THE LAW OF PEOPLES, HUMAN RIGHTS AND MINORITY RIGHTS

A Study on Legitimacy and International Justice

by

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Abstract

Severe poverty and ethnic-conflicts are the two most devastating problems of the contemporary world. Eighteen million persons die every year from causes related to poverty and a vast amount of developing countries suffer from tremendous processes of destabilization—frequently involving highly violent actions—associated to the relations between majority and minority groups. In both cases, the intervention of international powers and institutions has not been helpful enough to make a difference, and this present reality projects itself as a distressing scene for the future.

Human rights and minority rights are the most powerful international tools in trying to change this sad global scenario. However, there is an extensive debate on the nature of these rights in a theory of international justice. This is often characterized as a debate between “minimalist” who seek to reduce the currently-recognized list of human rights to a bare minimum in order to accommodate non-liberal societies, and more expansive liberal approaches, which seek to expand the list of human rights to include the full set of civil and political rights characteristic of modern liberal-democracies. In this thesis, I will argue in favour of a third position. In line with some of the more minimalist approaches, I will argue that constraints of legitimacy rule out attempts to include full civil and political rights into our list of human rights. However, I will argue that these same constraints of legitimacy advocates for expanding the currently-recognized list of human rights in at least two key respects: the recognition of certain basic social and economic rights; and the recognition of certain minority rights. In short, we should be minimalist on some issues, while more expansive in others.

In developing this argument, I will relay on the framework provided by The Law of Peoples of John Rawls. In the first chapter, I will present this general framework, stressing the constraints that legitimacy imposes on a conception of international justice and,
derivatively, on an account of human rights. These constraints, I will argue, oblige us to exclude from the account of human rights particular rights full civil and political rights. In the second chapter, I will present the constraints that legitimacy imposes on the exercise of political power. Legitimate exercise of political power, I will argue, requires the respect of human rights and minority rights. As well, this second chapter will help to provide the justification of human and minority rights. In the third chapter, I will present the constraints that legitimacy imposes on the practices of the international community in regard to the fulfillment of human and minority rights around the world. Legitimate practices directed to this achieve this goal, I will argue, requires their strict separation from actions undertaken to promote liberal reform. As well, this third chapter will help to state the role of human rights and minority rights.
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Chapter 1: Introduction

Human Rights and Legitimacy
A Defence of a Liberal Account in the Right Sense

In this chapter I will present the framework in which the rest of this thesis will work. In the first section, I will present John Rawls’s ideas in regard to the legitimacy of a liberal conception of domestic justice. In the second section, I will show why these ideas on legitimacy are also a constraint for a liberal conception of international justice and—as part of such a conception— for an account of human rights. In this sense, I will state that both a conception of international justice and the account of human rights must be acceptable for reasonable peoples. This impels us to exclude distinctively liberal content from them. I will argue, thus, that full civil and political rights (or what is sometimes labelled as rights to liberal democracy)¹ should not be part of the account of human rights, as it is unreasonable to expect all reasonable peoples to accept these rights.

1. The Legitimacy of a Conception of Justice

Rawls holds that the argument of his theory of justice can be divided in two main parts²: the first part specifies the content of the conception of justice—i.e., the principles provided by it—and its moral justification. The second part specifies an account of the stability of the conception of justice. Accordingly, the first part of the argument is related to justice—or what justice requires—and the second one to legitimacy—or what legitimacy requires.

¹ Throughout this work I will intermittently refer to full civil and political rights as rights to liberal democracy.
A Theory of Justice (TJ)\textsuperscript{3} might be seen as the presentation of the first part of the argument\textsuperscript{4}, whereas Political Liberalism (PL)\textsuperscript{5} presents a set of ideas concerned with the second part. However, it is important to note that, in order to construct the second part of his argument (political liberalism) Rawls had to renounce certain theses held in TJ. This shift shows a more fundamental characteristic of Rawls’s thought, i.e., that considerations of legitimacy can in part determine the content of a conception of justice. Considering this central characteristic, Allen Buchanan has spoken about “the primacy of legitimacy”\textsuperscript{6}. This statement, as Buchanan notes, is not to establish that considerations of legitimacy have a priority over those of justice, but, instead, that considerations of the latter cannot be formulated without taking seriously those related to the former.

But why does legitimacy enjoy this primacy? Two reasons credit legitimacy with a central importance; while the first one is normative, the second one is practical: (1) a liberal conception of justice, by principle, cannot be imposed; if it does not enjoy the consent of the citizens, it stops being a liberal one, even when its content is explicitly liberal. Close to the first reason, but in the sphere of the practical, the second reason claims that: (2) legitimacy is tied to the stability of a conception of justice. Internally, if a conception of justice is seen as legitimate by the citizens, it is reasonable to expect that they will support it throughout time. Citizens who recognize laws as legitimate will see

\textsuperscript{3}Rawls (1971).
\textsuperscript{4}The content of the conception of justice presented by Rawls (justice as fairness) are two principles to regulate the basic structure of society: (1) each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and (2) social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society. Rawls (2002), p. 42. As for the moral justification of this conception of justice, Rawls claims that its principles would be result of an agreement in between citizens, or their representatives, located in an original position of equity –i.e., under the veil of ignorance. Rawls (1971), pp. 118-183.
\textsuperscript{5}Rawls (1996).
\textsuperscript{6}Buchanan, (2000), p. 73.
these laws as appropriate rather than merely coercively enforced. Externally, legitimacy is also relevant to guarantee stability as it makes intervention from foreigners impermissible.

In addition, stability has quite an important role in Rawls’s thought since, as the next passage states, a conception of justice must be practicable:

In describing the second part of the argument, let us agree that a political conception must be practicable, fall under the art of the possible. This contrasts with a moral conception that is not political: a moral conception may condemn the world and human nature as too corrupt to be moved by its precepts and ideals.⁷

As this passage clarifies, the factual possibility of a conception of justice is of primary importance.⁸ In this account, stability is a necessary property of the very conception of justice, rather than a property of the scheme of institutions it is designed for; let us then call this second reason “the property of stability”. In the same way, the first reason can be seen as a necessary property of a liberal conception of justice; let us call it “the property of free acceptability”.

Legitimacy, thus, ensures that our conception of justice will have the property of free acceptability and the property of stability. It will be legitimate when it is reasonable to suppose that it would be endorsed by citizens throughout several generations. But before considering Rawls’s strategies to achieve this goal, a crucial delimitation must be made: it is not within the scope of a liberal conception of justice to achieve the consent of every citizen. For even when the principle of toleration is one of the pillars on which

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⁸ This statement contrasts with other views on what our principles should prescribe and what is actually possible. Gerald Cohen, for instance, has argued that political philosophy should only be concerned with what justice requires, even in the case that that implies going against the very human nature: “But suppose that, like me, you think that political philosophy is a branch of philosophy, whose output is consequential for practice but not limited in significance to its consequences for practice. Then you may, like me, protest that the question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference.” Cohen, G. A. (2003), pp. 242-243.
liberalism stands, it has to be taking into account in its relationship with the principle of liberty.

In contrast, there are other –non-liberal– views of tolerance in which liberty is not a principle to be considered. In this regard, Will Kymlicka has recalled the case of the Millet system in the Ottoman Empire: a system of communities of different religions (Muslims, Jews and Orthodox Christians), each of them empowered with the faculty of imposing its religious beliefs on the society of its own Millet and, accordingly, with the faculty of restricting several individual liberties –such as freedom of conscience, transit, or marriage. Nonetheless, tolerance between different Millets was strictly respected and, in fact, proved to be quite functional over the five centuries of the history of the Ottoman Empire.9 We have, then, models of toleration that offer tolerance between communities, and not between individuals. A liberal account of tolerance for the domestic case, though, must take into consideration individuals. But it cannot consider them all equally, as some of them might hold unacceptable ways of living from a liberal perspective. What then delineates the limits of what is tolerable in a liberal society?

Rawls has argued that a liberal conception of justice must attempt to gain support from reasonable persons or, equivalently, persons who profess reasonable comprehensive doctrines. Although throughout PL there are several remarks for what it is for a person to be reasonable10, two of them are of great importance in delineating what can be tolerated. A person is reasonable when:

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10 Leif Wenar has attempted to encapsulate them in the following five characteristics. According to his analysis of PL, a reasonable person must: (1) (a) possesses the two moral powers –the capacities for a sense of justice and for a conception of the good; (b) possesses the intellectual powers of judgment, thought, and inference; (c) holds a conception of the good in the light of a comprehensive doctrine; (d) is able to be fully cooperating members of society over a complete life; (2) is able to propose and follow a conception of justice, knowing that the other citizens will do so; (3) recognizes the burdens of judgment; (4) has a
(a) She is willing to propose and act according to a conception of justice when the rest of the citizens will likewise do so; (Rawls refers to this characteristic as “the criterion of reciprocity”).

(b) She considers it unacceptable to use political power against the reasonable comprehensive doctrines she does not profess;¹¹ (let us refer to this characteristic as “the criterion of respect for third parties”).

Mirroring this, a comprehensive doctrine is reasonable when it does not attempt to impose itself, by means of political power, on citizens who do not profess it; rather, a reasonable comprehensive doctrine agrees to cooperate with other doctrines following the conception of justice previously established. This is tantamount to say that a reasonable comprehensive doctrine fulfills the criterion of reciprocity and the criterion of respect for third parties.

We have, then, that a liberal conception of justice is only concerned with achieving the consent of reasonable persons and doctrines. We can now come back to the question of how we can attempt to ensure this or, in other words, how we can provide legitimacy to a conception of justice. This directs us to the justification of such a conception: according to Rawls, it is reasonable¹² to suppose that a conception can attain reasonable moral psychology; (5) recognizes the five essential elements of a conception of objectivity. Wenar (1995), p. 37.

¹¹ Rawls (1996), 49-50. The rationale behind this second characteristic is “the burdens of judgment”: citizens acknowledge that their political judgments are inclined towards certain positions due to factors which might well incline the judgments of other citizens to different positions. This is Rawls’s explicit rationale. By contrast, Wenar argues that such a rationale is not necessary, and it is actually problematic. For our purposes, it is enough to say that the second point rests on the following idea: citizens accept that professing any reasonable comprehensive doctrine is, in turn, reasonable.

¹² A note in relation to the term “reasonable” seems to be pertinent, since we have used it to designate three different things. In PL Rawls uses this term to describe almost everything; as Wenar puts it: “Justice as fairness proceeds through Political Liberalism to the soft rhythm of the reasonable. Rawls refers to reasonable principles of justice, reasonable judgments, reasonable conditions on a process of constitution, reasonable decisions, a reasonable political conception of justice, reasonable expectations, a reasonable
the support of reasonable citizens when its justification is, in turn, legitimate. This does not provide us with a circular answer, for such an answer would state that a conception is legitimate when it is reasonable to suppose it would obtain the support from citizens, and that it would obtain such support only if it is legitimate. Rather, we are saying that to show that a conception is legitimate requires showing, in turn, that its justification is legitimate.

In this sense, Rawls presents two non-exclusive strategies to offer a legitimate justification of a conception of justice: (i) a conception of justice must be presented in a way which mirrors ideas of the public political culture—or public reason—of society, as opposed to those of any comprehensive doctrine; and (ii) a conception of justice must accept the idea of an overlapping consensus, that is, it must allow every reasonable comprehensive doctrine to offer its own reasons as a valid justification for it.

It is reasonable to expect that reasonable citizens will accept a conception of justice whose justification follows these two strategies. For the first strategy basically states the conception of justice must be justified as coming from ideas already accepted by all reasonable citizens, whereas the second one leaves the door open to support the overlapping consensus, reasonable justification, reasonable norms, a reasonable society, reasonable disagreement, reasonable assurance, reasonable faith, reasonably favourable conditions, the virtue of reasonableness, a reasonable idea, reasonable measures, reasonable requirements, reasonable actions, reasonable doubts, a reasonable basis of public justification, reasonable answers, a reasonable variant of the public conception of justice, a reasonable understanding, reasonable belief, a reasonable combination and balance of values, reasonable extensions of justice as fairness, a reasonable expression of political values, unreasonable force, reasonable pluralism, reasonable comprehensive doctrines, and reasonable ways of affirming them, and reasonable agents or persons who have a reasonable moral psychology. Clearly, we need to study the meaning of this term. Wenar (1995), p. 34. For the purposes of this work, only three things are labelled as reasonable: citizens, comprehensive doctrines, and peoples. In addition, I talk about reasonable expectations for a conception of justice to be accepted by citizens—or by peoples—when it is related to domestic justice— or by peoples—when it is related to international justice.

14 Rawls, (1996), p. 134. It is worth noting that, although the idea of an overlapping consensus states that the different comprehensive doctrines can accept the principles of justice by their own reasons, such a consensus cannot be a mere modus vivendi; that is, an agreement based only on political calculations of convenience between the parts. That the overlapping consensus is not a modus vivendi implies that every justification of the conception of justice must have a deep moral commitment with it. Rawls (1996), p. 146.
conception of justice for different reasons than those offered by Rawls himself; it leaves, in other words, the door open to a plurality of justifications. These two strategies, then, ensure that a conception of justice is “free-standing”, that is, even when it can be supported by reasons from different comprehensive doctrines, to endorse it does not presuppose the acceptance of any of such doctrines; it is autonomous with respect to them.

2. The Legitimacy of an Account of Human Rights

I believe that the primacy of legitimacy also represents a constraint for a liberal conception of international justice –since a liberal conception must have the property of free acceptability and the property of stability. An account of human rights is part of that conception. Human rights do not represent a full conception of international justice due to the fact that they do not embrace all of what justice requires in regard to international relationships.\(^\text{15}\) However, as a consequence of being part of such a conception, our account of human rights is equally concerned with legitimacy –and, therefore, it must have the property of free acceptability and stability.

An account of human rights involves three different aspects: first, the justification of the account –that is, the rationale behind the actual list of human rights we endorse; second, the role of the account –that is, what human rights are thought to be for; and, 

\(^{15}\text{This is clear in the conception of international justice provided by }LP, \text{ where human rights are only one of the principles of its content. Rawls uses the argument of the original position to morally justify the principles of the Law of Peoples as well. The principles, Rawls says, would be the result of an agreement between all Peoples situated in original conditions of equity, that is, under the veil of ignorance. Rawls refers to this original position between Peoples as the second one. Rawls } (1999)\text{, p. 30. The result of that hypothetical agreement is the following list: (1) Peoples are free and independent; (2) Peoples are to observe treaties and undertakings; (3) Peoples are equal and are parties to the agreements that bind them; (4) Peoples are to observe a duty to no intervention; (5) Peoples have the right to self-defence but no the right to instigate war for reasons other than self-defence; (6) Peoples are to honour human rights; (7) Peoples are to observe certain specified restrictions in the conduct of war; (8) Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime. Rawls } (1999)\text{, p. 37.}
third, the content of the account—that is, what actual rights are included in our list of human rights. In trying to show that our justification is legitimate (i.e., that it is reasonable to suppose it would enjoy the support of peoples), we can employ to the two strategies offered by PL: (i) we must show that our account of human rights mirrors ideas which are part of the Global Public Reason, (that is, ideas already accepted by all peoples, or that is reasonable to suppose they would accept); and (ii) to claim that our account permit the idea of an overlapping consensus.

Rawls briefly mentions (i) in LP, although he refers to the justification of the full conception of international justice (the complete law of peoples). In a similar fashion, Joshua Cohen has argued for using (i) for the particular case of the justification of human rights.\(^{16}\) As well, Charles Taylor has argued for the use of (ii).\(^{17}\)

But similar restrictions to liberal toleration shape the scope of the agreement that a liberal account of human rights is trying to achieve: we only need to show that such an account is acceptable for reasonable peoples, countries or cultures. To delimit the reasonability of a people, we can simply refer to what PL states about the reasonability of citizens and of comprehensive doctrines (points (a) and (b) of the previous section). In making this transition, we would state that a reasonable people: (a) is willing to propose and act according to a conception of justice when other peoples will do so likewise; and (b) does not try to impose itself (e.g., by means of war or economic superiority, for instance) over other peoples.

However, in LP Rawls states that a conception of international justice must try to reach the acceptance of what he labels as decent peoples. But we should not take decency

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\(^{17}\) Taylor (1999).
as synonymous with *reasonability*. Rawls offers at least three criteria to count a people as decent: (I) the respect of human rights, (II) having a “common good conception of justice”, in which all persons have a legal personality and whose interests are minimally represented; and (III) the respect of the principle of non-expansionism.\(^{18}\) It does not seem problematic to take (III) as an extension of (b), as we just did above. However, (I) and (II) have no immediate parameter of comparison in *PL*. Because of that, we cannot take reasonability as synonymous with decency. Doing so, on the other hand, will lead us to circularity when trying to provide with legitimacy to our account of human rights: we will be saying that an account of human rights is legitimate when it is supported by reasonable peoples, where a people is defined as reasonable when it respects the account of human rights.

We can avoid this problem by saying that reasonableness and decency are two characteristics of non-liberal peoples, where the first one is determined by (a) and (b), and the second one by (I) and (II).\(^{19}\) In this account, reasonability is a characteristic of a people related to its external interactions, whereas decency is a characteristic of a people concerning with its internal interactions. Following this distinction, we can state that a liberal account of human rights is concerned with attaining the support of reasonable peoples.

We can then come back to the discussion of the justification, the role, and the content of our account of human rights. Both Cohen and Taylor argue in favour of an

\(^{18}\) Rawls (1999), pp. 64-66.

\(^{19}\) This is not the way Rawls uses the term reasonable in *LP*. He reserves it for liberal peoples [Rawls (1999), p. 35]. Rawls claims: “I think decency as a normative idea of the same kind as reasonableness, though weaker (that is, it cover less than reasonableness does.” Rawls (1999), p. 67. As well, my proposal differs from that of Buchanan (2000) p. 74-80, (2004), pp. 162-165, where he claims that it is possible to speak about liberal reasonableness and general reasonableness, the latter including non-liberal peoples. My point is more simple: a reasonable people (liberal or illiberal) must fulfill the two criteria given in *PL* for reasonability that are relevant to liberal tolerance.
account that does not include full civil and political rights. This, I believe, is due to the
fact that the first two aspects of an account of human rights (the justification and the role)
determine the third one (the content).20

The Justification

Our justification must be acceptable to reasonable peoples; however, the idea behind full
civil and political rights (i.e., that all persons are free and equal, or, equivalently, that the
autonomy of every individual must be respected) is not part of Global Public Reason.
Instead, the idea that all persons are free and equal is part of the domestic Public Reason
of only some peoples, namely, the liberal ones. Therefore, including full civil and
political rights in our account would make it illegitimate, as there would be no possibility
of presenting it as coming from ideas of Global Public Reason.21

It is difficult, however, to specify the content of Global Public Reason, and this
deserves mention. This idea pretends to mirror what Rawls has called Public Reason of
liberal societies. Just as reasonable pluralism (of reasonable comprehensive doctrines) is a
fact of liberal societies, pluralism of political conceptions of justice (where justice-as-
fairness would be only one amongst others) is a fact of these societies as well. This family
of political conceptions of justice represents the content of Public Reason. When

20 Beitz endorses the claim that the role of human rights constrains its content: Beitz (2004), p. 204. I am
adding that the legitimacy of justification does the same thing.
21 There is a vast debate on whether the ideas behind liberal rights are present in other cultures besides the
Western one. This debate is widely known as “the Asian challenge to human rights”. See Bauer, J. & Bell,
D. A. (1999). It is beyond the scope of this work to comment on this debate. However, while I will accept
that every culture has different tendencies, some of them highly progressive and some of them highly
conservative, I will follow Rawls in that some cultures have legitimately decided to institute other forms of
government rather than liberal democracy. Perhaps this is tantamount to say that even when we can find
liberal ideas in non-Western societies, such ideas are not part of the Public Reason of those societies but,
discussing about constitutional essentials or matters of basic justice in the public realm, only reasons coming from this family of political conceptions are acceptable.\textsuperscript{22}

But, is there a similar family of conceptions, ideas or principles of international justice that can be taken as the content of a Global Public Reason? Rawls thinks that if we can identify something as the content of Global Public Reason that would be all international laws and binding treaties.\textsuperscript{23} Among the ideas expressed in such laws and treaties we easily find those of freedom and equality of nations, states or peoples. Conversely, we cannot find these ideas for the case of persons, as most of the laws and treaties that regulate the international realm are concerned with the interactions of states, not with the interactions of persons.\textsuperscript{24} However, this offers no help in presenting human rights as coming from ideas Global Public Reason, as such an account is concerned with persons and not with states.

Considering this, I believe that the best way to describe this reason is to state that it only includes ideas acceptable to all reasonable peoples, or ideas we can suppose all reasonable peoples would accept; this leaves the door open to the possibility of continuing to increase the content of this reason. According to this view, the idea of Global Public Reason is not completely descriptive. So, when we say that human rights should be solely formed by ideas of Global Public Reason, we are saying they should be formed not only by ideas already acceptable to all reasonable peoples, but also by ideas we can reasonable suppose all reasonable peoples would accept.\textsuperscript{25} This generates a sort of

\textsuperscript{22} Rawls (1996), pp. 442.
\textsuperscript{23} Rawls also claims that in a society of peoples ruled by the law of peoples, the content of Global Public Reason is precisely the law of peoples, its ideals and criteria. Rawls (1999a), p. 55.
\textsuperscript{24} Wenar (2006), p. 103.
\textsuperscript{25} I believe this explains why Cohen claims that human rights must be understood as part of –not as coming from– Global Public Reason, and he describes this reason as follows: “[it] is global in its reach, in as much as it applies to all political societies, and global in its agent, inasmuch as it is presented as the common
“test” to every right which wants to be considered as a human right. In fact, I believe that this test also applies to a conception of international justice: every principle it includes needs to be acceptable to reasonable peoples.

The Role

If we look at the role of human rights, we can find a further reason to exclude rights to liberal democracy of its content. Beitz has claimed that most of the philosophical discussion in regard to human rights has been misleading because it has not considered the practical role that such rights play in the international arena. Contrary to the pattern of the discussion, Rawls claims that human rights express a special class of urgent rights and that this has been their role in the international sphere:

[Human rights] restrict the justifying reasons for war and its conduct, and they specify limits to a regime’s internal autonomy. In this way, they reflect the two basic and historically profound changes in how the powers of sovereignty have been conceived since World War II. First, war is no longer an admissible means of government policy and is justified only in self-defence, or in grave cases of intervention to protect human rights. And second, a government’s internal autonomy is now limited.

If the role of full civil and political rights is to ensure justice (or at least to ensure part of what justice requires), the role of human rights is to determine a standard that all political societies are to be held accountable to in the treatment of their members. This standard can be understood as a metric of minimal justice. When minimal justice is not

reason of all peoples, who share responsibility for interpreting its principles, and monitoring and enforcing them.” Cohen (2006), p. 236.
26 Beitz (2004), p. 193-195. As well, the role of human rights illuminates the distinction between human rights and natural rights. Even when their content might be very similar, their role is different, for the role of human rights presupposes an institutional order and the role of natural rights do not. Natural rights are seen as the rights every human being is entitled to in a pre-institutional order. Beitz (2004), p. 198.
28 Cohen presents this claim when arguing that defending an account of human rights which does not contain rights to liberal democracy in no way implies a relativistic conception of justice: “Justice requires democracy: that is true for everyone, for us –so to speak– as well as them. Democracy is not required as a matter of human rights: that too is true for us and for them.” Cohen, (2006), p. 246.
fulfilled locally, external interference is required. In short, human rights represent a metric of minimal justice, and minimal justice is enforceable.

There are at least two objections to this reasoning. The first one might claim that if we have considered the international practices of human rights as a definitive criterion to characterize their role, why, then, do we not take as definitive the content of the actual Declarations and Covenants of human rights –which include civil and political rights. We can respond to this objection by saying that the content of human rights is not only a matter of philosophical dispute. There is an intense debate in the international arena in regard to which rights should be part of the account. I think this explains the fact that after the UDHR and the two Covenants other protocols and conventions on human rights have been written and discussed.\(^{29}\) In contrast, the main role of human rights, to offer a standard to guide external interference in local affairs, is not subject of great controversy. We agree on the purpose of human rights, but we do not agree on which rights in particular fulfill that purpose. We can also explain this disagreement if we understand human rights as mirroring ideas of Global Public Reason: “disagreement of the scope of human rights may be seen as proceeding on a shared terrain of political agreement –the terrain of global public reason– and not (or not only) as disputes among different moral and political traditions themselves.”\(^{30}\) The fact that human rights represent a metric of minimal justice does not impede the possibility of reasonable disagreement on what minimal justice requires.

A second objection might claim that, in fact, we do not completely agree on the role of human rights. According to this objection, even when it is correct to state that


human rights represent a standard of minimal justice which justifies external interference in local affairs, human rights also have a broader educative and symbolic function. In this sense, proponents of this view tend to distinguish what they call the basic or most fundamental human rights from the rest of human rights: “we can work on a view of which human rights are the most important. Massive violations of the most fundamental rights can then be used as grounds for non-tolerance.” While this view agrees that the role of the “most fundamental” human rights is to provide a justified standard for interference in internal affairs, it seems to assume that “non-fundamental” human rights play some other roles in international practices. However, when we look at these claimed roles, what we have is that most of them represent a form of external interference. For instance, it is correctly claimed that human rights are standards required to become a member of certain international associations and to receive aid from international associations; likewise, it is claimed that human rights are used by NGOs to define their missions abroad. These facts, I think, instead of showing that human rights have a broader role beyond offering guidance for external interference, show that there are many ways external interference is carried out, of which military intervention is only the most dramatic and most infrequent. However, these types of interferences in local affairs are everything but symbolic. This also shows that international practices are going wrong when they habitually interfere in local affairs in the name of rights which are unjustified from the point of view of certain reasonable peoples.

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31 Nickel, (2003), first section.
34 In this work, once our account of human rights and international justice are complete, we will analyze in the third chapter which types of external interference can be justified in the name of human rights and which type of external interference can be justified in the name of liberal reform.
But even if we accepted that in the present world human rights have (also) a symbolic function I believe it would be a mistake to keep strengthening such a function. For this would reinforce the idea that human rights are mere manifesto rights, that is, rights which represent unreachable goals or idealistic thoughts. On the contrary, I believe human rights should be understood –in Rawls’s phrase– as a special class of urgent rights, a class which expresses a standard of minimal justice for every society and that justifies external interference (in all its different forms) when such a standard is not fulfilled.\(^{35}\) This understanding of human rights seems to be exactly the opposed to the idea that they are mere manifesto rights.

Summing up, an account of human rights which includes rights to liberal democracy fails because it does not provide a legitimate justification, and because it does not take human rights as a metric of minimal justice, especially considering that their role is to provide a guide for external interference when such a metric is not fulfilled locally.

The Content

What should it be, then, the content of such an account? The standard list of human rights, that is, a list formed considering the content of the UDHR and the two Covenants,\(^{36}\) contains five different categories of rights:

\(^{35}\) Rawls himself did not clearly recognize the different ways in which external interference in the name of human rights is done, as he seems to sustain that their main role is justifying military intervention. This also explains, as we will see in next section, why he restricts the content the account of human rights so drastically. However, as we just saw, interventions in local affairs in the name of human rights can be done in many ways.

\(^{36}\) It is frequently said that The International Bill of Human Rights is conformed by the Universal Declaration of Human Rights (1948), the International Covenant of Economic, Social and Cultural Rights (1966) and the International Covenant of Civil and Political Rights (1966) with its two Optional Protocols (1989). You can find all these documents in: http://www.ohchr.org/english/law/
1. Rights associated with physical integrity including prohibition of slavery, torture and cruel punishment; as well, freedom of movement, thought, conscience, and ownership of property. (Rights to physical integrity, thought and to own property)

2. Rights associated with the rule of law stating equality before the law and equal protection of the law, impartial hearing and trial, presumption of innocence and prohibition of arbitrary arrest. (Rights ensuring the rule of law)

3. Political rights ensuring freedom of expression, assembly, and association; as well as the right to take part in the government and periodic and genuine elections by universal and equal suffrage. (Rights to liberal democracy)

4. Economic and social rights ensuring an adequate standard of living including access to health and education; as well, free election of employment and protection against unemployment. (Social and economic rights)

5. Rights of communities including self-determination; as well, protections to minority cultures. (Minority rights)\(^{37}\)

This standard list contrast with that offered by Rawls. In LP we find the following list:

1. The right to life (to have means of subsistence and physical integrity)
2. The right to liberty: (a) freedom from slavery, serfdom and forced occupation; (b) partial freedom of conscience
3. The right to personal property
4. The right to formal equality (similar cases are to be treated similarly)\(^{38}\)

Additionally, Rawls mentions that the articles 3 to 18 of the UDHR should be considered as *human rights proper*.\(^{39}\) This claim adds the freedom of movement and the right to immigration (art. 13), the right to asylum (art. 14), the right to nationality (art. 15), and equal right to marry (art. 16) to the above list.

As a matter of fact, the choice of these rights appears to be somewhat arbitrary. Rawls himself states that his list only represents a first sketch. But what is important here,

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\(^{37}\) A very similar classification of the rights listed in the UDHR and the two Covenants is found in Beitz (2001), p. 271. The label added at the end of every category is mine.

\(^{38}\) Rawls (1999)a, p. 65.

as many authors have remarked, is what is missing. As we can see, Rawls’s list only contains rights from the first two categories of the standard list and it even makes an important limitation to the right to freedom of conscience. Let me try to explain the reason behind this limitation (which I endorse) and then make a final comment on the reasons to shorten the list of human rights.

Generally, the right to freedom of conscience is understood as offering protection against religious discrimination. Rawls’s claim about a right to partial freedom of conscience is then to state only a more limited human right against religious persecution.\(^{40}\) We can only understand this claim by highlighting the importance that Rawls concedes to liberal tolerance. He argues that it seems unreasonable to affirm that the only kind of legitimate political regime is a liberal one; on the contrary, it seems reasonable that other types of political regimes can also be legitimate.\(^{41}\) His description of a decent non-liberal society is an attempt to describe a legitimate regime of this latter type. This acknowledges the fact that a society in which it is of primary importance to promote a common religion can have a legitimate authority. If this is true, and such a type of regime can also be legitimate, then a full right to freedom of conscience as a human right is unjustified. Once we know that violations to human rights require external interference, to include a right to full freedom of conscience on the list of human rights would deny the legitimate authority of a decent non-liberal society.

Finally, a last comment on the reasons to shorten the list of human rights. I believe that, while Rawls was correct in de-attaching human rights from liberal rights – considering both the justification and the role of these rights–, we still have reasons to

\(^{41}\) Rawls (1999)a, pp. 61-62. In fact, I strongly believe that this is the intuition that motivates the entire enterprise of \(LP\).
maintain as human rights at least the most important rights of the other categories of the standard list. That is, even if we consider the reasons Rawls adduces to shorten the list – the justification and the role –, we can still sustain that more rights, rather than those expressed in his list, must be taken as human rights. In doing so, we will first have to prove that such rights – those we argue should be included in the list – can be acceptable for all reasonable peoples. That would serve to consider Rawls’s concern with the justification. This is what I propose to do in the next chapter for the case of social and economic rights, rights to minimal political participation and, as well, for including minority rights in our conception of international justice. Second, in claiming that more rights should be part of the account of human rights and of the conception of international justice, we have to state the role of those rights. That is what I propose to do in the third chapter.

3. Conclusion

Any liberal conception of justice – either domestic or international –, as well as all the principles of its content, is constrained by the primacy of legitimacy. Human rights are part of the content of a conception of international justice. In this sense, they must express two properties:

(1) the property of free acceptability

(2) the property of stability

However, the extension of the agreement a liberal conception of justice attempts to achieve, in order to be legitimate (and therefore having these two properties), is shaped by the scope of liberal tolerance. In this sense, a liberal conception of justice only attempts to
attain support from citizens, doctrines and peoples which are reasonable; that is, from citizens, doctrines, and peoples that fulfill:

(a) the criterion of reciprocity

(b) the criterion of respect for third parties

To have a reasonable expectation that a conception of justice will gain such a support, we need to show that it is free-standing. Two non-exclusive strategies are available for this:

(i) A liberal conception of justice mirrors ideas of Domestic Public Reason (when it is a domestic conception of justice) or Global Public Reason (when it is an international conception of justice).

(ii) A liberal conception of justice accepts the idea of an overlapping consensus (plurality of justifications).

An account of human rights—as it is part of a conception of international justice—must reflect ideas of Global Public Reason, and must accept the idea of an overlapping consensus. The idea behind full civil and political rights (i.e., that all persons are free and equal or, equivalently, that the autonomy of every individual must be respected) is not part of Global Public Reason. Because of that, a legitimate account of human rights cannot include such rights; for it would not be possible to present it as coming from ideas already shared by all reasonable peoples, or ideas that we can reasonably expect they can endorse. In addition, including civil and political rights would cause the account of human rights to fail because it would not take human rights as a metric of minimal justice, considering that their role is to provide a guide for external interference when such a metric is not fulfilled locally. Once we assume that there are other legitimate political systems besides liberal democracy, any interference in the name of liberal rights
is not justified. Thus, I believe that the concerns with the legitimacy of the justification of human rights, as well as the practical role such rights are to play, give us powerful liberal reasons not to include rights to liberal democracy in the account.
Chapter 2

Peoples and Legitimacy

Arguments for Including More Rights in the Account of Human Rights and in the Conception of International Justice

In this chapter I will argue for taking basic social and economic rights as human rights, and for taking minority rights as a necessary complement to human rights. Additionally, an argument to include rights ensuring a minimum of political participation will also be revised. But, how will I now attempt to argue for the expansion of the list of human rights after advocating for narrowing it? This question presents a fundamental worry, when trying to offer an account in between two extremes. The worry is this: it might appear that every argument presented to exclude rights to liberal democracy seems to advocate, simultaneously, for the exclusion of social and economic rights; similarly, it might appear that every argument to include social and economic rights seems also to advocate for the inclusion of rights to liberal democracy.

This line of thought mirrors the fact that there are, amongst many other positions, two extremes in the discussion of human rights. On one side, some authors (sometimes identified as minimalist) argue for a very basic list of human rights –even shorter than Rawls’s. According to them, the list should only include rights to ensure persons’ physical integrity and, in the limit, only rights that prevent genocide and mass murder. In this view, it is believed that once you seriously consider the reasons to shorten the list, you must go all the way eliminating rights. On the other hand, a significant number of authors (sometimes identified as maximalist) argue for the list of human rights more or less as it is written in the UDHR and the two Covenants, and some of them even allow the
possibility of adding more rights to it. In this view, it is believed that once you seriously consider the reasons to take something as a human right you must continue all the way adding rights. In this chapter my focus will be to argue that our account of human rights should be situated in the middle of these two views, so that we should follow neither of their patterns.

In the first section, I will present an argument that, while advocates for the inclusion of social and economic rights to the list of human rights, cannot be used to argue for the inclusion of rights to liberal democracy. Similarly, I will show that, once the former are justified by the argument I will present here, the framework presented in the first chapter cannot be used to exclude them. Additionally, at the end of the first section I will consider a second argument—based on similar premises—to support rights to minimal political participation and dissent—albeit not rights to liberal democracy. Finally, in the second section I will present an argument that both advocates for the inclusion of minority rights in our conception of international justice and respects the framework presented in the first chapter. These three arguments are framed around the idea of the exercise of legitimate coercive power. They try to state conditions that any reasonable people must accept in order to claim be regarded as a legitimate system of coercion over persons. This chapter, then, is concerned with the justification of human and minority rights, that is, with the type of arguments we can give to include more rights in our account of human rights and international justice.

1. Social and Economic Rights and Rights to Minimal Political Participation

As we saw in the first chapter, we can state that reasonability and decency are two characteristics of non-liberal peoples when they fulfill certain criteria and conditions. We
saw that reasonability is a characteristic of a people related to its external interactions satisfied by the fulfilment of the criteria of reciprocity and respect for third parties. We also saw that decency is a characteristic of a people related to its internal interactions satisfied by the conditions of respecting human rights, and having a conception of justice in which all persons have legal personality and whose interest are minimally represented.

We can argue that these two characteristics, external reasonability and internal decency, are enough to form a criterion of legitimacy for peoples. From the point of view of the international order, this also applies to liberal countries. Even if they stop being liberal in many ways, they can still be regarded as legitimate as long as they continue to be externally reasonable and internally decent.\footnote{On this point see Wenar (2004), pp. 265-275.} I would like to argue that, while Rawls is correct in typifying the respect for human rights as one of the most important domestic conducts required to claim legitimacy, human rights necessarily need to include some rights, beyond those that ensure brute subsistence, to satisfy the basic needs of persons.

The reason to support this claim is given in the very same \textit{LP}:

\begin{quote}
A decent hierarchical society’s conception of the person […] does not require acceptance of the liberal idea that persons are citizens first and have equal basic rights as equal citizens. Rather it views persons as responsible and cooperating members of their respective groups. Hence, \textit{persons can recognize, understand, and act with their moral duties and obligations as members of these groups}. […] They have the capacity for moral learning and know the difference between right and wrong in their society.\footnote{Rawls (1999)a, p. 66. Italics added.}
\end{quote}

In this passage, Rawls tries to make the distinction between the conception of a person as it is understood in a liberal society (the conception of liberal citizenship) and the conception of a person that is adequate for a non-liberal decent people. Even when the latter does not specify liberal citizenship, it does ascribe some basic features to persons. Since they are to be cooperating members of society, they need to be able understand the
main features of their society as a system of cooperation. This requires them to have
certain capacities such as the capacity of moral learning, the capacity to discern what is
right and what is wrong according to the system of cooperation they are in, and more
generally, the capacity to recognize, understand and act according to moral duties.

But we can understand this description of the adequate conception of the person
for a non-liberal decent society as stating an even more primary requirement of
legitimacy, which holds for any type of coercive power or law imposed over any
subject.\textsuperscript{44} In effect, in order to obey any system of law a person must have the capacity to
recognize, understand and act according to moral duties as they are typified within that
law. I think this is the way Alyssa Bernstein interprets what \textit{LP} states in the passage
quoted above. When showing the basic affinities of Rawls’s account of human rights with
that of Martha Nussbaum\textsuperscript{45}, Bernstein holds:

\begin{quote}
To regard women as obligated to comply with legitimate laws is to regard them as capable of
doing so, thus capable of carrying out the necessary reasoning: it is to regard them as
possessing the powers of rationality and reasonableness to at least a minimum degree
necessary for compliance with legitimate law. A government claiming legitimate political
authority over women cannot consistently require them to exercise powers of reasoning and
judgment, yet deny girls and women the conditions and resources necessary for developing
and exercising those powers.\textsuperscript{46}
\end{quote}

Rawls thought that such capacities (to which Bernstein refers to as powers) were
necessary for a person to be part of a system of cooperation in a decent society. However,
Bernstein claims that they are necessary to comply with any legitimate law, and not only
that of a decent society. I believe she is right in this claim. We can state it as the most
primary requirement for legitimacy:

\textsuperscript{44} I will use throughout this chapter “coercive power”, “coercive law”, “system of law”, “political system”
as synonymous expressions.
**First Condition of Legitimacy:** Any coercive system of law binding a person presupposes that such person understands what the system prescribes and that she is capable to act according to such prescriptions.

According to this condition, a legitimate law presupposes that the person which is bound by it possesses the necessary capacities of reasoning and judgment to hold her accountable for duty and responsibility as they are typified by that law.

Now we are in a position to formulate an argument to support the inclusion of social and economic rights in our account of human rights. A person endowed only with what is strictly required for brute subsistence cannot develop the capacities of reasoning and judgment to the necessary degree to hold her accountable for duty and responsibility; while it is certainly true that the development of these capacities presupposes one’s physical integrity, it alone is not a sufficient condition; nutrition, health, and education are also required to develop them. Let me call this argument the *FCL argument*. Phrasing it in few sentences, the FCL argument states: any coercive system of law binding a person presupposes that such a person understands what the system prescribes and that she is capable to act according to such prescriptions; without provisions to ensure nutrition, health, and education, it is impossible to be certain of the fulfillment of this presupposition.

What are the implications for the framework of *LP* if this argument holds? I think that beyond the inclusion of rights to ensure nutrition, health and education in its account of human rights, this argument does not require any further modification to the framework of *LP*. Since the First Condition of Legitimacy applies to any coercive system of law, it also applies to benevolent absolutist states, insofar as *LP* claims that this kind of
regime is legitimate. 47 Therefore, the provisions to develop persons’ capacities of reasoning and judgment should not only be features allotted to a decent society, as Rawls’s originally thought. Instead, rights to ensure such provisions should be on the account of human rights, to which all peoples, including benevolent absolutist regimes, are accountable for ensuring. 48

Why can the FCL argument not be used to advocate for the inclusion of rights to liberal democracy in the account of human rights? While a person needs nutrition, health and education to be able to understand and act according to a coercive system of law, it is not clear that such a person needs to participate freely and equally under the framework provided by that law in order to do so. In other words, the First Condition of Legitimacy does not state that a coercive law will be legitimate only if the subjects which are bound by it can freely accept it. Rather, it holds something much weaker: that is, persons need to be able to understand and act according to what a coercive law binding upon them prescribes; this holds true even if they do not freely accept such prescriptions. Claiming that only freely accepted laws by every individual person are legitimate would be almost tantamount to say that, in fact, only liberal political systems are legitimate. Rather, the First Condition of Legitimacy is thin enough to express a characteristic of any legitimate coercive political system held on every individual. The reasoning provided in this

47 We will come back to this claim shortly.
48 It might be worth saying that neither the FCL argument nor the characterization of states’ legitimacy as depending on external reasonability and internal decency rely on the accuracy of important parts of LP’s framework. That is to say, both the FCL argument and such a characterization of states’ legitimacy hold even if, as a matter of fact, no country in the world thoroughly suits Rawls’s description of a decent people, the description of a benevolent absolutist regime, or even the description of a well-ordered liberal society. If the actual states of the world pretend to be regarded as legitimate, they have to fulfill the First Condition of Legitimacy and show both external reasonability and internal decency. As the argument goes, whenever a state is reasonable and decent it fulfills the First Condition of Legitimacy, since decency implies respect for human rights and, according to the argument, human rights must include rights to ensure the provisions necessary to develop the capacities to be held accountable for duty and responsibility.
argument, then, cannot be used to justify including rights to liberal democracy as human rights.

Why can the framework presented in the first chapter to exclude rights to liberal democracy not be used to advocate for the exclusion of social and economic rights? Once the latter are justified by the FCL argument, I believe they do not represent a violation of such a framework. In the first chapter we concluded that our account of human rights needs to be free-standing, that is, it has to be acceptable for reasonable peoples (it can only include ideas of Global Public Reason) and it has to admit the idea of an overlapping consensus. Since the ideas of freedom and equality of every person are not part of Global Public Reason, we said, rights to liberal democracy cannot be part of the account of human rights; it would be unreasonable to expect that reasonable peoples would support an account of human rights that included such rights. Is the argument I am presenting now for taking rights to nutrition, health and education as human rights in the same situation? Is it unreasonable to expect that reasonable peoples can endorse the FCL argument? Of course, I have no definitive answer to this question. Nevertheless, the fact that what is expressed by the First Condition of Legitimacy is so weak leads me to believe we can expect an affirmative answer to this question. As the most primary requirement of legitimacy, it seems to me that this condition is not controversial in any substantive way – it is not liberal in any substantive way.

Now, before turning towards the discussion of minority rights, let me consider a claim based on similar premises as those of the FCL argument, but concerned with political participation and dissent. There are some authors who, while agreeing with Rawls that rights to liberal democracy should not be taken as human rights, still claim for
the inclusion of rights to minimal political participation in the account of human rights. 49

Jon Mandle says:

It seems that there are numerous institutional arrangements that can properly be said to produce collective decisions of the society, including, for example, in the USA with its electoral college and Senate; Hegel’s proposal, according to which individuals are represented through the “associations, communities and corporations” of civil society of which they are members; Mill’s system of “plural voting” in which the more intelligent or better educated receive an extra vote [...] Each of these arrangements rejects the principle one person, one vote, an so none is democratic in the most narrow sense. On the other hand, if properly implemented and carried out as intended, decisions made by each of these structures could properly be described as collective decisions of by the people of a society. 50

According to Mandle, there must be a human right to political participation that can be realized in any of these different ways which are not fully liberal-democratic. 51 In Rawlsian terms, this would be tantamount to say that there should be a human right to minimal political participation, taking the minimum to be as political participation is understood in a decent consultation hierarchy.

This position presents its case as a claim of legitimacy: in order to be legitimate, any coercive political system should be accountable to its society in one way or another. But observe that this claim cannot be derived from the First Condition of Legitimacy, since such a condition holds even if a political system binding upon persons is not accepted by them in any way. In this sense, this first condition is the most primary characteristic of legitimate laws. Rather, the claim that every political system must be accountable to its society in one way or another, suggests a further –and more demanding– condition of legitimacy. Let me state this condition as follows:

**Second Condition of Legitimacy**: any coercive system of law binding persons requires to be supported at least by a minimal procedure of collective decision in which the interests of such persons are considered.

This condition is behind the argument for the exclusion of rights to liberal democracy of the account of human rights but for the inclusion of rights to minimal political participation. As Mandle –following Rawls– holds, it seems reasonable to believe that there are various institutional arrangements that generate legitimate collective decisions besides liberal democracy. Let me call this argument the *SCL argument*. Phrasing it in few sentences, the SCL argument says: any coercive system of law binding persons requires to be supported at least by a minimal procedure of collective decision in which the interests of such persons are considered; without provisions to ensure a minimum of political participation and a minimal respect for decent, it is impossible to be certain of the fulfilment of this condition.

What are the implications for the framework of *LP* if the SCL argument holds? In this case, the direct implication would be that benevolent absolutist regimes would not be legitimate, since they are described as regimes that do not guarantee even a minimum of political participation. Note that Rawls only mentions this kind of political system twice: first, to say that since they are non-interventionist and respect human rights they are to be tolerated by the society of peoples\(^{52}\); and, second, to state that, because of the same reasons, they have the right to war in self-defence.\(^{53}\) This seems to suggest that, even when benevolent absolutist regimes do not allow a minimum of political participation and dissent, and even when they are not full members of the society of peoples –only well-ordered societies are–, they still represent a legitimate form of coercive power. This is, I believe, the only reason why Rawls would not accept the SCL argument. But perhaps Rawls would have to accept the SCL argument. After all, if we regard benevolent

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\(^{52}\) Rawls (1999)a, p. 4. A repetition of this claim is made on Rawls (1999)a, p. 63.

absolutist regimes as legitimate even when, as Rawls says, “[their] level of spiritual life and culture may not be high in our eyes”\textsuperscript{54}, it is because we think that in the eyes of those peoples that form of government is at least high enough. If we respect such regimes, this is because we believe in the value of self-determination; but any account of self-determination presupposes that the people in question determines its own fate. This requires a mechanism of justification. We might believe, for example, that the members of such a people (or the majority, or the wisest citizens, etc.) have decided to put all their power and rights on the hands of the ruler –as in a sort of Hobbsian pact. In any event, it would be very odd to sustain that a form of political authority is legitimate when there is not even a minimal justification to show that such authority finds support from the subjects who it binds.

On the other hand, the status of these peoples in $LP$ is not very clear.\textsuperscript{55} There is no detailed description of them; we do not even know if they are fully reasonable in their external interactions. Rawls only says that they are not expansionist (so that they fulfill the criterion of respect for third parties), but he never states whether they are willing to cooperate with the rest of reasonable peoples under the same conception of international justice (that is, whether they fulfill the criterion of reciprocity). Rawls says, however, that they are not full members of the society of peoples. This might lead us to think that they are not willing to cooperate in the society of peoples. However, the reason Rawls offers to state that they are not full members of the society of peoples is not that they are unwilling to partake in such a society, but that they are not well-ordered societies.

\textsuperscript{54} Rawls (1999)a, p. 92.

\textsuperscript{55} Philip Pettit pushes an interpretation of $LP$ in which benevolent absolutist regimes are not peoples at all. He supports this claim by highlighting that Rawls does not refer to this type of regime as a “people”. Pettit says: “A people will exist as an agent on the domestic and international fronts, then, only if the government acts appropriately in its representative role, giving a people a voice and a presence on those fronts”. Pettit (2006), p. 43.
To know whether benevolent absolutist regimes are reasonable is of primary importance because, as we saw in the first chapter, an account of human rights only attempts to obtain support from reasonable peoples. If they are reasonable, every attempt to include more rights in the account of human rights must be acceptable to them. In this case, the SCL argument should state something thin enough to include this type of people. And I believe this can be done. As I said above, any legitimate form of political power requires a mechanism of justification, and I do not believe that this type of regime will refuse to accept that. But if they are not reasonable, then, as I interpret Mandle’s reading of Rawls, there seems to be no problem in claiming that there should be a human right to minimal political participation, taking the minimum to be as political participation is understood in a decent consultation hierarchy.

2. Minority Rights
So far, we have covered four of the five types of rights included in the standard list of human rights presented in the first chapter. That list comprises: (1) rights to physical integrity, thought and to own property; (2) rights ensuring the rule of law; (3) rights to liberal democracy; (4) social and economic rights; and (5) minority rights. The major modifications to the standard list are, according to what we have seen, that rights type (1) can only include a partial right to freedom of conscience, and that rights type (3) should not include any specific right to liberal democracy, but only rights to minimal political participation. I followed Rawls in claiming that there should be only a partial right of freedom of conscience, and have revised an argument for the inclusion of social and economic rights as well as an argument for rights to minimal political participation. Rawls, it is claimed, would accept these arguments. In this section, I will consider an
argument for taking minority rights as a necessary complement of human rights, that is, as another component of our conception of international justice.

As the standard list shows, some human rights are thought to protect minorities. Initially, there was a tendency in the discussion to think that ensuring the human rights of individuals would be enough to protect minorities. An analogy with religions was traced: since individual rights have proven to be very effective in ensuring the survival and coexistence of different religions in the same state, a similar strategy should be followed with minority cultures. Perhaps the clearest example of this is found on the article 27 of the International Covenant on Civil Rights and Political Rights:

Article 27: In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The article states that it shall not be denied to any person the right to enjoy her own culture. The negative formulation implies that the implementation of the claimed right to culture requires nothing more from the state than non-interference, instead of further actions to make such a right possible. Because of that, minority rights cannot be justified

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56 Let me start by clarifying how I am going to use this term. According to Will Kymlicka, ‘minority culture’ is a general term which may refer to: (a) indigenous peoples; (b) national minorities; (c) immigrants; (d) mectics (temporary illegal immigrants); and (e) isolationistic ethnoreligious groups. Kymlicka (2002), p. 348-365. In this work, my main concern is with indigenous peoples and national minorities. Instances of indigenous peoples are Mexican aboriginal communities descendants of the pre-Columbian cultures. Instances of national minorities are the nation of Quebec in Canada, the Basque Country in Spain, or Northern Ireland in the United Kingdom. I will refer to both indigenous peoples and national minorities as “minorities”, “minority cultures”, “national minorities”, “minority peoples”. Additionally, I will also refer to immigrant groups, in which case I will make it explicit. Examples of immigrant groups are Mexican persons in the United States or African persons in Europe.

57 Kymlicka highlights: “Indeed, this was explicitly the argument given after World War II for replacing the League Nations’ ‘minority protection’--which accorded collective rights to specific groups--with the UN’s regime of universal human rights. Rather than protecting vulnerable groups directly, through special rights for members of designated groups, cultural minorities would be protected indirectly, by guaranteeing basic civil and political rights to all individuals regardless of group membership.” Kymlicka (2001), p. 71.

by this article. As well, it is important to note that the article treats minorities generically, as if the needs of the individuals who, for example, are part of an immigrant group were exactly the same as those members of a national minority.

But there are several reasons to think that individual rights are not enough to protect minorities. I think this is only clear once we accept that national minorities represent peoples. For the existence of peoples is necessarily tied to the creation of institutional structures and formal arrangements; these structures determine peoples’ success of reproducing their cultural life and language as well as of achieving their social goals.

In LP Rawls accords three basic features to peoples: “The first is institutional, the second one is cultural, and the third requires a firm attachment to a political (moral) conception of right and justice.” These characteristics confer on peoples an important moral and legal status. In fact, these characteristics make peoples the subject of the conception of justice expressed in the Rawls’s LP. However, in the present world, we regularly find that there is more than one unified national group for every given state. In this scenario, it is difficult to argue for conceding the status of peoples to some of those groups (the majority groups) without arguing for conceding the same status to the rest of the groups (minority groups). There is no a single characteristic of Rawls’s description of what peoples are, and of why they have a central moral importance, that national minorities do not fulfill. Nevertheless, in the first version of “The Law of Peoples” Rawls simply assumed that a single people corresponds to each state. This originated an influential critique to his category of “people”, arguing that such a type of homogeneous
political entity is nothing more than a Rawlsian fantasy. Vaguely, Rawls seems to recognize this critique in *LP* when he says:

> Historical conquests and immigration have caused the intermingling of groups with different cultures and historical memories who now reside within the territory of most contemporary democratic governments. Notwithstanding, the Law of Peoples starts with the need for common sympathies, no matter what their source may be. My hope is that if we begin in this simplified way, we can work out political principles that will, in due course, enable to deal with more difficult cases where all the citizens are not united by a common language and share historical memories.

As Rawls himself seems to assume in the passage, most of the present cases represent a “difficult” one. But this passage does not tackle the main problem of recognizing only certain groups as peoples while denying the same status to similar groups, namely, that this represents a serious inconsistency which questions the moral significance of the very category of “people”.

I do not see another way to overcome this critique but by recognizing the status of peoples of national minorities. This will help to best describe the real structure of modern states and to avoid an unjustifiable double standard in ascribing moral importance to majority groups while negating the same importance to minority groups, considering that both enjoy of the same characteristics that a group should fulfill to be consider as a people in Rawls’s own terms. These reasons (that recognizing national minorities as peoples is both a matter of normative consistency and a way of best describe the nature of the current states of the world) cannot be unattended by *LP* without paying a very high price, namely, losing the moral significance and the accuracy of the very category of “people”.

The particularity of this type of peoples, national minorities, is that they are located within the territory of a major people. This fact makes even clearer their need for

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institutional structures to successfully reproduce their cultural life. For one main reason: as Will Kymlicka has argued, every modern state has engaged in a process of *nation-building* which, in promoting a shared identity throughout the state’s society, has invariably involved the premeditated disempowerment of national minorities.\(^{63}\) This explains states’ frequent policy of encouraging persons from the major culture and new immigrants to move into the historical territories of national minorities, with the purpose of turning national minorities the smallest population even in their own territories.\(^{64}\) Likewise, the process of nation-building explains states’ attempts to redefine the boundaries and powers of internal political subunits. Since national minorities tend to be territorially concentrated, modern states have tried to trace the boundaries of internal political subunits in a way that splits national minorities’ population, so that in every political subunit they became a minority.\(^{65}\) The process of nation-building also explains states’ common policy to not allow national minorities’ languages to have institutional use.\(^{66}\)

All these policies are used as an instrument to disempower national minorities; they are an instrument of larger peoples to assimilate smaller peoples. In this sense, the analogy traced between religions and minorities is completely flawed. It is certainly true that in Western countries the main religions have survived without state’s institutional support, but it has never been a goal of the state to impede religions’ reproduction and prosperity. Contrarily, the process of nation-building shows that modern states have


\(^{64}\) Kymlicka (2001), p. 73.

\(^{65}\) Kymlicka (2001), p. 75.

\(^{66}\) Kymlicka claims: “There is strong evidence that languages cannot survive for long in the modern world unless they are used in public life, and so government decisions about official languages are, in effect, decisions about which languages will thrive, and which will die out”. Kymlicka (2001), p. 78.

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assumed the goal of assimilating national minorities and, consequently, the goal of imped ing their cultural reproduction and prosperity.

However, even when the process of nation-building has mistreated national minorities, it has been undertaken in order to achieve important goals, such as solidarity and political trust amongst the states’ members. The question of whether a modern state could have reached these goals without implementing these kinds of policies does not have a simple answer; in any event, as Kymlicka points out, insofar as we remedy the injustices that the process of nation-building has generated, there is no need to regret it.\textsuperscript{67} However, individual human rights cannot provide such a remedy since they do not concede to national minorities any sort of institutional protection. In fact, in many cases human rights have been invoked to deny institutional protection to national minorities’ languages and territories.

That minority rights offer a necessary institutional protection to national minorities is a fact that started to be acknowledged in the nineties. In this sense, a new tendency in the global discussion of human rights and international law –opposed to the initial tendency of thinking that individual human rights could protect minorities– emerged. Just as more liberal democracies has accepted minority rights charters within their corpus of laws, international legislation has begun to do so as well. This new tendency even recognizes the importance of having different laws to attend to the needs of the different kinds of minorities.\textsuperscript{68} It has been accepted, thus, that projects of minority rights are a necessary complement to human rights.

\textsuperscript{67} Kymlicka (2002), p. 347.
\textsuperscript{68} This explains the increase of targeted international laws passed to protect minorities such as the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their
But international laws to protect minorities will have to sort out the same issues of justification that human rights confronts: their justification will have to be acceptable for all reasonable peoples and not only for the liberal ones. In fact, rights to protect minorities seem currently to be more urgent in non-liberal countries; this increases the importance of trying to offer an acceptable justification of minority rights for such countries. Just as in the case of human rights, then, any international account of minority rights would only be justified if it can be presented as coming from the ideas of Global Public Reason, that is, ideas we can expect all reasonable peoples should accept.69

I think there is a strong argument in favour of minority rights that respects this restriction on the justification. Three premises are key for this argument. The first one is the recognition of national minorities as peoples70; the second one is the recognition that every modern state (and not only the liberal ones) has embarked on processes of nation-building; and the third one is the recognition of the criterion of reciprocity between peoples’ relationships.

With these three premises in place, minority rights seem to be strongly justified in every modern state. The process of nation-building violates the criterion of reciprocity between major peoples and minority peoples; as minority rights are an intended remedy to the injustices produced by the process of nation-building, they are nothing more than

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69 This restriction on the justification rules out, for example, the original justification of minority rights provided by Kymlicka, as his original project is an attempt to offer a distinctively liberal theory of minority rights. The core idea of this theory is that a person’s access to her own culture is a precondition of the exercise of her individual autonomy, as culture offers the meaningful options from which a person can choose. Kymlicka (1995), p. 83. However, since the idea of individual autonomy is not part of Global Public Reason, it cannot be used to justify international accounts of minority rights. Just as an account of human rights cannot be based on distinctively liberal principles, international accounts of minority rights can be based on distinctively liberal principles either.

70 A variant of the same argument will be presented below for the case of immigrant groups.
an attempt to make effective the criterion of reciprocity between majority peoples and minority peoples. Kymlicka has recently presented this claim as follows:

[T]he dominant group should accord to other groups the same rights (subject to the same limitations) that they demand for themselves. If dominant groups assert a right to protect their historic lands from a large-scale influx of migrants, they should allow other national groups to assert the same right. If dominant groups assert a sacred duty to maintain their religious sites and preserve their family names and toponyms, they must allow other groups to fulfil the same duty. This is not a distinctively liberal premise, although of course is it in any way illiberal or anti-liberal.71

This claim sounds particularly appealing when we are using Rawls’s conceptual framework. Reasonability (reciprocity and respect for third parties) is one of the two characteristics peoples must show in order to be regarded as legitimate. Because minorities also represent peoples, only peoples who respect them can be called to be reasonable. Accordingly, respect for minorities can be considered as a condition any people should fulfill to be regarded as legitimate.

What are the implications for the framework of LP if this argument holds? We first have to notice that Rawls himself states that decent hierarchical peoples do respect minorities.72 But Rawls does not state what follows from that claim. As we have seen, due to the modern process of nation-building, minorities can only be respected if they are endowed with a charter of special rights to offset such a process. It is because of this that Kymlicka has argued that a new principle should be added to the law of peoples:

In addition to the principles Rawls claims could be consent to by both liberal and hierarchical societies as the basis of an international Law of Peoples, one could also add a principle of reciprocity between dominant and minority groups.73

Since the law of peoples is only consented by liberal and decent hierarchical peoples, and both recognize the need to respect minorities, it seems reasonable to expect that the

inclusion of such a principle would gain support from them. However, as we are now stating, because respecting minorities is a condition any people should fulfill to be regarded as legitimate, it is a condition that also applies to benevolent absolutisms. They, as well, will be regarded as legitimate only if they respect minorities. And I believe the argument we have studied here for the inclusion of minority rights in our conception of international justice would be also acceptable for benevolent absolutist regimes if it is the case that they recognise the importance of reciprocity; if they do not, then they are not reasonable and, therefore, it is irrelevant whether they accept or reject the principles of our conception of international justice. The principle to protect minorities, under the framework of the law of peoples, can state something as general as:

9. Peoples are to respect the rights of minority peoples and groups of immigrants.74

I added the rights of immigrant groups in the principle because a similar argument based on the importance of reciprocity between peoples can be made to justify special rights for them. Groups of immigrants do not represent a people. They are, contrarily, persons who left their original people and merge into another one. As the process of immersion can be long and complicated, legal protection may be significantly helpful in reducing the inevitable difficulties associated to it. It is reasonable to expect that all reasonable peoples can accept this argument, as they tend to show interest in the well being of their citizens abroad.75 In this view, the interest a people shows for its citizens abroad will only be

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74 This principle is thought to be the ninth, because the law of peoples, according to Rawls’s last formulation of it, has eight principles. See chapter one, footnote 15.
75 There are plenty of empirical examples supporting this claim. To mention one, observe how Mexican politics nowadays is closely tied to the debate of the immigrant reform in the Congress of the United States.
justified if it is followed by a reciprocal respect for the citizens of other peoples living within that people.\textsuperscript{76}

Summing up, we have that the centrality of the criterion of reciprocity in the relations between peoples offers powerful reasons to state that minority rights are a necessary complement of human rights. As this criterion is so important and accepted in international relations, it seems that arguments based on it have a strong base.

3. Conclusion

In this chapter I analysed three arguments framed on the conditions a people must fulfill in order to be regarded as a legitimate system of coercion over persons. The first two advocates, respectively, for the inclusion of social and economic rights and rights to minimal political participation in the account of human rights. The FCL argument, which advocates for the inclusion of rights to nutrition, health and education, tries to state a condition that any type of law binding a person should fulfill in order to be a legitimate law.\textsuperscript{77} In contrast, the SCL argument only applies to political systems. In this sense, the

\textsuperscript{76} In this sense, Mexican claims about improving living conditions of illegal Mexican immigrants in the United States will only be justified when Mexico shows similar respect for the illegal immigrants of Central America living in Mexico. In fact, this was clearly stated in the current debate by the Mexican Ambassador at the United States: "Unless we correct the fundamental challenge of the violation of human rights of Latin American or Central American migrants crossing the border into Mexico, it's very hard for me to come up and wag a finger and say you guys should protect the rights of my citizens in this country […] It's very hard for Mexico to preach to the north what it does not do to the south." Dinan & Seper (2007). Eastern Europe, as well, provides several interesting examples in this regard: "the dominant group invariable changes its tune whenever some of its members live as minorities in another nation-building. For example, Turkey engages in an aggressive from nation-building which denies that ethnic Kurds have any linguistic or cultural rights, yet it vehemently protests when nation-building policies in neighbouring countries lead to the denial of linguistic and cultural rights to ethnic Turks. Greece’s conception of nation-building denies the very existence of Albanian and Macedonian minorities within Greece, yet it protests when Albania’s nation-building policies limit the cultural rights of ethnic Greeks within Albania. Romania claims that the demand by the ethnic Hungarian minority for “collective rights” is immoral and illiberal, while demanding precisely the same sorts of rights for ethnic Romanians living in Ukraine. Serbia refused to grant anything but minimal cultural autonomy to Albanians in Kosovo while simultaneously saying that a similar offer of cultural autonomy to Serbians in Croatia was ‘insulting’”. Kymlicka (2004), pp. 112-113.

\textsuperscript{77} I imagine the only legitimate law which does not require fulfilling the Fist Condition of Legitimacy thoroughly is that of mental institutions, where it would be controversial to say that persons must be able to

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FCL argument prescribes a more fundamental constraint of legitimate laws and, because of that, seems to have a more solid basis than the SCL argument. However, both arguments are thought to be acceptable to all reasonable peoples. It would be important to state, once again, that both the FCL argument and the SCL argument are not liberal in any substantive way – albeit they are compatible with liberalism. Because of this, the hope that reasonable peoples can accept their prescriptions seems to be justified.

Finally, the third argument I analysed was concerned with the inclusion of minority rights in our account of international justice. We saw that human rights, as they are traditionally understood in the UDHR and the two Covenants, are not enough to protect national minorities and groups of immigrants. The argument we studied to justify international accounts of minority rights has a solid basis, as it is framed on perhaps the most fundamental criterion which is to govern the interactions between peoples, namely, the criterion of reciprocity. In this sense, the hope that reasonable peoples can accept this argument seems to be justified as well.

Now that our account of human rights is complete and justified, and that minority rights are also justified to be part of our account of international justice, in the next and final chapter we will study what follows from this in the international arena, that is, what are the duties of the international system associated with the fulfilment of human rights and minority rights. Additionally, we will also see what international actions are justified to promote the distinctively liberal reform. In other words, we will analyse what kind of external interferences in peoples’ local affairs can be justified in the name of human and minority rights, and what kind of external interferences in peoples’ local affairs can be understood completely such a law. Besides this case, I cannot imagine another legitimate coercive system of law that must not fulfill the First Condition of Legitimacy.
justified in the name of liberal reform. In this sense, the next chapter will approach the question of the role our conception of international justice (which includes human and minority rights) is to play in the international sphere.
Chapter 3

The International Order and Legitimacy
The Fulfillment of Human and Minority Rights and the Implementation of Liberal Reform

In the preceding chapters I have argued that a legitimate conception of international justice (that is, a conception that is expected every reasonable people would endorse) should include (1) an account of human rights (which contains: (i) rights to physical integrity, partial freedom of conscience, and to ownership; (ii) rights ensuring the rule of law; (iii) rights to minimal political participation; and (iv) social and economic rights) as well as (2) targeted minority rights (specific rights to attend to the needs of minority peoples and groups of immigrants).

Whereas the second chapter was concerned with the justification of both human rights and minority rights, this final chapter is concerned with their role. For liberals, two questions arise when speaking about the role of such rights: what are the international duties associated to their implementation in the countries where they are not fulfilled, and what kind of liberal influence, beyond the legitimate standards of human rights and minority rights, can be done. The answer to these questions, I believe, can help us to develop a criterion of legitimacy for the international order. In this sense, a legitimate international order would be that which significantly contributes to the fulfilment of human and minority rights and allows, but does not enforce –by any mean–, liberal reform. As I believe this claim is implicit in LP, I will try to formulate it using the Rawlsian framework. I will, then, work on the basis that the implementation of our conception of international justice and the implementation of liberal reform are two clearly separate goals.
1. The Fulfilment of Human Rights and the Implementation of the Liberal Reform

We know from the first chapter that the role of human rights is to determine a standard of minimal justice to which all political societies are to be held accountable in the treatment of their members. When this standard is not fulfilled locally, external interference is required. But there are at least two reasons why a society might not fulfill this standard: 1. because it is negligent; 2. because it is powerless. In the first scenario, the authorities have enough resources to ensure human rights standards but it is not in their interest to do so. In the second one, the authorities do try to ensure human rights but they fail to do so due to their lack of resources.

As I also mentioned in the first chapter, external interference in the name of human rights can be done in many different ways. We can classify all in two categories related to each of these scenarios. In the scenario in which a government neglects to fulfill human rights standards the international community should implement coercive actions to correct the situation. Conversely, in the scenario in which a government is powerless to fulfill human rights standards the international community should provide assistance to

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78 Let me specify who is supposed to intervene. I will refer to the “international community” as the main body which is supposed to look for the fulfilment of human rights standards. As I understand the label, the international community is not only formed by the states of the world, but also –and perhaps more importantly for the fulfillment of human rights– by the international institutions and organizations created by those states, such as the United Nations (UN), the International Labour Organization (ILO), the World Trade Organization (WTO), the Food and Agriculture Organization (FAO), the World Bank Group, the International Monetary Found (IMF), etc. International NGOs, as we will see, have a different status in the international community and, accordingly, can play a different role in the fulfilment of human rights and the implementation of liberal reform. Accordingly, every time I refer to “international organizations” or “global organizations” this will not include international NGOs. To the latter, I will always refer explicitly.

79 The first scenario can present, at least, two variants: (a) when authorities can fulfill human rights standards but “explicitly” refuse to do so; and (b) when authorities do not “explicitly” refuse to fulfill human rights standards but do nothing to fulfill them. More subtle variants of these scenarios are presented in Pogge (2002), pp. 41-42, and in Mandle (2006), pp.49-50. As well, in regard to the second scenario, we can add as another persistent cause of authorities’ failure to ensure human rights (besides of their lack of resources) the adverse international conditions. We will come back to this claim shortly.
change the situation. So, all cases of external interference related to human rights can be classified either as *coercive actions* or *actions of assistance*, considering the cause which impedes the fulfilment of such rights.

With regard to the first scenario, coercive actions might vary in relation to the seriousness of the violations of human rights. They can range from pressure to become a member of international associations (for instance, when a government is not making enough efforts to respect the rule of law) and economic sanctions (for instance, when there is a systematic violation of the rights to minimal political participation) to military intervention (for instance, when there is a mass violation of the rights to physical integrity).

It is important to note that, according to this approach, coercive actions cannot be undertaken in the name of liberal reform. So, for example, restricting access to global organizations because of the lack of domestic liberal democratic institutions is not justified. However, this claim is not opposed to cases such as the European Union, as the situation is different when countries are trying to join regional organizations. This kind of organization can set liberally higher standards (or, simply, different—as in the case of the League of Arab States—) to join them than the global organizations of the international community.\(^8^0\)

With regard to the second scenario –where a government is powerless to accomplish human rights standards, actions of assistance might also vary in relation to the seriousness of the non-fulfillment of human rights. They can range from treaties of

\(^{80}\) We have to notice that the countries which have tried to join the European Union are societies already in the processes of liberalization. In this sense, it seems to be no problem in offering them “incentives” to improve a political system which they already accept. However, the case is different when “incentives” are offered to change a political system. Rawls holds that this latter case is not justified, considering that decent constitutional hierarchies have an equal status in the Society of Peoples. Rawls (1999)a, pp. 84-85.
economic cooperation (for instance, when the provisions to ensure health and nutrition for a population are not massively urgent but need to be improved) and programs of systematic economic aid (for instance, when the provisions to ensure health and nutrition for a population requires long-term programs of assistance) to unconditioned large-scale reconstruction contributions (for instance, when there is a natural catastrophe).

Here, again, it is important to note that, according to this approach, assistance to fulfill human rights standards cannot depend on criteria related to the implementation of liberal reform. So, for example, to be part of a program of financial aid cannot be denied due to the lack of liberal democratic institutions. However, this claim is not opposed to the exigency that receiving financial aid requires certainty on how that money is going to be used. Such an exigency represents a different demand than that of developing domestic liberal institutions, as it is only related to the efficiency and transparency in the use of international aid. International organizations can rightly condition their aid to the previous demonstration that it will be used for the purpose it was designated.81

The obvious implication of this approach to the fulfilment of human rights and the implementation of liberal reform is the suggestion that the international community has to change the way it deals with both. First of all, it is necessary that the particular projects and policies of these organizations do not go against human rights standards. In a better world, this claim should be no more than a simple platitude. Unfortunately, in the actual world, trying to align the programs and policies of international organizations with human

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81 In regard to this point, it is frequently argued that only liberal democratic institutions can ensure efficiency and transparency in the use of international assistance. However, I do not believe this always has to be the case. International organizations can have—as they do in many cases—their own regulatory bodies to guarantee that the aid they provide is correctly channelled by the institutions of the different countries, independently of whether such institutions are solidly democratic or not. Besides, in principle, there is nothing opposed to the possibility that institutions of non-democratic peoples can also be efficient and transparent.
rights standards is one of the most urgent goals for countless NGOs and global movements of civil society. It is well documented by now how the actual policies of, for example, the WTO both perpetuate and aggravate poverty in the developing countries.82 The regime of commerce imposed by these policies does not pass the test of even the less demanding theory of global justice, as it represents both a mass violation of the human rights (the right to health and nutrition) of the persons living in developing countries and a failure in respecting the criterion of reciprocity between peoples. So that any attempt to make the international order minimally just and legitimate passes for changing the present regulations of international commerce.83

But there is another way in which the international community has to change the way it deals with the fulfillment of human rights and the implementation of liberal reform, as it is habitually assumed that these two goals represent the same thing. Take the case of the actions of assistance for the fulfillment of human rights. International organizations such as the World Bank and the IMF frequently adopt policies in which loans to struggle against poverty are granted to countries on the condition of the

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82 In contemporary political philosophy, perhaps the most well-known analysis of how the actual regime of commerce imposed by the WTO both perpetuates and aggravates poverty can be found in Pogge (2002). Pogge says: “With hundreds of millions undernourished and barely surviving, the dramatic changes brought by the WTO Treaty had a significant impact on who would live and who would die. Millions who would have lived had the old regime continue have in fact died from poverty related causes.” Pogge (2002), p. 18.
83 This does not necessarily imply renouncing the economic logic of a global free market. Instead, to change the present commercial regime might imply exactly the opposite: “My complaint against the WTO regime is not that it opens markets too much, but that it opens our markets too little and thereby gains for us the benefits of free trade while withholding them from the global poor. I see the appalling trajectory of world poverty and global inequality since the end of the Cold War as a shocking indictment of one particular, especially brutal path of economic globalization which our governments have chosen to impose. But this is no reason to oppose any and all possible designs of an integrated global market economy under unified rules of universal scope.” Pogge (2002), pp. 19-20 (italics in the original). Therefore, it is not (or not only) a matter of discussing different economic systems, it is a matter of making the system we already have (or any other we could have) consistent with human rights standards and the criterion of reciprocity between peoples.
development of domestic democratic institutions.\textsuperscript{84} As we saw, once we distinguish human rights from distinctively liberal rights this kind of policy is simply not justified.

Likewise, just as actions of assistance of the international community tend to fuse both the fulfilment of human rights and the implementation of liberal reform, there is a similar tendency in the present world –perhaps surprisingly not only in political circles but also in academic circles– to assume that military intervention in the name of liberal reform is justified.\textsuperscript{85} According to this tendency, liberal democratic principles are the most fundamental core of human rights, and the moral voice of these rights impels the world powers to force the democratization of every political system. Moderate proponents of this view often claim that it is important, in establishing the moral status of a particular military intervention, the factual probabilities of success. But notice that here the discussion is not any more about whether the imposition of democracy is morally correct or incorrect but, rather, about which ways of imposing democracy are morally correct and which ways are not. Then, according to this view, imposing democratic governments is,

\textsuperscript{84} This was the approach of the World Bank to Latin-America during the nineties. In fact, this organization was habitually accused of making loans not only conditional to the democratization of institutions, but also to the so-called \textit{neo-liberalization} of such institutions. Venezuela’s resignation to its affiliation to the World Bank offers a more recent example of this problematic issue. Venezuela’s main argument to resign was the Bank’s implementation of the policies above described. As there is an ongoing tendency in many Latin-American countries (Bolivia, Ecuador, Nicaragua, Venezuela) to adopt more “socialist” policies, distinguishing actions (either coercive or of assistance) to fulfill human rights standards from those that tries to implement liberal reform is highly important for the future approach of international organizations to the region.

\textsuperscript{85} An astonishingly vivid defense of this position is expressed in Fernando Teson’s words: “The grand strategy that encompasses the war in Iraq and the commitment of the United States to promoting global freedom is not the simple product of militaristic, radical conservatives, as many have said, even if, of course, the present administration is conservative. I see this effort differently. I interpret it as the natural continuation of a extraordinary idealistic, transformative, liberating impulse in the American Republic, one that ties the current effort in Iraq with Woodrow Wilson’s pro-democratic doctrine, Franklin D. Roosevelt’s conviction in fighting European fascism, Jimmy Carter’s courage in putting human rights at the top of his foreign political agenda, Ronald Regan’s landmark victory against communist tyranny, and Bill Clinton’s inspired leadership in Kosovo, Haiti, and elsewhere during the happier days of globalization. I believe all persons committed to liberal values in the broad sense should support the war in Iraq.” Tesón (2005), p. 19.
in principle, always morally justified. But, again, as we saw, once we distinguish human rights from distinctively liberal rights this kind of military policy is simply not justified.

Does this mean that liberal reform should not be a goal of international institutions at all? If Rawls is correct in his main intuition regarding international justice, namely, that there are other *legitimate* political systems besides liberal democracy, then to promote liberal reform would de-legitimize international institutions. But I believe there might be another place for promoting distinctively liberal ideas. As we saw in the first chapter, Rawls holds that reasonable comprehensive doctrines do not try to impose themselves on other citizens and doctrines by means of coercive political power. Instead, Rawls believes that the place for such doctrines to compete with each other in order to gain adherents is – what he calls– the *background culture*. This culture is described as a space where all kind of arguments about the nature and value of different comprehensive views can be expressed. The idea of background culture is clearly tied to that of public reason, as another way of determining the content of both is in opposition to each other:

The nature of public reason will be clearer if we consider the difference between non-public reasons […] Non-public reasons comprise the many reasons of civil society and belong to what I have called the ‘background culture’, in contrast with the public political culture.

So the background culture is a space where different members of civil society can advance comprehensive positions –non-public reasons. I think we can imagine a similar space in the international realm. In this view, the struggle for accomplishing liberal reform would take place in the *Background Global Culture*. This category would be tied together to the idea of Global Public Reason –just as are the background culture and

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86 So Tesón finishes his reflection as follows: “If being a humanitarian imperialist means advocating that the hegemon use its might to advance (by appropriate moral means) freedom, human rights, and democracy, then I am a humanitarian imperialist. Tesón (2005), p. 30.


public reason for the domestic case. As we saw in the first chapter, some authors have begun to delineate the content of the idea of Global Public Reason; contrarily, to my knowledge, no one is trying to extend Rawls’s idea of the background culture to the global case. I believe this extension is required to complete the transition of Rawls’s conception of justice to the international realm.

But whereas these two ideas (Background Global Culture and Global Public Reason) are equally necessary to make sense of Rawls’s conception of international justice, they suffer from the same problem; namely, the difficulty of delimitating its specific content. I already commented (in the first chapter) on the problems of delimitating the content of the idea of Global Public Reason. Here, I will only point out some preliminary remarks on the idea Background Global Culture.

Just as with the case of Global Public Reason, the idea of a Background Global Culture is not completely descriptive. It might imply the aspiration of developing international movements of civil society capable of discussing the features of different political systems. In this sense, such movements may explicitly advocate for the liberalization of a particular people. I imagine this could also be the place for movements advocating for the Islamization, Catholization or secularization of a particular government. The same thing can be stated in regard to Universities. Building research networks, international groups and global forums, Universities can hold a joint programme with the explicit purpose of advocating for a more liberal understanding of, for example, scientific research.89

89 As part of the Background Global Culture, Universities’ international networks could also advance more “conservatives” understandings of scientific research. For example, the discussion around Creationism and Intelligent Design theories could be placed in this Background Global Culture.
But if the idea of Background Global Culture is not completely descriptive, it still can serve to best describe ongoing international movements and organizations. In this sense, international NGOs can be seen as part of it. In fact, the same thing can be said about Universities and trans-national movements of civil society, as many of them around the world already have broad collaborations and joint goals.

Locating the implementation of liberal reform in the Background Global Culture recognizes the fact that strictly speaking peoples are not distinctive and completely liberal or illiberal. In all of them we find different social tendencies, some of them highly progressive and others highly conservative. As it is not justified for a legitimate international system to implement policies directed to change legitimate local governments, this does not hinder the possibility of social mobility in local societies. In this sense, this view acknowledges the fact that the only way a people can engage in a process of liberalization is when this becomes an exigency on its own society. However, this view also sustains that when similar social tendencies (either liberal or illiberal) of different societies work together they do not represent an imposition from one people to another or, more broadly, a threat to the legitimacy of the international order as a whole.

2. The Fulfillment of Minority Rights and the Implementation of Liberal Reform

I think minority rights also represent a standard of minimal justice, as they are an attempt to make effective the criterion of reciprocity between majority peoples and minority peoples. Justice between different peoples requires, minimally, the respect of the criterion of reciprocity. Thus, when the standards of minority rights are not fulfilled locally, external interference is required –as in the case of human rights. In this sense, the
international community must play a chief role in ensuring that minority rights standards are respected.

However, I do not think it is very promising to distinguish either as coercive actions or actions of assistance (as in the case of human rights) all efforts of the international community to make minority rights respected. Ethnic-conflicts are widely spread around the world, yet even when many of them are highly violent, talking about “mass violations of minority rights” seems to make little sense. Likewise, since –as we will see– the present international legislation does not offer equal targeted protection to all types of minorities, it might appear out of place to talk about “minority rights violations” at all. If we cannot (yet) talk about minority rights violations, it is not promising to present a range of international’s coercive actions and a range of international’s actions of assistance related to such “violations”.

In defining the role of international organizations in the promotion of minority rights, perhaps it is more promising to explore, first, the causes that have brought these rights to some of the Western liberal countries and, afterwards, see whether these causes are, or can be, present in the countries where special rights are not provided to minorities. In fact, this is the strategy Kymlicka has proposed himself to follow in a recent study.\footnote{Kymlicka (2007).} In this final section, I will analyse some of Kymlicka’s ideas in this regard and will propose that international organizations should dissociate –too– the promotion of minority rights from the implementation of liberal reform; this, I will claim, is not only a requirement for the legitimacy of the practices of international organizations, but also something that may help minority rights to receive a better reception in the non-Western world.
We saw in the previous section that, currently, two general causes are related to governments’ most terrible failure in ensuring human rights standards (i.e. severe poverty): their lack of resources and the present adverse international conditions. In the case of minority rights, however, other causes are related to the failure to accomplish them around the world.

According to Kymlicka, minority rights in Western liberal countries have to be partly understood as the most recent achievement of a social struggle which has its origin in the UDHR. The UDHR has generated a powerful revolution, in particular, in relation to the idea of equality. The first achievement of this revolution was the recognition of the equal status of colonies and colonizers (reflected in the UN’s Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960). The second achievement of the human rights revolution, inspired by the first one, was the recognition of equality of races (reflected in the International Convention on the Elimination of All Forms of Discrimination of 1965). The third achievement of the human rights revolution, inspired by the second one, was the recognition of the equal status of majority peoples and minority peoples (reflected in the UN’s Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992). In this picture,

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91 This claim, of course, does not deny the fact that local factors make each case of non-fulfillment of human rights highly complex. However, the two causes mentioned above play a chief role in most of these cases. In any event, we should avoid falling into what Pogge refers to as “the most harmful dogma ever conceived: explanatory nationalism, the idea that the causes of severe poverty and other human deprivations are domestic to the societies in which they occur”. Pogge (2006), p. 217. As well, there is another way in which the present international conditions are adverse to human rights standards. As we will shortly see, the fact that the “human rights discourse” promoted by international organizations is not dissociated from specific liberal claims makes difficult the reception of such a discourse in non-liberal countries.

92 The human rights revolution, as described by Kymlicka, is associated with the moral discourse that the UDHR generated. In this sense, “human rights” here refers to something much greater than the specific set of rights usually taken as human rights. The human rights revolution can be best described as a generator of rights-consciousness and awareness in a very general way. I will refer to this revolution as “the rights-consciousness revolution”, “the rights-consciousness discourse” or, simply, as “the human rights discourse”. 

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minority rights are the most recent step in a broad movement struggling for equality.\textsuperscript{93} However, Kymlicka also points out that each of the achievements of this movement was favoured by political factors with incredible international repercussions. In the case of the last achievement, minority rights, the most important extra-moral factor can be located in the fact that, largely, multicultural policies do not represent a threat to the security of Western societies in the present world.\textsuperscript{94}

So we have two co-related conditions which have helped in carrying out minority rights in Western liberal countries: (1) the impulse of the human rights revolution; and (2) the fact that multicultural policies do not threaten the security of Western liberal societies.\textsuperscript{95} These conditions should not be underestimated. In the present world, both of them are mostly absent in non-Western societies. The question, then, is how international organizations can help to generate these conditions in such societies. Let me comment on the first one.

A first claim in regard to the “rights-consciousness condition” has to do with the de-attachment of the human rights discourse and the liberal discourse. Perhaps the human rights discourse, as a generator of rights-consciousness, will continue its dissemination around the world in the present conditions. Here, the work of NGO’s and Universities is crucial as part of the Background Global Culture. However, I strongly believe that this discourse would have a better reception in non-liberal countries if it were not necessarily

\textsuperscript{93} Kymlicka (2007), pp. 61-62.
\textsuperscript{94} Kymlicka (2007), pp. 82-84
\textsuperscript{95} This claim does not deny the fact that certain multicultural policies in the West are now seen as threat to national security. In particular, after the 9/11 attacks and the subsequent Madrid and London bombings, multicultural policies to address the needs of Muslim immigrant communities are sometimes perceived as a way of fomenting an environment easily exploitable by radicals. These perceptions are important, but we should be cautious of not overstating them. I think Kymlicka is correct when he says: “two of the key pillars of liberal multiculturalism […] have been questioned in the case of Muslim immigrants. But this is an exception (and hopefully a temporary one) to an otherwise powerful trend to normalize the presence of immigrant ethnic identities in the public space.” Kymlicka (2007), pp. 107-108.
associated with liberalization. Liberal ideas are often seen as a tool of Western powers, a new way of exporting domination and implanting hegemony. This is frequently the local understanding of human rights too, since they are taken as straightforward liberal ideas.\footnote{This confusion between human rights concerns and liberal rights concerns is exacerbated by the fact that until now there has been no strict separation in international laws or “quasi-laws” (like the UN’s declarations) between these two types of rights. I believe a way of doing this, without withdrawing the already existing international legislation, would be to pass a Declaration on \textit{basic human rights}. In this case, everything I have said about the justification and the role of human rights could be taken as concerned with basic human rights. Likewise, if there were such a law, the rights-consciousness discourse should solely emphasize basic human rights.}

Finally, because of coming from the impulse of human rights, minority rights are sometimes perceived as, say, the most “up-to-date” form of Western’s hegemony implantation:

\begin{quote}
[I]t is widely believed in many post-colonial states that the international sponsorship of minority rights is simply a plot or conspiracy by the West, and particularly the United States, to weaken and divide post-colonial states, especially those that might pose a challenge to American hegemony.\footnote{Kymlicka (2007), p. 173.}
\end{quote}

In this context, I believe that we should not present minority rights as a liberal exigency but, rather, as an exigency of equality between different peoples. In fact, as we just saw, if the human rights discourse helped to strengthen minorities’ claims in the west, it was precisely because it strengthened the idea of equality. In this sense, the human rights discourse should keep putting particular emphasis on the importance of this idea or, in Kymlicka’s words, on the importance of eliminating ethnic and racial hierarchies.\footnote{Kymlicka (2007), p. 61.} It must stress the idea that just as non-liberal countries look for recognition of liberal countries as equal peoples with an effective right to exist, in the very same way minority peoples claim to be recognized as distinctive peoples with an effective right to exist. This last claim, as we saw in the second chapter, is not distinctively liberal –albeit compatible
with liberalism; rather, it is a claim based exclusively on the importance of the criterion of reciprocity.

So, a first claim in regard to the “rights-consciousness condition” –which seems to be necessary for a best reception of minority rights in non-Western countries– is that distinguishing the discourse of human rights from the promotion of liberal reform would provoke great advances. This will serve to de-alienate both human and minority rights claims in non-liberal local contexts. Though, I do not want to neglect that the natural place for the human rights discourse is the Background Global Culture in which, as we know, particular liberal claims can be expressed. However, governments and international organizations also promote and use this discourse to advance their agenda. Thus, the fact that this discourse tends to abandon its natural place impels the de-attachment of liberal content from it.

A second claim related to the “rights-consciousness condition” is that a liberal institutional context is not necessary for all schemes of minority rights. The fact that an effective system of multicultural policies has now emerged in the West (and that democratic values and structures have presented a proper context for this) does not hinder the possibility that such a system could exist in non-liberal societies.\textsuperscript{99} This affirmation should not be surprising, since minority rights represent a scheme of toleration \textit{between} different groups and not a scheme of toleration \textit{within} each group.

However, in advocating for non-distinctively liberal schemes of minority rights it is especially important to clarify something. As Kymlicka mentions, if the human rights discourse has propelled minority rights in Western liberal countries, it has also guaranteed

\textsuperscript{99} Remember the very example of the Millet system of the Ottoman Empire. See chapter one, p. 4.
that minorities tend not to violate human rights; it has helped not only to inspire minorities’ claims but also to constrain them. Kymlicka explains:

States are unlikely to accept strong forms of minority rights if they fear it will lead to islands of local tyranny within a broader democratic-state. The likelihood that multiculturalist reforms will gain support depends heavily, therefore, on confidence that these reforms will not jeopardize human rights and liberal-democratic values.\(^{100}\)

This affirmation is done in the context of explaining the raising of minority rights in Western countries. In the position I am advancing here, the only justified constraint to minorities’ claims and practices must be the very human rights standards and not, additionally, higher liberal principles or values. As in non-liberal peoples there is not an instituted liberal form of government, it would be hypocritical making rights of minorities conditional on their liberalization. In supporting minority peoples, thus, international organizations must always consider that the only two justified standards required for advancing claims and practices are, as in the case of major peoples, the respect for human and minority rights.

Let me now turn to the second condition that has helped minority rights to arise in the context of Western liberal countries, and then make a final comment in regard to the actions of the international community should undertake in trying to advance minority rights in the global context. This second condition, as we saw, is found in the fact that – largely– multicultural policies do not threaten the security of Western liberal societies. In the local context of these countries, empowering minorities does not involve great risks for the dominant group, even if this empowerment could increase the possibility of eventual secession.\(^{101}\) This does not seem to be the case in other countries around the

\(^{100}\) Kymlicka (2007), p. 63.

\(^{101}\) Kymlicka explains this with some examples: “Quebec nationalists may want to secede from Canada, but an independent Quebec would be an ally of Canada, not an enemy, and would cooperate together with
world, where an eventual secession of a minority could generate a new enemy for the country who agreed to recognize special rights for that minority. This reality, I believe, impels international organizations to work on forms of self-determination, or regional autonomy, which pay particular attention to the problem of secession.

However, more generally, I think we should understand minority rights the other way around: in an insecure world, where many countries are constantly threatened by ethnic-conflicts, minority rights represents a way to attend to the problems provoked by these conflicts, not a way of exacerbating them. The international community cannot act on the presupposition that ethnic-conflicts around the world will suddenly disappear. On the contrary, these conflicts very frequently generate vast humanitarian crises—in which the international community is obliged to intervene. So minority rights are a tool for both peoples and the international community to deal with the present ethnic-conflicts and prevent greater harms. Thus, I believe such rights are not only justified by normative reasons (as we know from the second chapter) but also by pragmatic reasons.

It seems to be clear, then, that the international community is obliged to promote these rights and to work in generating the conditions which favour them. I have argued that to distinguish the rights-consciousness discourse from the promotion of liberal reform will help in generating such conditions in non-liberal countries. I would like to conclude by mentioning another strategy.

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Canada in the NATO and other Western defense and security arrangements. Similarly, an independent Scotland would be an ally, no enemy of England; an independent Catalonia would be an ally of Spain, and so on.” Kymlicka (2007), p. 82.

102 In fact, this was partly the impulse behind the implementation of laws regarding national and ethnic minorities in Europe during the nineties: after the Cold War, the fear of a generalized escalation of ethnic-conflicts around Eastern Europe countries—and its subsequent implications for the Western Europe countries (such as mass refuge problems)—was powerful enough to mobilize European regional institutions and worked on laws on the rights of national minorities. Kymlicka (2007), p. 117.
As we saw in the second chapter, during the nineties a tendency to pass targeted legislations addressing the needs of different minorities emerged in international law. However, Kymlicka points out that this tendency did not go all the way. While European organizations decided to target national minorities (passing the Framework Convention for the Protection of National Minorities – FCPNM – in 1995), the UN decided to target indigenous peoples (passing the Draft Declaration on the Rights of Indigenous Peoples – DDRIP – in 1993). In the absence of a more adequate scheme of targeted laws, the FCPNM has represented an incentive for European minorities to present themselves as national minorities. Similarly, in the absence of a more adequate scheme of targeted laws in the rest of the world, the DDRIP has represented an incentive for minorities of the world to present themselves as indigenous peoples. These dynamics are highly unstable and threaten to break down the very idea of a targeted system of minority rights, as all minorities are trying to obtain the same protection (the only one presently available).

On the other hand, Kymlicka also points out that even if the UN continues targeting laws on the global level, it would hardly find categories that correctly suit all minorities of the world, considering the numerous variations in the characteristics of ethnic groups in the five continents. These two things taken together (that minorities are currently trying to obtain the same protection and that keep targeting laws in the global level would find problems to correctly identify all different types of minorities) might generate a backlash in international law, bringing it back to the point when it was thought that a general and ambiguous right to culture, like that expressed in the article 27

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of the International Covenant of Civil and Political Rights\textsuperscript{106}, represents the best way of defending minorities.

Confronted with this panorama, Kymlicka proposes two things: one, that in order to avoid the first problem, targeting laws to address the specific needs of minorities must continue; and two, that in order to avoid the second problem, the task of targeting these laws should be delegated to regional international organizations, considering that they can develop a more specific and sensitive legislation according to the needs of the different regions of the world.\textsuperscript{107} This strategy is perfectly feasible in the present conditions. Furthermore, I think it represents the most immediate duty of the international community with regard to minority rights. We first need the adequate and complete legislation to manage the interactions between peoples. It is in the hands of the international community and its organizations to continue with this project. This legislation would trace the map for further actions in the fulfillment of the rights of minority peoples. Without this first step, the international community will walk blindly towards trying to achieve its two major goals: peace and minimal justice between peoples.

3. Conclusion

In this chapter I have explored the responsibilities of the international community in regard to the fulfilment of human rights and minority rights. In regard to the former, I argued that it is necessary, for instituting a legitimate international order, to separate the actions directed to the fulfilment of human rights standards from those directed to the implementation of liberal reform. This is due to the fact that human rights are standards of minimal justice that justify external interference in local affairs, as they are rights that all

\textsuperscript{106} See chapter two, pp. 32-32.
reasonable peoples accept. Contrarily, as liberal rights do not enjoy this support, liberal reform cannot be implemented by coercive institutional means (with all its graduations); nor should this reform be placed before the assistance to fulfill human rights standards. The adequate space for advancing liberal reform, I have claimed, is the Background Global Culture, a space in which social tendencies of different peoples can work together in trying to change an already legitimate government. This is, I believe, a way to capture what Rawls had in mind when he presented LP. In a legitimate international order, liberal aspirations are confined to the social tendencies of societies, rather than to the actions of foreign governments or international institutions.\textsuperscript{108}

The discussion of the international responsibilities for the fulfilment of the rights of minority peoples helped me to present a further claim in regard to the separation of human rights and liberal rights. I argued that it is important to detach the distinctively liberal content from the discourse of human rights. This, I sustained, would help to de-alienate human and minority rights claims in the local context of non-liberal peoples. Additionally, I stated that not all schemes of minority rights require a liberal institutional order, and that we should not put higher (liberal) standards to minorities than those of other peoples in order to advance claims and practices. In this sense, minorities—as any other people—must respect human and minority rights to be regarded as legitimate peoples. Finally, I supported the suggestion that regional international organizations must continue developing targeted laws to address the needs of minority peoples of the different regions of the world. This is the most urgent task of the international community

\textsuperscript{108} Consider the following passage of LP: “I also suggest that it is not reasonable for a liberal people to adopt as part of its own foreign policy the granting of subsidies to other peoples as incentives to become more liberal, although persons in civil society may raise private funds for that purpose. It is more important that a liberal democratic government consider what its duty of assistance to peoples burdened by unfavorable conditions.” Rawls (1999)aa, p. 85.
in relation to minorities. Without the adequate legislation it is difficult to trace a correct map of international actions. A more complete scheme of minority rights is necessary to ensure both minimal justice as well as peace between peoples.
Conclusion

In this work, I have studied, on the one hand, what minimal justice between and within peoples requires. Likewise, I have studied the constraints that legitimacy imposes on a conception of international justice and an account of human rights, on the exercise of domestic political power, and on the practices of the international community. I understand, following the *Law of Peoples*, that these constraints represent more than a simple strategy in a world where the requirements for a more robust conception of justice seem to be implausible. I conceive of the constraints imposed by legitimacy as normative and not only pragmatic. Allen Buchanan and Robert O. Keohane have recently presented a study on the legitimacy of what they call “global governance institutions”, making the following claim in regard to the relationship between justice and legitimacy:

Collapsing legitimacy into justice undermines the valuable social function of legitimacy assessments. There are two reasons not to insist that only just institutions have the right to rule. First, there is sufficient disagreement on what justice requires that such a standard for legitimacy would thwart the eminently reasonable goal of securing coordinated support for valuable institutions on the basis of moral reasons. Second, even if we all agreed on what justice requires, withholding support from institutions because they fail to meet the demands of justice would be self-defeating from the standpoint of justice itself, because progress towards justice requires effective institutions. To mistake legitimacy for justice is to make the best the enemy of the good.109

This claim in many ways synthesises the importance of legitimacy in its relationship with justice, but it forgets the most important normative feature of legitimacy: that is, that a liberal conception of justice, either domestic or international, cannot be imposed, neither on reasonable persons nor on legitimate governments, respectively. This claim, as simple as it is, represents the first constraint of any liberal conception of justice, I tend to believe.

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