed on appeal. The dangers of allowing such a punishment without the extra scrutiny and explicit assent of most members are relatively limited. Coercion that involves catastrophic consequences – for example, wars, financial ruin, mass migration, some environmental disasters – ought to meet the higher standard.

97 Discussed in (Rawls 1999; drawing on Soper 1984)
At both levels of justification, it is necessary to have a shared background against which arguments are made and decisions taken.\(^\text{98}\) If that background were a single set of fair considerations – what is and is not relevant, or a rule for generating relevance judgments from shared principles – then justification would not be such a challenge to peacefulness. People might not agree on a plan, but they would agree on the problem definition and scope. Their disagreement would be over preferences that make sense to one another, and are thus negotiable within the existing procedures for dispute resolution; they are not destabilizing. This is in part the reason imaginary equal persons would find agreement in the Original Position, because it assumes they agree on principles for fairness, and know that any disagreements over specifics don’t indicate others’ hidden unfairness.\(^\text{99}\)

Unfortunately, we do not have a single set of principles that all agree are fair, nor is this likely. Rawls argues that the facts of global pluralism are such that there is not such a set, although it is possible to reach agreement on something thinner – reasons all believe all could accept as treating them as equal partners; Jeremy Waldron agrees (Waldron 2000). Hilary Putnam argues persuasively that there simply is not one uniquely best way to describe even facts about the world that would lead to consensus. Moreover, we can’t describe facts without presupposing some things about the value of that information, or uses to which it might be put (Putnam 1993). Fortunately, there are more and less useful ways of characterizing information, and of taking values and uses into account when choosing descriptions of social problems. With a good choice of this ‘shared

\(^{98}\) They do not require complete agreement, but some common assumptions or factors, the ability to communicate, a similar enough idea of their common task that they can do it. This is not a deep or controversial observation (though one could make a similar-sounding claim).

\(^{99}\) A similar idea of uniform shared norms is sometimes asserted in defense of toleration of authoritarian groups – the idea is that the subordinated share the belief that their lack of power is natural, right and fair, and thus the group is just. And as has been noted by many people, empirically these groups are not monocultures, individuals tend to want things that look very much like basic human rights (or basic capabilities), regardless of the denials of their leaders, and in fact such denials are often responses to early attempts by citizens to get these capabilities for themselves (Benhabib 2002; Doppelt 2002; Freeman 1996; Kymlicka and Shapiro 1997; Kymlicka and Norman 1994; Marcuse 1965; Nussbaum 1999; Nussbaum 1997; Nussbaum 2000b; O’Neill 1993; Philpott 1995; Scanlon 1979; Shachar 2001; Wolff 1965; Young 1997).
background’ within which members state their needs and goals, and present their proposals for cooperation, countries can make peaceful cooperation more likely.

The shared background is what psychologists call a “holding environment” – a social space that is safe enough that participants can experiment with new relationships and changes to rules, secure that if the results are undesirable, they can be reversed. They can play with innovations, explore what would happen if they took this or that view of the problem before committing to either a definition or a treaty. For example, representatives of countries could negotiate under backward-looking reasons to see if there could be a consensus on which histories are relevant, without committing to that approach (Winnicott 1982; Shapiro and Carr 1991; Jaggar 1998; Van Buskirk and McGrath 1999).

Now, I am not suggesting that we need an international holding environment because countries are ‘like’ individuals, or because diplomats are prisoners of their emotions, unable to reason. Rather, we need a holding environment because in unstructured spaces everything said or done is simultaneously evidence of intent, underlying preference, understanding of the problem and trustworthiness. An assertion like “history of conquest is irrelevant, what matters is current pollution” describes part of a worldview, but is it rational or reasonable? Is it provisional, subject to others’ opinions, or part of a shared comprehensive doctrine to which its citizens are committed? Does it follow from premises others share (perhaps about possibility of consensus on historical injustice) or not? Perhaps most important, is it self-serving, a consciously false rationalization in an effort to avoid fair costs, evidence that the party is not to be trusted? Too much is unknown, giving parties perfectly good reasons not to trust one another, with others’ every act or omission possibly indicating bad will, and each of one’s own acts and omissions ripe for misunderstanding.

A good organization functions as a holding environment in several ways. It demonstrates inclusion of all (so that members need not fear expulsion over missteps), it has “in place symbols, structures and practices that support the enactment of me-not-me boundaries appropriate to the... setting.” It encourages creativity and reality-testing, and most important, members know it will “stick
around” even when it is not needed, for future reassurance, clarifications and possible conflict resolution (Van Buskirk and McGrath 1999, p.814). It is not static, rather, members negotiate their roles in the organization, with each other, over time and as goals or circumstances change; pathologies of this process cause real problems for members (Shapiro and Carr 1991, esp. ch.5-7).

In other words, treaties and agreements, to be just and effective, presuppose that they are made in the right sort of environment (not simply justified with the right sort of reasons), and that they can be reinterpreted or amended because the safe, collaborative conditions under which it was developed can be trusted to continue. The deeper structure, the agreed-to-be-fair procedures and the holding environment all describe the features to be regulated (or ensured to be safe), while the details of the agreements or the structures that implement them, are conditional (Van Buskirk and McGrath 1999; Macintosh and Maclean 1999; Cannibal and Winnard 2001; Schubel 1997).

The justice of the organization is determined from the details, but what Rawls calls “stability for the right reasons” is a function of the holding environment, an ongoing organization with agreed-to-be-fair procedures for coming to agreement and regulating existing ones. In order to make trust rational, parties trust the process to indicate trustworthiness, to encourage it (by defining fairness over time, balancing outcomes on different issues), and to reveal treachery. By decoupling trustworthiness, commitment to reasonableness, problems and proposed solutions, it allows disagreement on one without voiding agreements on others.

Some sort of holding environment is needed in the international arena, to help countries deal with tragedies of the global commons and other hard choices. If we had an unambiguous set of principles all considered fair, then peoples could use reasoned arguments to devise policies that are consistent with those principles, much as Rawls does analytically, at a much more abstract level. But not only do we not have agreement on fair principles, we are unlikely to have the kind of comprehensive fair principles that could cover emerging issues and crises, unless they are formed (thickly) through the kind of sustained interaction and dialogue possible in the safe space of a holding environment. Unlike an original
position, real life does not afford us knowledge and reflection prior to experience – it is likely that parties had no opinion at all about relevant features of pollution until they began to see it as a problem requiring collective action.\footnote{This doesn't mean that the contractarian principles are objectively right, however, the problem may be thought to have existed though not seriously considered; I may even be wrong about our ancestral foresightedness.}

This may remind the reader of pragmatism or discourse ethics; Habermas contrasts his “ideal discourse situation” with Rawls’ domestic original position:

Under the pragmatic presuppositions of an inclusive and noncoercive rational discourse among free and equal participants, everyone is required to take the perspective of everyone else, and thus project herself into the understandings of self and world of all others; from this interlocking of perspectives there emerges an ideally extended we-perspective from which all can test in common whether they wish to make a controversial norm the basis of their shared practice; and this should include mutual criticism of the appropriateness of the languages in terms of which situations and needs are interpreted. In the course of successively undertaken abstractions, the core of generalizable interests can then emerge step by step.

Things are different when the veil of ignorance constrains from the beginning the field of vision of parties in the original position to the basic principles on which presumptively free and equal citizens would agree, notwithstanding their divergent understandings of self and world. (Habermas 1995, pp.117-8) (italics in original; underlining is mine)

If one imagines a real institution designed to take advantage of diverse perspectives, without imagining participants as able to literally take each other point of view, he offers two elements essential to the international holding environment. First, all test controversial ideas to see if they should ground their shared practices – test them before adoption, consider modifications and alternatives, without fearing dissolution of commitment to work together, or of other common projects. Second, different situations arise over time, and are addressed over time. New proposals ought to be reconciled with the stream of past and future agreements, seeking both to balance costs and benefits across many issues (to share them more fairly than is sometimes possible within a single issue) and to keep all agreements consistent with one another.
Parties try to keep the entire scheme just, even though it is not constructed all at once, or designed at a prior level of abstraction. This will involve justifying the whole project (and the latest element as part of it) to each other, regularly. This kind of dialogue reinforces the holding environment by signaling commitment to consistent and just international relations; it also helps resolve contradictions and answer objections, which gives more concrete reasons for cooperation. The procedures and organizational structures of such an international body would be relatively fixed; this adds stability and predictability to the holding environment, and make it safe for parties to expect and plan for subsequent stages of any negotiation. (Hampshire 1996). Each case may be considered just in isolation or balanced against other agreements, but valuing context ought to appear reasonable for all peoples to do and to expect of others, on Rawls’ definition of reasonableness.

Summary:

Peaceful and stable collaboration, even on costly collective action problems, requires each country to be given the proper respect (consistent with equal respect for all), which includes taking into account its unique circumstances and needs. One might think this requires the international arena to have achieved a consensus on fairness expressed as a unique set of consistent fair principles, on which all of their subsequent deliberations would depend, and be judged. But that is not available to us – in reality (this is uncontroversial) or in theory (this is somewhat controversial, but less important if theory follows reality).

Instead of universal principles, we can create an international society, within which representatives of countries act together through procedures that all acknowledge as fair enough, though not ideal, independent of the specifics of each case. Such an institution contains dissent and fear within a larger context, of earlier and later times, and of other matters. When parties cannot find a solution to one problem that all agree is fair, they can amortize the unfairness over time, link to other matters on which the unfairness works in the other direction. Over time, such procedures will generate a fair stream of decisions, with which all countries have reason to comply, expecting the rest to do the same. This means the allocation of
burdens and compensation could be seen as independent of each country’s rational interests and relative clout, giving further reason to trust the international body will address the next conflict fairly and peacefully, even if it is not apparent how.

For the body to act as a holding environment in this way, it would have to include stronger and closer ties among countries than Rawls allows for the Society of Peoples. It would need to be a standing body, operating even when it is not in the middle of negotiations, so that its credentials of competence and durability remain valid – it needs to stick around, visibly, to give countries reason to trust it. The body also needs to administer the treaties, decide about local exceptions or complications in light of the stream of fair decisions, and in light of other treaties with costs and benefits. So it would be larger, more powerful, and with broader responsibilities than Rawls allows.

His fear, that such a powerful Society of Peoples would become tyrannical, can be contained by restricting its domain of expertise, or dividing it among several bodies; it is also alleviated by keeping the body from enforcing its own decisions – they are binding, but enforced through coordination among members. Where dramatic action is required, the need for consensus helps guard against injustice by slowing the process, giving relatively more influence to opponents of action. If the targets of the attempted coercion have voice (or even membership) in the Society making the decision, then if there is a good case to be made for an alternative to painful coercive measures, there is ample opportunity for that case to be made. It’s a fallible process, but the likely type of error is one where a large majority of members get carried away with the wrong idea, not one where the bureaucracy accumulates power unchecked, and is able to coerce the world’s countries into submission.

In the next subsection I argue that it is possible to create an international body that has significant administrative authority to issue binding decisions to sovereign countries, without those countries sacrificing either the authority or autonomy of their democratic choices, or their security from global tyranny. This is
by appealing, in the subsection after that, to recent work on expanded notions of democracy needed to analyze administrative agencies.

**F. Closer Union can be Feasible and Safe**

Cooperatively limiting the damage from global climate change raises two further problems for the Law of Peoples. First, Rawls fears that any one body with authority over self-determined countries will tend to tyranny; without external checks on its raw power it will be unaccountable. It will also undercut citizens’ abilities to decide important issues for themselves (if the decisions are well-ordered) if democratic and decent governments’ deliberative policies are overridden by some international agency.

Second, any emissions limitations, to be effective, require reducing total global emissions. It cannot be effective with the compliance of only well-ordered states, but must somehow ensure real compliance (not simply assent) from nearly every country, including burdened and outlaw governments.  

Securing the cooperation of burdened and outlaw governments may require stabilizing their unjust rule, or treating them like legitimate leaders of their populations. This would prolong badly-ordered regimes, even those that violate human rights (deliberately or through mismanagement), in opposition to the goal of a just foreign policy.

I argue that an international body could have limited binding authority over member states without turning despotic, if it is self-determined (that is, if its structures are responsive and accountable, representative, inclusive, transparent and deliberative, though not necessarily in a way that grants each person equal power). Such an institution would produce fair decisions, that reasonable people would find treat them as equals, and its power to expand would be limited. This design would force countries to choose their representatives to this body in specific, well-ordered ways, however despotic their home rule, if they want to be

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101 In the near-term, meeting global emissions targets only requires compliance from countries that actually emit most of the greenhouse gases; many very poor countries could be excluded. However, that is not a stable solution in the longer-term if it would simply make those countries attractive places to relocate dirty factories and vehicles. For this reason, it is customary to speak of “universal” or “near-universal” compliance.
members. This sets a ceiling to the amount of legitimacy a badly-ordered government can claim as the price of compliance with climate change treaties or the like. They get some cooperation and recognition, and are expected to ensure emissions are limited, but the representatives who speak for the society and participate in the regulation are not chosen by the badly-ordered government.

1. The Specter of World Tyranny

The strategy (democratic or decent) that ensures that a state treats all of its citizens fairly, over time, requires that there be substantial scope for collective action by those citizens. This is so that there are enough recent decisions for citizens to be continually reassured of their fairness – another version of the holding environment that enables reasonable and rational cooperation. As more of these decisions are coordinated with other countries, a common fear is that there is less and less room for citizens to act creatively together. Participation atrophies into voting up or down on a policy created outside the polity, while power accrues to the administrators and diplomats, usually unelected, many from other countries, who write the policies. This worry has been expressed in various countries considering joining the European Union or the World Trade Organization.

Rawls wants the Society of Peoples to be a minimal body, or rather several “loose confederations of peoples,” a phrase of which he says “I use this adjective to emphasize that confederations are much less tight than federations and do not involve the powers of federal governments,” (Rawls 1999, §4.4, p.41, p.41n50). The reason for this is his belief that, if it were any stronger, the international body would, in effect, become a world government, which has an inherent tendency to become a tyranny; it may then degenerate into innumerable local conflicts under a failed super-state. The choice is between a world government with too much power

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102 There is an important question of how peoples are represented. Countries might be treated as equals, irrespective of population, land or wealth, or it might be individuals (or groups) who are considered the moral unit of analysis. Given the large variation in all of these characteristics, it would seem that each design would have unique implications for policies. I do not offer an opinion on which is best, but believe that a solution can be found that all people and well-ordered societies can accept as legitimate – this theoretical problem is no harder than the global warming problem considered here.
or too little; following Kant, he thinks moderation is unstable in this case (§4.1, p.36).

To prevent world government, then, he describes the “Society of Peoples” as a set of smaller bodies, each with a limited mission, composed of representatives of well-ordered peoples. For instance, one is an analog of the World Bank, while another resembles the General Agreement on Tariffs and Trade (§4.4, p.42n51). Consider the GATT: it was a treaty to help harmonize trade policy among countries of the world, to benefit all of them. Although there were long subsequent rounds of renegotiation and discussion, member countries were not bound by the outcomes of the discussion – as a treaty, acceptance or rejection by each government was not guaranteed. This threat of exit was not uniformly credible, which meant countries were even less equal than one might think.

Unlike its successor, the World Trade Organization, GATT could not arbitrate trade disputes, much less enforce its decisions; it could merely facilitate Pareto improvements in international trade. The task of the WTO is harder, and there are potential costs to member nations who violate its rules. It is a more powerful organization, and being unelected (and by treating as equals countries that are neither decent nor democratic), it has great potential to become arbitrary, tyrannical or merely unfair to countries and individuals.

Like the GATT, the various Societies of Peoples are much like a series of *ad hoc* committees deputized to negotiate treaties and perhaps monitor countries’ adherence to them. Without saying so, he gives the impression that member peoples have the right to refuse to sign each treaty (where that is consistent with their reasonable interests), and that most negotiations are not binding. This preserves as much room as possible for each (well-ordered) people to debate internally and revise its plans with minimal constraints from the outside world, as long as those plans are sustainable and not aggressive. The Societies are individually self-determining, but the international organizations are not self-determining, or invested with ongoing responsibilities for interpretation and conflict resolution, and cannot act as holding environments able to contain disagreements before they turn violent.
The problem is that ties this weak actually make the international regime less trusting, because they don’t allow countries to agree on understandings of how to apply concepts like fairness and equality. With too much freedom to interpret these for themselves, each society has no basis for understanding why others would choose a different interpretation, save their own self-interest, which is not a reason that treats others as equals. A conflict over a particular policy may be interpreted as evidence that the other party is not committed to treating others as equal members, or citizens of one country may take a disagreement to indicate that they would be foolish to comply with the disputed rule, even if they had previously agreed to do so.

Without the right international institutions, any conflict has potential to destroy the entire regime of cooperation, via uncertainty, even for parties that have a history of trust and profitable cooperation. They might transcend distrust with a leap of faith in the ultimate fair-mindedness of other well-ordered societies, but that is too much to expect; in the real world, where countries are occasionally duplicitous, we should not rely on such gallantry becoming routine.

If peoples are to trust in each other’s good motives, they need repeated demonstrations of good faith, and the implicit understanding that breaches will be noticed and consequences applied. If they are to negotiate interpretations of fairness through concrete cases, then they need a stream of cases to address. Both of these interests are served by making the Society of Peoples into a standing body with routine meetings and repeated tasks, more like a democratic WTO than a GATT. It is compatible with having multiple international bodies, each with a narrow area of operation. By limiting the scope of each body’s authority, we limit its potential for seizing power.

Because the WTO can judge countries to be in violation of its policies, and can endorse penalties, countries recognize its decisions as binding, even though the actual penalties are imposed by other member nations – the WTO is not itself the agent of coercion. That also makes it less likely to turn into a world dictatorship – it coordinates but doesn’t implement, which means it needs to persuade at least some key member nations before it can assess penalties. It couldn’t become a
tyrant without some help; in Society of Peoples that treated all countries as equal members, this would be even less likely. An illustration is the European Court of Justice, which has evolved into a respected constraint on EU member states’ laws, though its authority is not backed by a ‘legitimate monopoly on the use of force.’ It works instead by giving political cover to officials in each country who then work within their own democratic system to effect the changes (Alter 1998).

We also limit the potential for abuse by ensuring that these Societies of Peoples are appropriately well-ordered. That is, organizations that are at least decent, committed to member participation and reason over coercion, would have internal procedural safeguards against concentration and abuse of power. Rawls directs the Society of Peoples to be well-ordered, composed only of well-ordered societies, but apparently believes that these safety measures are insufficient.

By insisting that the representatives to these bodies genuinely represent their peoples – accountably, transparently and with much consultation of all citizens – we limit the risk that an international agency would develop its own interests in opposition to those of its member peoples. Of course, it could be done badly and lead to tyranny as Rawls fears, but the risks are limited. They must be balanced against the likely consequences of international mistrust, which can cause war, and the costs of climate change itself. I simply disagree with Rawls over which are worse, but within a framework much like his own.

Contrast this with a more sweeping approach: Alan Buchanan argues that Rawls is wrong, that representatives to the second original position, aware of world history, would choose democratic analogs of the World Bank and WTO, with substantial binding authority. The global basic structure is pervasive, and it limits domestic autonomy. Just like the domestic case, it can be made more just, or less

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103 Although one expects some emergent solidarity whenever individuals work closely together, it need not work against the principals.

104 He thinks the Society of Peoples must be much more like a government to satisfy representatives of peoples behind a veil of ignorance. This is because even when a country has full legal authority to regulate its economy and distributions within it, the constraints that arise from the network of global trade and finance, intellectual property rights and such, limit the impact of domestic laws. There is a difference between economic self-sufficiency and distributional autonomy, in his words, and Rawls only mandates the former (Buchanan 2000, esp. p.709+).
depending on how it is regulated. Given the choice, well-ordered peoples would certainly choose justice. It is not clear how activist such institutions would be, though Buchanan thinks peoples would vote to restrict international inequalities of wealth, and to provide global equality of opportunity in addition to democratic rules of operation. (Buchanan 2000, p.711).

I would not take so many decisions away from well-ordered societies and give them to a democratic super-state-like body. Instead, I accept Rawls' claim that a world of just but separate states, coordinated rather than unified, can itself be just, and allow all humans to prosper, if only we get the details right. With that in mind, I turn briefly to some of the details involved in prescribing multiple, international, democratic bodies.

2. Why Self-Determination?

If solving the collective action problem fairly and peacefully requires an institution, the next challenge is to avoid Rawls' nightmare of bureaucratic authoritarianism, where power gradually concentrates in offices that are neither democratic nor decent. Compliance is premised on such a body being 'fair' in some sense. I have argued that the relevant (achievable) sense is that the institution produces a stream of decisions that treat everyone fairly over time, in a way that all can perceive as legitimate. The key word is "perceive" because otherwise compliance with its decisions would not be rational, for countries or for their citizens. If such an institution is well-ordered (self-determining or fully democratic) then it meets these conditions.

That is, democratic legitimacy makes the institution and its stream of decisions fair enough, and predictably so, to make assent and actual compliance reasonable, and not irrational.\textsuperscript{105}

To succeed, the policy has to be binding on countries, companies and individuals; the fewer conditions (strictly) necessary for global agreement, the

\textsuperscript{105} There might be another way to achieve this end, or not; it is enough for me that there is at least one.
easier the task of making a universally-acceptable case for its legitimacy; coercion is impractical and dangerous, while real legitimacy is merely very difficult.

Which features of well-ordering are most important for this purpose? This is not an idle question, because it speaks directly to one of the more controversial points of the law of peoples: what if some conditions of democracy are not necessary for some purposes of international law? That is not to say they are less important for people or societies, but simply that we can talk about just international relations without using those conditions in the discussion. Therefore these arguments can be persuade people who reject those conditions, or who think some are derivative of others.

In chapter II, I argued that a decent society is one that endorses all of the conditions of democracy except for equality. Agreeing on the importance of respect, participation, representation, and accountability, a decent society guarantees substantial amounts of power and influence to its least-powerful citizens, though others have more. A society remains decent only as long as the least-powerful don’t fall below some threshold of respect and influence. Advocates of liberal democracy (including me) believe that without equality, no society could remain decent, if it were achievable at all. Equality is no less important for a just society than the other elements, but can be treated separately in an argument. The point is that there may be people who believe they are committed to openness, participation, representation, free elections, rights and so forth, but not equality. If an argument does not introduce the important role of equality until later, the early parts can be made to and accepted as legitimate by those people, which promotes peace and broadens the set of potential allies against more serious injustices.

**a. A Sketch of Democratic Bureaucracies**

There is a growing body of research into different ways various administrative agencies have approached problems of responsiveness, accountability, and other elements of both democracy and decency, from neighborhood groups and NGOs to international regulatory bodies. The common puzzle is that even though their founding mandates do not ensure accountability or
direct elections, or even specify the relevant constituency, and even though they lack the power to coerce compliance from the actors they regulate, some of them have spontaneously evolved into effective, adaptive, consensual agencies (Alter 1998; Cohen and Sabel 2003; Dorf and Sabel 2000; Fung 2003b; Fung 2003a; Sunstein 1995). Are they fair enough, do they provide enough contact to contain and resolve disputes, to guide the design of the climate change body?

This literature is expanding the range of what we think of as democracy, showing that fewer conditions are strictly necessary than had been assumed. Much of the work has described a form of democracy that could apply to bodies that are not directly elected, such as courts and regulatory agencies, eliding the question of whether they are democratic or merely decent. According to Cohen and Sabel, there are five conditions that make these deliberative bodies democratic:

1. It "requires assured protections of basic rights of speech, association, and participation"
2. It should "proceed under a norm of transparency that invites and informs wider public participation in policy argument."
3. The "public discussion must have the right content and focus, which means that it must be attentive to coordination across units as well"
4. It "requires mechanisms of accountability that connect deliberative decisions in particular policy areas with wider public discussion about those areas"
5. "And, to ensure that such accountability respect the equality of those subject to the decisions, a democratic background of deliberative polyarchy includes a individual right to contest decisions." (Cohen and Sabel 2003, pp.730-731)

These meet the conditions outlined in this chapter for the various societies of peoples within which things like climate-change treaties would be negotiated, and which would administer and interpret those treaties.

The five principles have slightly different roles in the two arguments, however. Cohen and Sabel argue that new forms of democracy must be possible

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because some have already emerged in practice, for example within regulatory structures of the EU. I have set a harder task than demonstrating possibility: We need to know if at least one such organization can have democratically-legitimate authority without having the coercive power of enforcement that could be abused far too easily. If there were no adequate safeguards against tyranny, the world might even be better off enforcing ad hoc agreements with old-fashioned power politics and belligerence.

Consider the five principles as they impact various safeguards:

Basic Rights are necessary but insufficient for justice or decency in many forms of organization, not merely governments or other bodies with coercive capabilities. For example, Rawls claims that benevolent despots will provide basic rights to all citizens, but are not thereby considered well-ordered. Rights of speech, association and participation can be justified both as ethical first principles, and independently as practical tools that help people to keep political power diffuse.

Transparency does more than encourage participation, it also helps prevent consolidation of power, especially in bodies with great influence. For example, although the IMF is made up of representatives from borrower and lender governments, and although its procedures include collecting good information from potential borrower governments, its loan policies are largely fixed in advance, without reference to this data. They are imposed over the objections of borrowing ministers, backed by the coercive threat of worse economic disaster should the IMF declare the country to be uncooperative. Rather than open the process to public comment or modification, it hides its processes and data with a view to minimizing input from outside the organization (Stiglitz 2002).

Lack of transparency does two things: it indicates that an organization prefers power more than success at its narrowly-defined mission, and is likely to hide its abuses or incompetence rather than adapt to new information. Watchdogs can use lack of transparency to warn of potential power-grabs, and start to take counter-measures to re-open the processes. Opaqueness also makes it hard to track responsibility for decisions, and thus hard to keep the decision-makers accountable to their constituents. Transparency is both a key component of
democracy and useful for diagnosing possible threats to democracy, or the breakdown of conditions of trust and compliance.

On Deliberation, “having the right content and focus” is certainly important, as safeguards don’t work if they are ignored or irrelevant, but a related idea is more important. Organizational responsibilities should be clearly delineated, both hierarchically and laterally. Decisions about delegating different tasks to different bodies, and especially about some tasks that should never be given to specific bodies, are necessary to give content to other principles like accountability, participation and the like. This is less about the process or quality of deliberation than the choice of umbrella authority under which it should take place.¹⁰⁷

Accountability should indeed link public deliberation and preferences with official actions (even if only by prompting clear explanations of why those preferences would be unjust or impossible). This helps to avoid the more Machiavellian seizures of power, that consult the public for show but ignore its input. The idea is to constrain officials to doing only their jobs (even if part of that job is to redefine its content over time), not work on extraneous matters, or engage in corruption, or neglect some responsibilities. It ought to encourage administrators to catch and fix errors and remedy negligence. Especially where the public discussion is unsystematic, and not always informed deliberation, the benchmark of accountability (for my purposes) should not be fealty to public preferences, but rather administrative competence.

Finally, the individual right to contest decisions is another necessary (but insufficient) basic political right. Indeed, for Rawls this principle underlies rights of speech and assembly, so that a decent society might place some limits on speech and assembly as long as the right to openly contest decisions and receive a respectful and satisfying answer was not curbed (Rawls 1999, pp. §8-9, pp.66-7,72; following Soper 1984). It finds echoes in the idea of organizations as holding environments (Macintosh and Maclean 1999; Cannibal and Winnard 2001; Van

¹⁰⁷ Although it has been argue that deliberation is the link between democratic legitimacy and the obligation to comply with law (King 2003), I am not concerned here with compliance so much as limiting the potential for abuse.
Buskirk and McGrath 1999; Shapiro and Carr 1991). Nothing more need be said on this point.

b. Nice work, but can we get it?

If the role democracy plays as a bulwark against global tyranny is captured by these five conditions, aimed at regulatory and administrative structures, not primarily legislative ones, then it is actually much more of a requirement of well-ordering – that these agencies be at least decent, but not specifically democratic. That is, a domestic society is decent if everyone has substantial influence on government, basic rights guaranteed, a network of other political and civil rights, and respect as a valued member of society. It is democratic if everyone has prima facie equal opportunity to influence public decisions and equal respect, typically demonstrated through an equal vote in free and fair elections.

If the focus is less on choosing who will make and enforce laws, and more on deliberation, setting agendas and choosing narrow interpretations and applications of the laws and decisions, then equality plays a much smaller role. Narrow questions of interpretation will not have equal impact on everyone, almost by the definition of narrow. Whether an application is fair turns on questions of whether two cases are sufficiently similar to be treated similarly, or whether some distinguishing feature should determine treatment, rather than on a general principle of equality.

If different factories making different goods from different raw materials are covered by the same pollution regulations, the impact will vary among factories no matter whether the law was intended to treat them equally by imposing an equal cost, or an equal quality standard, or an equal liability for damage. Furthermore, any of these might have the same effect as a rule phrased not as ‘equal treatment in virtue of X’, but respect for unique value, for example a reward for pollution control implemented earlier, voluntarily and altruistically. This is not obviously less just than the same policy framed as equal treatment – the justice is in the details of its deliberation, implementation and impact.
That is, for democratic experimentalists, what Rawls calls well-ordering is the thing most relevant to setting just, fair and fairly-implemented policies for things like global coordination of collective action. It is not that equality is unimportant or morally arbitrary or unappealing outside the Western canon, but rather that it is not as useful a tool for making some practical decisions in individual cases. Whether a case is decided fairly depends on other factors, one of which is the case’s relationship with the stream of past and future decisions on related matters – whether it is part of a coherent and defensible concept of fairness consistently applied, and not whether it is part of the one best concept of fairness.

This is not an endorsement of well-ordering without equality, merely an observation that much of the work done by a principle of moral equality (in liberal theory) can be done by other things (consistency, connection to informed public deliberation, accountability, etc.) in concrete attempts to set policy fairly and consistently (Sunstein 1995; Dworkin 1986). Some inequalities are out of bounds in any case, for example, refusing to give any pollution credits to people from a particular race, religion, country or sex. Most examples like these are not merely unequal to individuals, however, they are also unfair from other perspectives – imposing excessive hardships; perhaps violating basic human rights; treating countries unequally; failing to connect deliberations among those people to wider policy, and the like.

It ought to be much easier to get agreement from across the globe on the weaker requirement of self-determining institutions than fully-liberal just ones. That might not be important for all purposes, or for a theory of international justice, but it is a crucial step in securing an effective treaty on something like climate change. In order for well-ordered societies to enforce compliance even from outlaw countries, they ought themselves to be convinced of the treaty’s basic fairness. If a change in presentation can persuade decent societies that, perhaps for religious reasons will
not entertain a premise of universal equality, but that have a parallel premise to do the same work, that seems reason enough to make the change.¹⁰⁸

G. Two Further Benefits

How might we give some shape to the revised Society (or Societies) of Peoples, having specified that it should have broad powers of interpretation and decision, but very limited powers of coercion, and that it should conform to the five principles? For clarity, I will confine the discussion to the body concerned with global climate change. To be effective, it must achieve near-universal compliance, which means it cannot exclude burdened and outlaw societies. Well-ordered societies would have to find a way to include the many badly-ordered governments in such a global project, while looking to reform them as a separate obligation of justice. In The Law of Peoples these two goals are in conflict, but an appropriately designed global institution could serve both ends to some degree.

There are two levels at which a body constructing a Kyoto-type treaty should be democratic (understood broadly, as in the previous section) or self-determining, to be legitimate. First, as Rawls describes, each participating country should be represented and treated as an equal, without regard to its wealth or military power.¹⁰⁹ This is simply a condition that any properly self-respecting society would

¹⁰⁸ This is simply a restatement of the asymmetric reasoning in The Law of Peoples. Fully-liberal societies consider alternative principles for the Society of Peoples, but decent societies simply consider various arguments for accepting the scheme that liberal societies present to them. Left to their own devices, decent societies might choose global principles that would not be good enough to count as a just world order. Rawls' argues that it is better to choose principles that liberal and decent societies can endorse as fair, albeit through different, though overlapping arguments.

¹⁰⁹ There is a further question to be settled about the best way to represent countries as equal partners, given their vastly unequal populations, wealth, land area and vulnerabilities. It is not obvious that equal treatment would give one vote each to China, Nigeria and Switzerland, or if not, which of the three should dominate. It is a solvable problem, however, one that real unions have managed to address peacefully, to for example, recently in the EU. I suspect that if there is more than one Society of Peoples, each for a narrow specialty, that different options for balancing influence would be more appropriate for one than another, which could operate as a further check on any one country’s dominance. This is another case where the justice or injustice of the plan would lie in the details of power-sharing, not the abstract principle. I further suspect that the decision of the best interpretation of 'equal' for a given problem would have to be specified by the parties in constructing their institution, for them to accept it as sufficiently fair to underpin compliance. There should be some form (probably consensus based) of democratic legitimation of its constitution for any subsequent decisions to be treated as binding, and that my opinion could not replace it.
demand for itself, decent or liberal. Countries are relevant, and are the units to be represented, because they are to be the sole bearers of the legitimate power of coercion and enforcement. If individuals were represented directly in their national governments and also in parallel in international governments, then it would be easier to bypass each country's internal deliberations, and treat the international as a super-state-like entity. That would not guard so well against accretion of power by the global body.

Second (as Rawls does not describe), for widespread legitimacy and compliance, it is important that these country-diplomats actually represent all of the people in their charge; they must be agents of the society, not merely of its government or other elite interests. If some segments of the world's people are not represented, not only will they have cause for resentment, and incentive for noncompliance, but people everywhere have reason to distrust a scheme that is demonstrably not well-ordered. Just and decent societies ensure universal representation by holding free and fair elections, but increasingly also through means noted by the democratic experimentalists – comprehensive consultation of diverse stakeholders, taking decisions through deliberative consensus rather than rational-interest voting, etc.

I want to endorse such precautions against tyranny, but am troubled not to have seen a description of how the exemplary agencies are structured differently from a scheme of collusion of some parties against the interests of others. That is, Cohen and Sabel's five conditions mandate universal rights of participation and appeal, and appear to define interest-cartels as undemocratic, but is that is a matter of labeling the cartels, or of preventing them in the first place? It is essential to gain the compliance – not merely the signatures – of all countries that have or might develop the capacity to emit the relevant gases. Otherwise total global emissions will increase, even if the current major contributors cut production sharply. This cooperation, however, sits uneasily with The Law of Peoples,

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110 To avoid the risks of tyranny, Rawls would never permit such a standing body to have coercive powers of its own. It could possibly coordinate nonmilitary coercive acts, like boycotts or diplomatic censure, among the members that do comply, but that is much less direct and effective.
because of the risk that working with an outlaw government gives legitimacy to the outlaw leaders, in the eyes of the international community and within the outlaw state. In §13.3 (p.92-3) Rawls emphasizes that well-ordered societies will work together, through one organization or many smaller alliances, to reform outlaw (and burdened) societies. He refrains from giving practical advice, and notes that this enterprise rests on luck as well as policy. The tension is real, however, between the pressure to isolate and shame outlaw governments, and the desire to make some improvements by bribing the government with money or international recognition.

While this can pose a real dilemma for many international issues – tax harmonization, trade, regional resource management, cultural exchanges, etc. – it is not as difficult when the issue itself requires near-universal consent. Isolating outlaws completely is not compatible with limiting otherwise lucrative practices, so unless all countries become well-ordered in the next few years, some cooperation with badly-ordered governments will be necessary. The best we can do is to find a way to minimize the shadow of legitimacy that follows being seen to consult and cooperate with the outlaw leaders.

For instance, this could be done in two parts. First, design an international agency with a relatively narrow mandate. Composed of representatives of all countries (not just the well-ordered as in the Society of Peoples), it first hosts the deliberative construction of a climate-change treaty, and then administers and interprets it, so that in each country, under local conditions, it is applied consistently in ways all can find reasonable. The agency doesn’t have much power to enforce its decisions directly, though perhaps it could levy fines. Major sanctions would have to be applied by the other countries, and to be effective, they would have to agree on penalties. This wouldn’t prevent all abuses of power, but it would mean that the agency’s own power would be limited unless it had the full support of a number of member countries.

A lot more could be said about the design of this institution: for example, how to prevent a small number of (powerful) countries capturing the agency and ruling through it, how to prevent rational power politics in favor of more Rawlsian
reasonable politics. These ought to be familiar from the design of other democratic institutions, however. My purpose here is simply to show that such an institution can be both effective and relatively safe.

The second part of the design strategy concerns the process of choosing representatives to this agency. If we could arrange real individual-level democratic (or at least decent) choice of every country's representatives, then it would matter less that each member country was itself not well-governed. Failing that, it would be good to ensure that the outlaw society's representatives were at least not chosen by its abusive government, but instead more plausibly represented the members of the society itself. The material benefits of climate change treaties (aid to build cleaner factories, compensation for damage from flooding and storms, etc.) would be a powerful stimulus to the outlaw leaders to allow such limited autonomy, especially if Rawls is right about the material benefits of peaceful trade.111

Active participation in the global body would enhance efforts to teach members of burdened and outlaw societies how to act in a participatory democracy, for example, how to form coalitions rather than extremist-led factions. Because democratization requires more than one choice (of external representative) and is very difficult to do well at the best of times, reforming burdened and outlaw societies is time-consuming and dangerous. Giving the citizens practice at self-determination, without first destabilizing the existing government, thus preserving whatever civil society and government benefits there are, would be a, conservative way to proceed. This is easy to suggest, but hard to imagine; it is at least worth trying to find such a way to include badly-ordered societies while minimizing the inadvertent stabilizing effect such inclusion would have.

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111 The model for this observation is the eagerness of countries in central and eastern Europe to join the EU. They are eagerly modifying their constitutions and practices to meet the requirements. Rather than complaints that the conditions of membership are peculiar to western European culture we see appeals for accelerating the admissions process.
H. Conclusion

The point of this theory of just international relations is to guide real international relations. Rawls argues that there are many matters on which just-and-decent countries will easily find mutually beneficial resolutions; this natural cooperation leads democracies to prefer peaceful trade over conquest or intimidation. He argues, mistakenly, that this means well-ordered societies need no deep, binding international institutions, but prefer loose confederations that coordinate negotiations on treaties they find easy to write. This, he thinks, maximizes each country’s independence, allows citizens to determine their common goals with the least interference from abroad.

Unfortunately, not all global concerns can be resolved without steep, asymmetric costs. Under such conditions, even well-ordered societies may be unable to agree on a plan to allocate those costs, because they would have no common idea of what would be fair, or any consensus on what factors ought to be irrelevant to treating each other as equal partners. They lack this consensus if they lack the kind of ongoing collaborative institution within which ideas of fairness are deliberated and instituted in a set of procedures all agree would be fair if applied consistently over time.

Consider the problem of limiting greenhouse gas emissions to mitigate global climate change. Countries face radically different risks of environmental damage, are differently able to install cleaner technologies or cut production. A country’s wealth can help cushion the economic shock of sudden changes to production, but there are great wealth inequalities around the world; the same is true for economic diversification. Even countries committed to treating each other fairly, as equal partners in the world would not necessarily agree on what fairness meant in concrete terms.

If countries face several interpretations of fairness, that are equally reasonable but that have radically different costs and benefits for different countries, then each has reason to think that the others are choosing not on reasonable grounds, but on rational calculations. If a country’s representatives burden their state with high costs, its citizens have reason to reject the agreement
made in their name, in light of the lack of global reciprocity. Each country has reason to interpret the disagreement over fair plan as evidence of others' treachery, or at least, as insufficient evidence of their commitment to mutual trade and cooperation more generally. In other words, a disagreement on one global collective action problem can spread into a generalized distrust of other countries’ motives, to revising the assessment of whether or not others are well-ordered. In the extreme, failure to reach agreement can lead to violent conflict.

The goal is to achieve widespread agreement on a norm of fairness that, though perhaps not the one each country would prefer given its own culture and politics, is one they can all agree is fair enough to all to be acceptable. They then would ensure that this norm is applied and interpreted consistently over time to all countries. Doing this requires an institution, a deliberative and administrative body through which all countries are committed to enacting a stream of decisions that take all countries’ needs into account, and accommodates them fairly and reasonably. Fairness is not measured by abstract principles (on which there is no agreement) but in concrete terms, costs and benefits over time, across many decisions.

The constitution and practices of the international body itself are also components of fairness – they determine whether it is reasonable for individuals and countries to comply with decisions that seem unfair taken in isolation. Institutional design is also crucial for limiting the agency’s ability to accrue too much power and turn despotic. If it meets various conditions of democratic legitimacy, it will serve both purposes: justifying universal compliance and limiting its power. The agency’s power can also be limited if it does not have the direct ability to impose severe penalties on member states. Punishments that are not easily reversible should only be imposable indirectly, by explicit consent and coordinated action of its member states. This limits naked grabs of power. It also effectively encourages them to seek broad consensus rather than bare plurality, and favors accommodation of special needs rather than rigidity in the name of fairness. This climate favors peace and respect for other countries as equals, and fosters a spirit of reciprocity and compliance.
Organizing the Society of Peoples in this way is consistent with Rawls’ stated aims of peaceful, reasonable, sustainable cooperation, and directly addresses his fear that too strong an authority would become a global tyranny. It may also satisfy the liberal who is perplexed at Rawls’ rejection of cosmopolitanism. In addition, it offers a way to introduce the practice of democratic deliberation to people living under bad governments, in a limited way, without first destabilizing their social and economic structures. This basic security encourages peaceful experimentation with reforms, because all sides face greater risk from more catastrophic changes like revolts.

These proposals will stand or fall not so much on the sketch offered here, as on the details of the implementation, for institutions are remarkably good at self-aggrandizement beyond their briefs, and political theory has yet to offer a reliable guarantor of real accountability – elections are a very imperfect proxy. Ultimately, though, one has to balance the risks of different schemes collapsing: when Rawls’ construct fails, even just states will have some reason to make war on one another; when mine collapses, the global body snatches more power and member countries have to be on guard lest it acquire police or military power. In my judgment, the former risk – of international misunderstanding and mistrust – is far greater, with more lethal consequences for vast numbers of people in the world. Fortunately, this debate too can be settled peaceably.
V. Conclusion: Progress Toward a Just Foreign Policy?

A. What Has Been Discussed

In this dissertation I explored three ways in which the value of having separate, autonomous countries should shape the foreign policy of a just state. Historically, there have been two approaches to questions of justice beyond national borders. One approach, considers obligations among human beings, where boundaries might constrain the options available to us but not the space of what humans owe to one another. The second considers the implications of asymmetric political relationships. If shared coercive institutions can oblige citizens to treat one another in certain ways, what are the complementary obligations to noncitizens?

The two strategies will be more useful for addressing different problems arising from international law, and a comprehensive theory ought to use both approaches. The first helps one to ascertain which things are critical for a minimally decent human life; material, social and political rights follow, and we can derive corresponding universal obligations on all human beings to secure those rights for one another. The second strategy asks how we ought to meet these obligations given that we live in independent countries, with separate governments. Inviting the oppressed and needy to join in ‘our’ just government is impractical; no country wants to expand its franchise to that degree (whatever its imperial aspirations), and the people in need of assistance usually express a desire for their own well-ordered, rights-respecting government.

Investigating what that encompasses requires a model that presumes the existence of separate countries, each governed collectively by its own citizens, pursuing their own agenda, consistent with basic human rights (at home and abroad). It is also committed to leaving considerable space for each country’s self-determined political choices and priorities, which requires defining the conditions under which a country’s decisions are free from interference; also specific
principles and prohibitions on interference where it is required by international justice.

How then do we construct a just foreign policy for a liberal state in a world that is not itself perfectly just? That is the project of this dissertation, to determine some of the requirements and prohibitions on foreign policy imposed by a theory about justice and some constraints of real politics. It builds on the work of cosmopolitans, who have helped determine the requirements of a reasonable human life with dignity – the content of basic human rights and others needed for participation in a political community. It also builds on the contribution of John Rawls who offered a framework for determining which rights and obligations attach to compatriots and which to the international community. This is especially useful for figuring out what a just country should do beyond its borders – what it must do, what it must not do, and what options are available.

In chapter II I explored the requirements for national self-determination, when another country ought to be concerned for people elsewhere, and when it should trust that they are able to pursue justice for themselves without risking life, health or dignity. That condition I call collective self-determination and it is very close to what Rawls describes as a decent society; people need not be treated as equals, but everyone must have a great deal of respect, real opportunity to influence their government, and economic security. At that point, others should refrain from interference, both out of respect for that country’s collectively chosen plans (though they are not fully just) and out of caution. Knowing the history of disasters following interference elsewhere, a just society should be properly cautious, interfering only where the risks are outweighed by extreme and irreversible suffering if they do not intervene.

I turned next (in chapter III (Limits to Foreign Aid)) to the matter of material redistribution obliged and forbidden as a consequence of promoting separate self-determining countries. The question is: How could we use foreign aid to relieve poverty in another country while preserving its autonomy, and not provoking resentment? One might expect that the answer is to give it abstract material aid – money – rather than specific goods, empowering the poor country. Giving wheat,
soy or rice may be resented as a foreign ‘rule’ about what ought to be eaten. Emergency housing may not have the right dimensions for households in all cultures or climates. Intuitively, we think these decisions ought to be made by the recipients, or their representatives. Unfortunately, unless the needy country has the right sort of institutions, we cannot rely on their spokesmen to speak for them, and cannot rely on the country’s own institutions to get the help to the needy. This is intrinsically part of the problem of poverty, and ought to be in the model we use to analyze it.

If we want to limit foreign aid, to leave space for collective self-determination, then first we must make sure the country is collectively self-determining – that it has well-ordered institutions, and enough material aid in the hands of the neediest that they have effective opportunities to do something other than simply stay alive. That requires importing well-functioning institutions for distributing aid, and making respectful choices about what things to give, following consultation with the people themselves. Space doesn’t come from a lack of attention and management required of the donor country, it comes from conscious construction of the institutions and practices that will eventually operate in that space, and from careful determination of when to end the aid. Just countries provide the political scaffolding while just or decent governments and markets are created and tested, and take it with them when no longer needed. Foreign aid of this sort is risky, because it requires the level of interference that can lead to abusive relations between states, but it is feasible, and, I contend, safer than simply giving money to a government that will not use it to help the neediest. The lesson of its risks is to encourage space for self-determination in the first place.

Finally, in chapter IV (Limits to Independence) I turned to the limits on a country’s autonomous decisionmaking even on matters that at first appear purely domestic, but have global consequences. Rawls believes that just and decent countries will address such problems as they arise, through cooperative treaties that treat each country fairly, as an equal partner; he thinks that this requirement, and that they offer reasons for such treaties that all could accept as consistent with equal partnership, is enough to guarantee fair treaties and peaceful cooperation,
even when a country has rational incentives to seek a more lucrative arrangement. I show, however, that this would only be true where the cooperative arrangement is mutually profitable, and can break down where it is a matter of allocating burdens fairly, especially where there is no uniquely best plan. Under such circumstances, the reasons they give one another are not decisive, which gives countries reason to believe the others are acting out of selfish interests instead, and that the reasons they offer are disingenuous. Not only will they fail to reach agreement on the matter at hand, their disagreement can lead to a breakdown of trust and peaceful cooperation more generally.

Crafting a solution that demonstrably treats other countries as equal partners in unequal circumstances will require that they have a prior shared context within which norms of fairness have been constructed. This both acts as a holding environment, within which disagreements can be contained and resolved rather than spreading, and it allows the possibility of benefits and burdens to be shared consistently and fairly over time, when it is not possible in any one instance. Such an environment includes a well-ordered international institution, or set of them, with the ability to issue binding decisions, made collectively by members through procedures all agree are fair.

The chances that such a body would become a tyrannical world government can be minimized if it lacks the means by which to enforce its decisions, except through coordinating members in enforcing them, and of course, by constituting it to be fair and representative. This limits each just or decent country’s sovereignty, by requiring international coordination, but not by setting some other agency in authority over it. Although my proposal might trigger John Rawls’ reflexive fear of global dictatorship, it is consistent with his specific requirements of peaceful cooperation as equals, and of peace more generally.

B. Questions Remain

There are many other questions one could ask about the content of a just foreign policy. I have not touched on any of the issues surrounding use of force in protecting human rights, or in helping to reform governments that actively resist
such help, or to end the rule of leaders who enjoy abusing their power. Nor have I addressed the relationships between government and nongovernmental actors in the international realm — charities, corporations, cultural and ethnic groups, professional societies and the like have key roles in the real world. As their members are simultaneously citizens of some country and actors on behalf of one or more other groups, it would be a good idea to explore ways in which countries may and may not use these groups when promoting justice abroad. Some of these transnational movements are neither peaceful nor just, and their activities can be directed against governments, individuals, or these other entities. As real foreign policy is increasingly concerned with such problems, one would like a theory to offer some guidance.

However, not everything can be done at once, and I think this dissertation is a good beginning. It suggests some themes, or strategies for approaching subsequent foreign policy questions. If one of the conclusions is that it is important to leave considerable space for collective self-determination\(^{112}\) then we ought to seek ways of constructing well-ordered governments in which a just country provides the scaffolding and the recipient society provides the labor and direction. Recent war crimes tribunals, combining the authority of established international agencies and the legitimate representatives of the society that was violated, might inspire such developments of the theory. Legitimacy performs a secondary role of limiting the interference from abroad, and though it is not a foolproof way to avoid meddling, it would help the well-intentioned outsiders avoid mistakes.

Originally, I had hoped to conclude by suggesting several concrete applications of the principles worked out in these three chapters for the contemporary foreign policy of well-off constitutional democracies. In the course of writing, however, at least two of my ideas have been implemented and then rendered ineffective or obsolete, over a fairly short span of time. Accordingly, I shall try something less ambitious, and perhaps more durable: discuss an idea proposed by others, and modify it so as to leave sufficient space for independent choices by

\(^{112}\) But not for dictators or incompetents merely claiming the mantle of legitimacy.
well-ordered societies, encouraging good government and offering considerably less encouragement to bad governments.

C. Reforming International Loans

Here is a summary of two related proposals for reforming international loans that illustrate the advantages for a liberal theory of justice of the just-foreign-policy approach over the global-justice approach. Following that, I suggest some improvements that follow from the arguments in the three previous chapters. While the chance of even a modified proposal being adopted is laughably small, it is useful to point out the ease of making such simple improvements with such clear benefit.

1. Two proposals

Thomas Pogge, Michael Kremer and Seema Jayachandran think that international economics, as supported by wealthy democratic nations, encourages corrupt, dictatorial governments, and destabilizes newly democratized ones. This is counter to the stated aims of established democracies, and against their long-term interests for peaceful trade. At fault is the automatic granting of two privileges to the de facto, hence recognized, leaders of a state, without regard to their legitimacy: the international borrowing privilege and the international resource privilege (Kremer and Jayachandran 2002; Pogge 2001b; Pogge 2001a).

The practice of international loans in its current form does not support democracy, for three reasons. First, many poor countries face crippling debts, and when a democracy has to service a debt, it cannot also meet the demands of its populace, and becomes unpopular and unstable. Second, many of the loans have not benefited the people, either they were given for failed programs or unneeded items, or the money was simply diverted by corrupt officials and lost. This makes servicing the debt difficult to justify to a needy population. Third, and related to the first two, the loans were often made to undemocratic governments with different interests than their populations; there should have been every reason to suspect they would not serve their citizens well.
To encourage democracy, all three argue for fundamental changes in international loans, both to stabilize new democracies and to make new coups d'état less attractive. The changes should make it difficult for any government but a democracy to borrow money. Kremer and Jayachandran propose an international institution be empowered to declare whether a regime is “odious” (or what Rawls calls an outlaw). Any well-ordered successor government to such a regime would not be liable to repay any international loans made to an odious government. This would make it harder for outlaws to borrow money, and would free the society from heavy debt incurred illegitimately in their name; such debt makes it harder to stabilize a new democracy. If it were independent of the institutions granting the loans, and if it only evaluated regimes prospectively, then its honesty and accuracy would be more certain, and its judgments accepted (Kremer and Jayachandran 2002).

Pogge offers some related proposals. He suggests that each newly democratized country add an amendment to their constitution asking the international community not to lend money if the democratic government is overthrown, and stipulating in advance that any such loan would not be repaid. Even if coup leaders repeal the amendment, any future democracy would be able to declare the repeal invalid. More importantly, the well-off democracies would be too embarrassed to enforce repayment under those conditions (Pogge 2001a); if new democracies could get the OECD countries to pledge to honor this amendment, it would have greater force than mere embarrassment (Pogge 2000). If several countries were to do this, they could set up an international Democracy Panel, perhaps under UN auspices, whose sole responsibility would be to evaluate whether the current government is too undemocratic according to its own constitution to borrow money (Pogge 2001a).\footnote{Pogge's Democracy Panel would never impose its own standards of democracy or enforce a similar amendment from an authoritarian government; Kremer and Jayachandran's agency would evaluate whether a government is both undemocratic and misusing funds.}

Lenders will object that refusing to honor authoritarian-incurred debts would simply encourage any coup leaders not to honor loans given to their democratic
predecessors, which would discourage loans to new democracies and harm them. Pogge suggests a Democratic Loan Insurance Fund (DLIF) to service the debts incurred by democracies should they be overthrown. Rich, stable democracies ought to join in this fund, though they will almost certainly never need it, because of their commitment to democracy in general, and the material benefits of there being more democracies in the world with which to trade (the profitability of peaceful trade is emphasized by Rawls). Even so, because these proposals would so discourage coups that the risk of the DLIF having to repay a loan will be very small, and so the premiums will not be prohibitive (Pogge 2000).

The international community also inadvertently helps authoritarian rulers to destabilize future governments. Whoever is recognized by the international community as leader of a country is considered to be in charge of their natural resources. Dictators can plunder these raw materials and sell them off for personal profit and political favor; other countries are happy to get the material cheaply and in bulk, so they give the unjust government support. This looting destroys the environment, creating serious problems that can overwhelm a responsible government in the future. Foreign rewards to the bad government give it even less reason to respond to its own people's needs; it is less likely to democratize and more likely to violate human rights.

Kremer, Jayachandran and Pogge propose that the international community stop regarding these leaders as having legitimate authority to dispose of resources, and instead think of them as fences of stolen goods (Pogge 2001b, p. 21; Kremer and Jayachandran 2002, p.26-29). The countries and companies that benefit from resource mismanagement, and reward or bribe the government, are imposing the global order that keeps these countries poor and poorly governed. It is not simply that these countries don't know how to develop well-ordered, responsive governments, and need our education and advice (they are not merely burdened, but also ruled by outlaws). Rather, there are specific things that the developed nations can do to undo the injustices they currently impose through the resource and borrowing privileges.
2. Discussion

Unfortunately, these proposals are inadequate for the real world for a rather uninteresting reason. Most democracies in the world are insufficiently just to endorse the democracy condition. A formal constitution is usually adopted before it can be implemented, especially in a new democracy. At the time of adopting Pogge’s amendment, for example, democratization would almost certainly be incomplete, and its institutions’ vulnerability to corruption will be untested – and likely significant if the country needs loans from abroad.

Political scientists talk about two parts to democratization – democratic transitions followed by democratic consolidations. If the amendment is adopted during transition, but consolidation fails, turning the state into a constitutional oligopoly, then that is how the rest of the world, or the Democracy Panel, would understand their condition “democratic enough to get and repay loans,” and they will believe that this hijacked-democracy’s citizens support the loans and sale of their resources. Similarly, Kremer’s and Jayachandran’s agency would have to choose specific criteria for ‘enough’ democracy (or ‘enough’ fealty to the society’s real interests) on which to evaluate new governments for loans. They would face a tradeoff between demanding criteria, that very few governments could meet, or much less ambitious criteria, more formal measures of democracy or corruption, that would count too many corrupt or incompetent regimes as acceptable.

Pogge has three problems. If the world and Democracy Panel were to rely on the level of democracy at the time of adopting the amendment, then there is ample room for leaders to steal foreign aid, get funding for inappropriate projects (like unneeded dams or arms purchases), and squander their resources. If instead the world were to rely its own standards to decide when democracy had been sufficiently demonstrated, then there are two possibilities. The world might refrain from giving aid to a fledgling democracy that needs the aid to improve living conditions, and thereby make consolidation much more difficult. Rich countries might also give aid inconsistently, according to their own interests, not the interests of the needy people, much less their level of democracy; there is evidence that this actually occurs (e.g. Thacker 1999). The same possibilities are true for legitimizing
transactions that dispose of a country’s raw materials, although one might think waiting for democratic consolidation before developing natural resources -- to have a national debate about the subject -- would be a good thing.

As stated, these proposals seem to add no secure advantage to the current situation. Even for Pogge’s rhetorical purpose (of shaming the OECD countries into forgiving bad loans), ambiguity means that the OECD could claim to be respecting the amendment whether it gave loans or not, while never holding its own loans to have been in error.

It does no good to specify fixed definitions of what are inevitably moving targets. What counts as ‘enough’ democracy to be worth supporting with international loans is not a likely candidate for eternal truth. Whether loans should be supported likely depends on many criteria, including information that might not be available in all cases, but crucial in some. These three authors seek uniform criteria to ensure that loans are not granted based on political favors to one or another powerful country, but instead on evidence of well-ordering. Pogge wants full democracy, while Kremer and Jayachandran will settle for self-determined legitimacy and lack of blatant fraud.

I propose another standard that might be more feasible in the world, coming out of the conclusion to the second chapter, which was that just countries should not assume that minimizing interference abroad is best achieved by giving money and having locals administer it. Rather, the donors or lenders need to ensure that the structures are in place for effective use of the money; though this may require more involvement on the ground, it does help get the needed resources all the way to the people who need them. This is key, for it is not the case that all fraud is committed by the heads of state, it can penetrate all the way down, and even honest leaders may find it impossible to purge the lower ranks of corruption or waste. In more theoretical terms, there is no bright line between the burdened and the outlaw governments, real countries have elements of both, and real policies must take this into consideration.
3. Revised Proposal

I propose that international society permit loans to badly-ordered societies (burdened or outlaw) only if (a) the project would directly provide for basic needs, such as education or public health, and (b) the expenditures were closely audited by independent monitors. Only the portion that was actually spent on the approved project would be eligible for repayment, even by a future democracy. Lenders could seek repayment of looted funds from the corrupt leaders themselves (whether or not they were deposed), or from project contractors, if it were shown that this was where the theft occurred. To facilitate this, the banks could ask, as a condition of such loans, that undemocratic leader-borrowers (and perhaps contractors) authorize in writing such collection efforts.

An obvious objection is that such broad collection authority would be used to harass government leaders and former leaders who happen to be disliked by some influential world power. Audits themselves could be unfairly influenced by both lending and borrowing government officials. To prevent such abuse, recovery of embezzled money would have to be preceded by some form of open judicial-type review, where the accused may defend themselves, and where the audit could be vetted against claims of bias. That cannot, in general, be a court in the country that received the loans, because that country isn’t required to be well-ordered. Ideally it should be some truly independent review board, composed of people with relevant expertise in both accounting and in local economy, who are not affiliated with the lenders, the former or current borrower government or the accused embezzlers.

Another objection is that the proposed close auditing of the use of loans would require a good deal of supervision and control of the entire project by foreign experts. This may be more than insulting, there is reason to think that the most effective programs are ones implemented by the recipient government, even when it is not democratic; although local control doesn’t mean good control, it may be better than foreign control (Bigsten 2001). This gives good reason to insure that the

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114 This idea preceded the recent international accounting scandals that made audits seem less-than-reliable discouragers of fraud. Whether these audits could work depends on publicity (in the lending nations), enforcement and public interest in keeping the loan process honest.
foreign supervision is solely for the purpose of tracking expenditures, payments and delivery of materials and services, to record which funds are used, which are diverted and by whom. The monitors should not second-guess local decisions on how to proceed once the project has been approved and the loan granted. However, local control is no panacea and badly-ordered societies need some basic structural reforms to implement any change, and the lender should be able to insist on reforms like rule of law, accountability or transparency (Botchway 2000; Kabeer 2000).\(^\text{115}\)

Also, monitors should be intrusive and suspicious in proportion to the openness and well-ordering of the receiving government (as is the risk of misuse of funds). The better a government responds to its people's needs and interests, the less oversight is needed to insure this responsiveness. The more a government genuinely represents all of its citizens, and the more transparent and accountable it is to them, the more well-ordered it is. The better a government fares on this continuum, the less vigilant the lenders have to be to guarantee human rights; less vigilance equals less intrusiveness, and less opportunity for charges of paternalism.

Kremer and Jayachandran highlight an important issue: is there reason to expect that the project will benefit the people it is designed to help? If not, the loan should not be given in the first place. If there is good reason to expect the funds would be stolen, that is a good reason not to give the loan. If there is good reason to expect that monitoring would so demoralize the people that the project itself would fail, that is also good reason not to give the loan. In any case, there are other ways to finance development projects, not all of which burden successor democracies or encourage coups.

In the worst cases of needy countries with no reliable infrastructure, perhaps the loan should be given to a nongovernmental organization to administrate the

\(^{115}\) The "structural reforms" I speak of make a government more well-ordered – better able to consider its citizens’ opinions and interests, more inclusive and more accountable. They are not the "structural adjustment" policies made notorious by the World bank and IMF, which have reduced subsistence and security (e.g. Abbasi 1999; Kremer and Jayachandran 2002; Stiglitz 2002; Singer 2002a)
project, pay all bills and keep accurate records, acting as an agent for the society whose government is inadequate to the task. The society and any future governments would be responsible for repayment, unless they could show that the NGO siphoned off the money for its own nefarious purposes, or allowed contractors to do so.

A final objection is that this scheme gives lenders too little incentive to do the monitoring honestly, as they could either declare that the loan was used properly and demand repayment from any future government, or declare that the money was embezzled and pursue claims against everyone involved in the project. The response is that the monitors need to be independent, truly unaffiliated with the lenders or the borrowers. Figuring out exactly how to do this would be a challenging task, but there is no reason to think it would be impossible. Again, key to its success would be open, public records of the transactions and audits, so that uninvolved parties could join in the debate about repayment, evaluating records and claims.

It should be noted that the worst impact of unwise IMF and World Bank loans to countries now burdened with huge debt is not the fact of the loans themselves, but the structural adjustment conditions attached to the loans that left their economies unable to meet basic needs, much less repay large loans (less still if the money was embezzled). We should be wary of imposing conditions on a loan that, despite the best intentions, makes things worse for the recipient nation. All of these proposals insist on rule of law (at least in the administration of the loan), and basic human rights, not any specific ideology.

D. In Conclusion

This dissertation has explored some counterintuitive recommendations of a liberal theory, premised on the moral equality of humans (the units of analysis) for constructing foreign policy for a single just country with respect to others. One might expect that universal moral equality could never result in differential responsibility to citizens and noncitizens, or that it could somehow endorse greater inequalities among noncitizens than among compatriots. One might expect that
countries ought to be more closely linked, either by mutual consent or because each would discover the same requirements of justice. Conversely, one might expect that just countries ought to be quite self-contained, even isolated, because that would be the only way to justify special concern for compatriots, and for communal projects that outsiders wouldn’t share.

In the end, none of these is compatible with liberal justice in a world of other, unjust states, for different reasons. It would be no further help to ignore the fact that noncitizens don’t participate in a government’s decisions, or that redistribution really requires shared governance if it is to be a matter of obligation. Similarly, it is worth exploring in detail the conditions under which it is reasonable for different countries to trust one another, and for citizens of each country to abide by the agreements made in their names, because those conditions do not come into being automatically. All of these speak to the ties between countries and their citizens, and among countries themselves. It is only by exploring these connections that we can come to some better specification of justice across borders.
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