HUMAN RIGHTS, LEGITIMACY, AND GLOBAL JUSTICE:
DECONSTRUCTING THE LIBERAL THEORY OF
INTERNATIONAL RELATIONS

by

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Abstract

This dissertation examines liberal statist and liberal cosmopolitan attempts to explain global justice. It argues that liberal statists misidentify their own commitments regarding human rights, and that once these implications are drawn out, many statist and cosmopolitan theories of global justice converge on several of their central positions. Although statists and cosmopolitans differ in their methodologies, emphasis, epistemic commitments, and some logical commitments of their respective positions, I argue that they are nonetheless committed to many of the same positions about practices in the sphere of global justice. They share elements of a logical structure, based in liberal domestic principles, which commits them to similar practical implications. Their convergence is most visible in an examination of their human rights commitments. They nonetheless differ in their analytic priorities, and hence in the ease with which they arrive at many of their insights and conclusions. In particular, despite Rawls’s denial of the desirability or feasibility of cosmopolitanism, he shares many practical commitments with cosmopolitans such as Tesón, Beitz, Buchanan, Tan and Caney. Their shared liberal egalitarian premises arising from liberal domestic theory result in convergence on what they take to be the central questions of global justice, and moreover on their answers to these central questions. Liberal theories on both sides of the cosmopolitan and statist divide endorse a practical approach to human rights that links human rights compliance with such practical global justice privileges as non-intervention, humanitarian aid, treaty relations, and even tolerance. And this convergence entails a more united liberal account of global justice than theorists on either side of the statist and cosmopolitan divide have been willing to admit.
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Chapter 1
Introduction

This dissertation argues that the global justice debates between liberal statism and liberal cosmopolitanism involve significant mischaracterizations and misunderstandings of opposing positions. On a charitable reading, these opposing liberal theories of global justice offer distinct advantages and disadvantages, and for a liberal committed to the ideals of equality, toleration, and freedom, the dilemma regarding how best to conform to these ideals in the international realm is difficult to resolve. However, a focus on the redistributive elements of the debate has left the human rights component of global justice sidelined, and this dissertation aims to refocus the debate on its human rights implications in an attempt to find common ground, and offer a direction of inquiry through which a partial resolution to the impasse regarding distributive justice becomes possible. In particular, I will argue that liberal statism, in light of its own precepts, is committed to a broader account of the content of human rights than statist theorists have typically been willing to admit, and that in this respect statism and cosmopolitanism ought to be conceived of as sharing human rights commitments rather than as disagreeing on this count. Given this shared commitment to human rights, they can be viewed as having significant overlap in the normative content of their respective theories, which furthermore entails convergence in practical commitments regarding humanitarian intervention and the duty of assistance. In the face of significant human rights and normative overlap, the cosmopolitan and statist disagreements regarding distributive justice can be seen as less intractable, and a way out of the distributive impasse becomes
more plausible: the shared commitment to a duty of assistance entails at least a minimally shared commitment to rectifying distributive injustice, even if global egalitarianism cannot be conceded by the statist side. But, finally, this dissertation argues that a significant distinction between statism and cosmopolitanism remains: the epistemic commitments of statism and cosmopolitanism – regarding how we can identify injustice – remain even once practical convergence is established. This introductory chapter will try to motivate the competing appeals of statism and cosmopolitanism, and will outline the steps in the argument going forward.

Each proponent of liberal statism and liberal cosmopolitanism views her theory as appropriately and logically continuous with liberal domestic principles, and views this as part of the appeal of her form of global justice. In general, arguments for both liberal statist and liberal cosmopolitan positions take the form that inasmuch as one is committed to liberal domestic justice, one ought to be committed to a form of global justice that embraces and is continuous with liberal domestic principles of justice. Yet liberal statism and liberal cosmopolitanism offer distinct positions, and disagree on many levels with each other’s position. A preliminary task for this dissertation is therefore to clarify the relationship between these abstract levels of agreement and disagreement in order to formulate the motivation for the debate.

It is widely assumed that questions of global justice, and therefore the debate between liberal statism and liberal cosmopolitanism, are primarily debates about the scope of liberal concern for distributive injustice. Hence, global justice has often been framed, and equally often rejected, as the unreasonable and unfeasible requirement for
global redistribution and global egalitarianism\(^1\). Yet I will argue that the debate regarding the scope of concern for justice is best understood through the lens of its human rights framing: the human rights focus reveals inconsistencies and equivocations regarding the language of toleration, legitimation, and justice and better locates the cosmopolitan and statist liberal disagreements, as well as some surprising points of agreement. Once the debates and assumptions regarding human rights are properly foregrounded, several problematic assumptions of the human rights discourse can be resolved, and the debate between liberal statism and liberal cosmopolitanism can be seen in a new light. I will argue that with human rights as the focal question for framing a liberal debate about global justice, the positions in the debate can be elucidated, and the site of the debate itself can be relocated to a deeper and more fundamental set of epistemic issues regarding the perspective from which to make judgments regarding justice.

Liberal statism, as I interpret it here, starts from an understanding that the question of justice as a liberal domestic arrangement has been resolved in favor of liberal domestic arrangements\(^2\). Its premise is that, whatever other arrangements may exist in the world, we can be sure that liberalism is a just domestic arrangement. Any other arrangements may or may not be just, but ought to be evaluated on their own merits. While liberal statists believe that the task of theorizing domestic justice has largely been accomplished, they are not committed to the view that any real-world existing liberal

\(^1\) On redistributive framing: Beitz (1999); Pogge (2002); Tan (2004); Caney (2005). On the rejection of global redistribution: Rawls (2000); Nagel (2005); Miller (2007)

\(^2\) Its proponents include: Rawls (2000); Blake (2001); Nagel (2005); Miller (2007); Sangiovanni (2008)
states fully live up to the requirements of justice. In fact, they often criticize particular failures of domestic justice. They nonetheless typically believe that existing liberal states have made significant achievements in relation to domestic justice, achievements that need to be protected. They therefore insist that the pursuit of global justice not threaten the fragile achievements of domestic justice. Hence, the project of global justice for liberal statists involves first and foremost safeguarding existing spaces of liberal justice while undertaking to make the world as a whole more just.

Liberal statists therefore examine questions of global justice – questions such as human rights, migration, just distribution, fair trade, and humanitarian intervention – as questions of foreign policy for a just liberal state. Under liberal statism, whatever measures of justice can be achieved on a global scale cannot be allowed to compromise the existing justice of liberal states. So, global justice will first and foremost preserve and protect existing pockets of liberal justice. To this end, the state’s sovereignty rights are fairly robust, and amount to the state having rights that are fundamental to global justice. Global justice aims to spread outwards from just liberal states, wherever possible, and to do this by using only just means to achieve its goals. Statists furthermore take toleration of difference to be a central defining feature of liberal international relations, such that the international realm must exhibit toleration of diversity amongst states in order to achieve anything that might be called ‘global justice’. These theorists take the state to be
the central unit of international justice, and so take state rights and toleration of state difference to be definitive of liberal global justice.

This methodology achieves two desiderata for a theory of global justice. First, it preserves existing spaces of justice globally – namely, existing liberal states. Secondly, it tackles the questions of global justice from a situated foreign policy perspective. Each question or issue of global justice is therefore able to invoke the just liberal state’s interests and values in its deliberations regarding questions such as human rights, migration, just distribution, fair trade, and humanitarian intervention. Given the history in international relations of reliance on the concept of a state or nation’s interests, the existence of defined national or state interests and values can be seen as a virtue of liberal statist accounts of global justice. These strengths explain some of the intuitive appeal of the statist account of global justice.

Liberal cosmopolitanism, as I understand it here, defines justice in individual terms. Liberal domestic justice teaches us that individuals are the subject of justice, and furthermore that how individuals fare in any given theory or process will be the ultimate measure of its justice in liberal terms. In a sense, the state disappears in the analysis of the liberal cosmopolitans since justice will be measured by any given policy’s effect on individuals directly. Nonetheless, in many of its forms, liberal cosmopolitanism accepts

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3 A possible exception here is, of course, Rawls (2000), who takes ‘peoples’ as the central unit of international justice.
4 Proponents include: Beitz (1975); Beitz (1999); Pogge (1995); Pogge (2002); Tan (2004); Tan (2012); Caney (2005)
the instrumental value of state structures\textsuperscript{5}. These theorists believe that many of the principles that can be justified within liberal domestic justice ought to be taken as universal principles of justice. Although they still value toleration, liberal individual equality takes priority over toleration. Again, toleration of individual differences is protected by individual rights such as freedom of religion and freedom of conscience, but state rights and sovereignty rights remain derivative and instrumental to the pursuit of equal individual rights. Institutions, states, and even the basic structure of a state are arranged to the benefit of their individual members. Hence, liberal cosmopolitans argue, the same ought to be true of global institutions and the global basic structures. Individuals are the analytic priority in global justice, and therefore states and other global institutions should be studied precisely because, and to the extent that, these are instrumentally valuable to the pursuit of individual justice.

Liberal cosmopolitanism is universal from the outset, and therefore its scope includes every individual, state, and multilateral organization in the world. Hence, part of its appeal is its comprehensiveness as a theory of global justice. Liberal cosmopolitanism, in many of its forms, takes the ideas and practices of human rights as flowing directly from liberal domestic civil rights commitments, and grants these rights the status of universal human rights. Given its universality and its consistency with human rights ideals, the intuitive appeal of cosmopolitanism is also clear.

\textsuperscript{5} Here, I will focus on forms of cosmopolitanism that accept the instrumental value of states. For a contrasting form of cosmopolitanism, see Held (2010).
My motivation for thinking about statist and cosmopolitan theories in consort, rather than arguing in favor of one over the other from the outset, is that they each offer significant insights into the central questions of global justice, even while they each suffer from deficiencies. I argue that these two accounts offer importantly different methodologies for thinking about global justice, and each offers insights unavailable to the other. I furthermore find it interesting that a shared starting point of liberal domestic justice can lead to such divergent accounts of global justice.

Thinking about global justice in terms of foreign policy for a just state provides a different lens than thinking of global justice as principles that apply directly to individuals around the world. Some insights are only epistemically available from one perspective, and a comparison of both theories allows these differences to emerge. I argue that the logic of statism offers some important advantages in that it maintains a more explicit and coherent account of the role of states. Yet cosmopolitanism offers advantages in terms of universal scope and intuitiveness. I argue that the two approaches converge on many of the moral issues in international relations, such as human rights and humanitarian intervention, and that the convergence tells in favor of a hybrid or unified liberal account of what global justice requires on a practical level. However, the different perspectives on questions of global justice offered by each of the two theories are less easy to reconcile. So I will argue that unfortunately the differences in perspective that define liberal statism and liberal cosmopolitanism cannot easily be unified, and so we are left with a problem of epistemic incommensurability.
Throughout the dissertation, I argue that the very subtle differences that define the starting points for these positions have ramifications on multiple levels. Liberals seek to articulate a theory of international relations that adequately accounts for both liberal domestic principles of justice and the modern realities of international life. And to this end, they are particularly torn between the liberal principles of toleration and the liberal principles of freedom and equality, which are strongly interrelated in liberal domestic theory. As individual principles, they do not appear to be in conflict at the liberal domestic level. However, one issue facing liberals tackling the problems of global justice is the question of to whom these principles apply: whether their international analogues remain principles of individual toleration and equality, or the ideas of group toleration and equality. This division along principled lines has ramifications along practical lines: first regarding the conceptual units of international justice, and secondly regarding the practical imperatives of international justice. The practical implications factor into arguments for the theories, with certain practical implications viewed as a reductio ad absurdum by proponents of the opposing theory.

I will begin, in Chapter 2, with an examination of the central arguments for and against liberal statism and liberal cosmopolitanism. I will define each theory more fully than I have here, and will explain their commitments with reference to criticism leveled by their opponents. Whereas the positive arguments in favor of liberal statism and liberal cosmopolitanism rely on intuitions about the appropriate extension of liberal domestic policy, an examination of the objections to each theory will allow a sharper distinction to be drawn between the two theories. I will, nonetheless, examine the positive cases for
each theory, and argue that some of these fail even on their own terms. Beyond intuitive appeal, the arguments in favor of each theory are often much weaker than the strength of the resistance to opposing theories would suggest. Nonetheless, two positions emerge that are worthy of consideration, and the remainder of this dissertation will explore the ramifications of these arguments for a liberal theory of global justice.

Each framing has its advantages and disadvantages. Although the two theories seem quite compatible at the theoretical level (given that they share a basis in liberal domestic principles), these theoretical and principled differences have practical implications that become entrenched in the debates between the groups. The differences seem particularly pronounced over two interconnected practical implications for a liberal theory of international relations: human rights and humanitarian intervention.

Chapters 3 and 4 examine the interrelated questions of the nature of human rights for a liberal theory of global justice, and the content of human rights for a liberal theory of global justice. In chapter 3, I examine what human rights are, at least insofar as the concepts are deployed in the liberal discourse on global justice. As a result of a broad array of cultural objections to the universal accounts of human nature on which human rights have been typically founded, both statists and cosmopolitans have come to rely on a practical approach to human rights that focuses on the use and functions of human rights in international affairs. Chapter 3 examines how they arrive at this understanding, and will argue that the practical approach to human rights emerges out of careful consideration of liberal domestic justice, particularly as espoused in Rawls’s *Theory of Justice*. In their commitment to a practical approach to human rights, both liberal statists
and liberal cosmopolitans appear to be committed to the unified project of drawing out lessons from liberal domestic justice, and pursuing values of liberal toleration and equality on a global scale.

The unified position on liberal global justice is unfortunately merely apparent. Chapter 4 examines the question of content for a liberal theory of human rights, and how this diverges for statists and cosmopolitans. Liberal statists, partly in virtue of their commitment to the value of toleration, espouse a form of human rights minimalism that aims to maintain the weight of human rights claims while also achieving universal agreement on their content and practice. Liberal cosmopolitans, in virtue of their commitment to universal equality, pursue a broader scope for human rights, and object strongly to the human rights minimalist position.

Both groups agree that human rights compliance is part of the minimum requirement for a state to achieve legitimacy in the international realm. However, they disagree over the relationship between human rights content and liberal domestic rights. For liberal statists, human rights are distinct from liberal domestic rights just as international justice is distinct from domestic justice. For liberal cosmopolitans, human rights are part of the extension of liberal domestic justice to the international realm, and liberal civil and political rights are therefore included in the content of a universal doctrine of human rights. For statists, human rights must be limited to minimal content, because to do otherwise would be to imperialistically and paternalistically impose Western liberal values and violate the principle of toleration. For cosmopolitans, human rights are international analogues to liberal domestic rights, and arguably serve as the
language of international social justice. To the extent that any rights can be justified as constitutive of or necessary for liberal domestic justice, the resulting principles are universally valid. This expansive human rights content is absurd and unjustifiable according to the liberal statists, while the minimalist content for human rights adopted by the statist seems like a concession to unjust and illiberal states according to the cosmopolitan. This is often presented as an impasse – as the two liberal accounts talking past each other – but I will argue that minimalism is not only objectionable from a cosmopolitan perspective, but is in fact inconsistent with statists’ own commitments. This does not mean that the two become indistinguishable, but I will argue that both accounts, rightly understood, ought to be committed to a fairly robust conception of human rights.

Chapter 5 examines liberal statist and liberal cosmopolitan commitments regarding humanitarian intervention, and these form an interesting parallel with the statist and cosmopolitan disagreements over the content of human rights. Cosmopolitans appear too permissive from a statist perspective, while the statist appears too tolerant to the cosmopolitan. Both groups agree that humanitarian intervention is a last resort provided that (i) it will improve the human rights situation, and (ii) human rights cannot be protected in any other way. Both agree furthermore that state sovereignty is a privilege that can be undermined or withdrawn by the international community for human rights-related reasons. However, given their disagreement about the content of human rights, the two groups define the threshold for legitimacy and non-intervention in different places. If extreme human rights violations invalidate the state’s rights to non-intervention, and the
two groups define human rights differently, the threshold for a right to non-intervention will move with the expansion of content of human rights.

Liberal statist object to cosmopolitan human rights inflation in part because they believe it overcommits cosmopolitanism to humanitarian intervention. I defend liberal cosmopolitanism from this objection, arguing instead that statism and cosmopolitanism each have available just war distinctions that prevent any slippery slope to excessive and illegitimate humanitarian intervention. In this sense, again, I argue that the statist objection to cosmopolitanism fails, and that liberal statism and liberal cosmopolitanism share many of their practical commitments with respect to humanitarian intervention.

Chapters 3, 4, and 5 amount to a denial that statism and cosmopolitanism offer substantially different positions regarding liberal global justice when viewed through the human rights framing. They share commitments to a practical account of human rights, and to humanitarian intervention when necessary, but to relying on intervention only as a last resort. I argue that once the commitments of liberal statism are made more internally consistent, liberal statism’s disavowal of and objection to cosmopolitanism collapses on a practical level.

Chapter 6 returns to the question of what ultimately differentiates and motivates liberal statism and liberal cosmopolitanism. Each theory offers a unique perspective on questions of global justice. Liberal statism is framed as a foreign policy for a liberal state, and to that end, it always has domestic state interests available as elements of deliberation in international relations. However, in Chapter 6, I argue that this also raises an epistemic barrier in that questions of liberal legitimacy and justice are necessarily decided from an
explicit outsider’s perspective. That is, questions of toleration and of intervention, of injustice and illegitimacy, and of when human rights violations are bad enough to warrant international reaction, are necessarily burdened by being viewed through the commitments of domestic state interests of the intervening state, and moreover have the epistemic barrier of an outsider perspective to overcome. The central advantage of statism, which is its situated perspective, raises an epistemic barrier that undermines the feasibility and justice of liberal statism.

Cosmopolitans do not escape unscathed, although their perspective fares better than statism’s. They are saddled with their own problem of perspective that requires mediating between an un-situated universal view-from-nowhere, and an individual perspective that encounters its own problems of incommensurability. Chapter 6 argues that although the practical consequences of liberal statism and liberal cosmopolitanism may converge in many instances, the positions remain distinct, and remain saddled with distinct burdens.

Ultimately, the two theories converge on many practical decisions regarding when intervention is an appropriate solution, and what actions global justice requires. For one, they both have recourse to further justifications for non-intervention and to the totality of just war theory, even if they disagree over what constitutes just cause. Hence, neither theory is committed to intervention whenever human rights are violated. However, the difference between the state-focused perspective and the individual-focused perspective remains salient in evaluating the theories. The individualist-perspective of the cosmopolitan makes certain forms of injustice more visible, even if the cosmopolitan is
unable to bring about change in a direction of justice. The injustices of forced marriages or illiteracy are much easier to identify, although just as difficult to remedy, on a cosmopolitan theory. The injustice of rendition and injustices committed in the name of disputed (non-state) territory are particularly difficult to identify on a state-centered approach, even if they are exceptional examples. The state-focused perspective makes it difficult to identify certain forms of injustice, even though the state-focused perspective is also better able to remedy injustice where it can be identified. Where a state can be identified as the perpetrator of injustice, the state-focused system provides clear, practical directives about how best to remedy the injustice.

My conclusion can be framed in terms of points of agreement and points of disagreement with Rawls in particular. Rawls’s greatest strength in the Law of Peoples is the framing of global justice in terms of foreign policy for a just liberal state. In this way, Rawls avoids the problematic moral perspective of a view from nowhere, and furthermore offers the most coherent liberal account of the function of the state within global justice. However, in avoiding the problematic view from nowhere, Rawls and other statists burden themselves with an epistemic problem regarding questions of justice. Whereas liberals necessarily define the just state in terms of individual freedom, the state’s foreign policy perspective is limited in its ability to understand the internal justice or injustice of another state.
Chapter 2

The Liberal International Ideal: Cosmopolitanism or Statism?

A consensus amongst liberal theorists holds that solutions to the problems of global justice ought to emerge out of liberal views about domestic justice, appropriately adapted for the international realm. However, given the variety of dimensions to liberal domestic justice, liberal theorists disagree about the appropriateness of particular adaptations to the global realm. I am framing the question of global justice in terms of how liberal theorists ought to explain justice beyond the individual liberal state. The question facing liberal theorists tackling the questions of global justice is an interesting one: how can the tools of liberalism – the enlightenment values of liberty and equality, the ideal of the social contract, and their modern democratic interpretations – account for the reality of a globalized yet diverse modernity? A broad spectrum of liberal theorists has offered answers, and these demonstrate a surprising diversity amongst theories of global justice, even given the common starting point of liberal domestic premises.

Amongst many contemporary liberal thinkers about global justice, Rawls’s account of domestic justice serves as a focal point. While not all (or even many) theorists agree with Rawls’s account of global justice in *The Law of Peoples*, many nonetheless organize their positions in terms of points of agreement and disagreement with Rawls. Rawls draws a distinction between the domestic realm of justice and the international realm of justice, but many of his followers and critics take a more direct route from Rawlsian domestic justice to a Rawls-inspired form of global justice. This chapter will explain how the two Rawlsian theories – that of liberal domestic justice as fairness and
that of a global law of peoples - define the terms of the liberal debate over global justice\textsuperscript{6}. In particular, the Rawlsian liberal logic defines the classifications of liberal positions, and furthermore limits the range of possible conclusions available to theorists drawing on Rawlsian liberal premises. Although many critics object to the Rawlsian account of global justice, many nonetheless interpret Rawls’s account of domestic justice as having implications for global justice.

The dividing question amongst liberal theorists of global justice is the position of the state in the global sphere, although this definitional distinction spirals into further disagreements at both theoretical and practical levels. Very few theorists of global justice deny the relevance of the state to questions of global justice altogether, but the division I will be concerned with in this chapter is over the precise value afforded the state, its justification, and ultimately its analytic priority for questions of global justice. Is the state or the individual the fundamental unit within the global sphere of justice? Is the state intrinsically valuable or merely instrumentally valuable in the pursuit of justice? If there is a global social contract, does it involve individuals or states as its units in negotiation? I will explore the ways in which divisions along these lines open the doors to interesting insights into the requirements for a liberal theory of global justice.

On a statist account, in which the state is construed as the fundamental unit for examining questions of global justice, a liberal theory of global justice takes the form of a foreign policy for a liberal society because the state’s perspective frames the debate. On a cosmopolitan account, in which the individual is construed as the fundamental unit, a

\textsuperscript{6} Rawls (1996); Rawls (2000); Rawls (1999)
global and universal perspective is implied whether or not a global state is invoked. On either liberal account, the state’s authorization to use coercive power is only justified with reference to its benefit to individuals, so a problem may arise with the justification of any state actions that are not explicitly in the interests of citizens. This can make international cooperation difficult to explain, especially on a state-focused or foreign policy account of global justice. But when the individual is construed as the fundamental unit and the primary viewpoint, how ought NGOs’, and states’ interests and perspectives be taken into account? When individuals are the fundamental unit of global justice, the calculus of international justice becomes extremely complex given the global diversity of individuals and their interests. The liberal solution to the problems associated with diversity has been to rely on universal principles such as human rights to explain the normative content to a diverse audience. However, this move has raised an additional set of disagreements regarding the grounding for any such universal normative content, which will be discussed further in Chapter 3 on human rights.

On the statist account, where states are the essential unit of global justice, state rights have analytic priority in the international realm, and the protection of human rights falls into the domain of domestic justice. This leads to inequality in the protection of individual human rights, varying along state and economic lines. In the individualist account, human rights and other individual rights take analytic priority over group and state rights, but the implementation of universal individual rights faces feasibility constraints. These problems will be examined in further detail in later chapters, but at this
point it is worth emphasizing that both theoretical and practical problems, albeit in distinct versions, arise for both statist and cosmopolitan accounts.

For many of these issues in global justice, I will argue that the practical implications of liberal theories will demonstrate convergence, but via conflicting routes, each facing its own internal inconsistencies and objections. Both types of theory agree that the sovereignty of states is a valuable norm, but their reasons and expressions of this agreement differ. Both theories agree that human rights are of fundamental value in global justice, but they disagree about how the content and justification for human rights should be expressed. And both theories agree that in extreme cases, the norm of sovereignty must give way to the protection of human rights, however they disagree about the precise mechanism of justification for humanitarian intervention. A series of subtle differences in analytic priority and logics amongst these theories nonetheless suggest that the framing remains crucial in evaluating these theories as theories of global justice, and that will ultimately be my focus.

A relevant distinction can be made at this point regarding viewing states or individuals as a *moral priority*, and viewing them as having an *analytic priority*. My claim regarding statism is merely that these theories regard states as an analytic priority, and hence that they view states as the appropriate level of analysis for examining questions of global justice. Liberal cosmopolitanism, in contrast, views individuals as the appropriate unit from which to analyze questions of global justice. Both theories, inasmuch as they are liberal, view individuals as the moral priority for questions of both
domestic justice and global justice. And both theories would deny that states ever merit moral priority in examining questions of global justice.

This chapter will divide the theoretical terrain into three types of position regarding the relevance of the state to questions of global justice, each with its own distinct logic and emphasis. The first is the historically dominant position in international relations called ‘realism’, which takes states as the only units of relevance to questions in the global and international realms. According to realism, states are fundamentally self-interested entities, motivated in particular to protect their borders and citizens. Given its view that states are the primary actors in international relations, realism can be seen as prudential and pragmatic in its justification and reasoning. State interests dictate the available options and the ultimate justification for choices made in international relations. Realism holds that questions of internal justice for a state are either not relevant or not visible from an international perspective that views prudential reasoning in international relations as taking priority in deliberation. Realism is not a liberal position, and has been held up by many liberal theorists as morally untenable for a variety of liberal reasons. Yet it nonetheless serves as an important counterpoint to liberal theories of global justice, and it is for that reason that it is included here.

The central division amongst liberals is over the relative analytic priority of individuals, states, and global institutions in the analysis of questions about global justice. All three types of entity are important for liberal theories, but the question remains one of analytic priority. Liberal theories accept the values of equality, autonomy, and freedom, but differ as to how these apply in the global realm specifically. The position that I call
‘liberal statism’ holds that states are the essential units of global justice, and constitutes the second type of position regarding the relevance of the state. Finally, ‘liberal cosmopolitans’, although they may exhibit variation, share a premise that individuals are the analytic priority in global justice, and that states and global institutions should be studied precisely because of the effect these have on individuals. Just to complicate the typology, a sub-grouping of cosmopolitans might be called ‘statist cosmopolitans’ because they accept the utility and justice of dividing the world into states in order to achieve cosmopolitan goals, yet these theories are fundamentally cosmopolitan in aims and structure. I will therefore count them as cosmopolitan theories for my purpose, and will not treat them as a distinct account of global justice.

Of course, there is significant overlap between liberal statism and cosmopolitanism, given that the liberal state in statism is typically justified in virtue of the individual interests it serves, and furthermore given that both groups employ human rights in their analysis. But the logic of analytically prioritizing the state or the individual within the international realm helps these theories remain distinct, and results in interesting albeit subtle variations in the treatment of the central questions of global justice.

Liberal statism takes the question of domestic justice to be more or less settled in favor of liberalism, and therefore understands the problems of global justice as questions of foreign policy for an internally just liberal state. Liberal statism draws a firm distinction between the domestic and international realms of justice, and therefore views

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the internal justice of a state as prior to and distinct from its legitimacy in international affairs. The liberal definition of justice determines how individuals should relate to one another within the context of a liberal state, but international principles of diplomacy and respect for sovereignty govern international relations for liberal statism.

Disagreements between liberal statism and liberal cosmopolitanism arise when toleration and mutual respect of states comes into conflict with toleration and respect for individual human rights. Both theories investigate questions such as the justice of humanitarian intervention, the legitimate scope of international cooperation, and the priority of humanitarian aid, but liberal statism in particular investigates these questions from the perspective of state interactions, while liberal cosmopolitanism investigates these questions primarily from the perspective of the individuals affected. Realism takes the extreme position that questions of morality are not relevant in the international realm, whereas both statist and cosmopolitan theories view liberal values as having fundamental normative implications in the international realm.

Cosmopolitans, on the other hand, take the equality of human beings, regardless of state membership or citizenship, to have a universal scope. Cosmopolitans take the fundamental equality of individuals to define the terms of justice for the global realm, just as it does for liberal domestic justice, and cosmopolitans often take human rights to explicate this fundamental equality. Equality of individuals regardless of any state or national affiliation has significant implications of non-discrimination including prohibitions of discrimination over nationality, citizenship, race, gender, sexual

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orientation, and age. It has also been interpreted to have egalitarian distributive implications, although I will not examine those here. Even given disagreement over definitions of these terms, equality and non-discrimination are of fundamental importance to liberal cosmopolitan understandings of global justice. The language of human rights figures prominently in the cosmopolitan explication of global justice, although for many cosmopolitans ‘human rights’ turn out to be co-extensive with liberal domestic rights. For cosmopolitans, global justice is first and foremost about duties to individuals, and only derivatively about the status of states.

In the extreme cases liberal statists and liberal cosmopolitans hold themselves in fundamental opposition to one another, even though they may share liberal features such as egalitarianism and reliance on a social contract. In general, however, the theories that I am calling statist and cosmopolitan differ primarily on the question of whether communities or individuals are the primary analytic unit in international relations. They share a foundational role for human rights, but they differ in their understanding of the scope and content of human rights. There are further disagreements within each group, for example over the precise role of states, the requirements of legitimacy in the international realm, and over what role, if any, suprastate regimes and institutions ought to play in international justice, and these will be discussed in later chapters.

In this chapter, I will examine the general disagreements amongst liberal theories of international relations that arise from their respective arguments regarding the form that a liberal international justice should take. On one extreme, the (non-liberal) realist

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position holds that states are the only agents relevant to international relations. The realist position is typically associated with a denial that moral reasoning applies to the international realm, although this denial is not necessary to the realist focus on states. At the other extreme are global state cosmopolitans who argue that the logic justifying a liberal state ought to be applied globally – hence individual states ought to be replaced by a global democratic form of governance\textsuperscript{10}. In between are a series of liberal statists, advocates of a global social contract, and institutional or statist cosmopolitans, all of whom agree that the state or some analogue to the state is an important agent in international relations, and furthermore that morality and normative reasoning are important in international relations, despite their disagreements over the relationship between the internal justice of states and the external justice of states. This chapter will argue that the extremes of the spectrum represent untenable positions: realism because of its denial of a space for moral reasoning in international relations, and global state cosmopolitanism because of feasibility constraints and an objection from tolerance. The remaining series of liberal positions rely on an interesting relationship between the concepts of human rights and the concept of legitimacy in international relations, and these themes will be explored in further depth below. This chapter aims to explain the basic elements of how liberal theory has been applied to the problem of global justice, and the basic form of the disagreement amongst liberal theorists of global justice.

\textsuperscript{10} Held (1992); Held (2010)
2.1 Realism

Realism has been the standard understanding of international relations, prevalent at least since the Treaty of Westphalia of 1648. Liberal theories of international relations of all stripes are in conflict with the central tenets of realism, hence their need to refute some of these central tenets. It should be noted that liberal theorists have tended to focus on historic and arguably outdated accounts of realism, and that contemporary realists have proffered more nuanced theories that might be more palatable to liberal theorists of global justice, and moreover more compatible with liberal desiderata for a theory of global justice. Nonetheless, given that liberal theorists have repeatedly defined their theories in opposition to ‘realism’, it is useful to characterize realism as liberal theorists have characterized it.\(^1\)

State actions are primarily justified, under the realist paradigm, by reference to the state or national interest, sometimes to the exclusion of other considerations.\(^2\) Morgenthau explains: “International politics can be defined as a continuing effort to maintain and to increase the power of one's own nation and to keep in check or reduce the power of other nations”\(^3\). States are understood as rational self-interested actors in the international arena, and the international arena is understood as fundamentally hostile.

Realism explains the international arena as potentially a Hobbesian war of all against all, with each state an approximately equal actor attempting to advance its self-interest through its international actions. Hence, a principle of non-interference and non-

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\(^3\) Morgenthau (1948) pp. 80.
intervention is maintained for fear that unlimited pursuit of self-interest would result in perpetual world war. Each state is granted self-determination in exchange for obeying the condition of mutual non-intervention. Liberals would agree that stability and avoidance of war are valuable aims, but they disagree that unlimited sovereignty and non-intervention are therefore justifiable. These practical disagreements between liberals and realists will become more important in Chapter Five, where I discuss liberal justifications for humanitarian intervention.

But on the basic theoretical point, the liberal’s fundamental disagreement with realism is over realism’s denial that altruistic reasons should be used to justify state action, and especially over the explanation that to act altruistically in international affairs is to act irrationally. According to realism, the state ought to act only to advance its interests, and ought not to be motivated by moral reasons. This denial of moral reasoning is unacceptable to liberal theorists, and it becomes the focus of many of their objections to realism. Beitz and Buchanan argue that the Hobbesian justification for denying the legitimacy of moral reasoning in international relations is empirically false. They argue that there are good reasons to suppose that moral reasoning does in fact enter reasoning in international affairs, and furthermore that it ought to enter reasoning in international affairs.

14 Beitz reads Machiavelli this way, as suggesting that “the private virtues – liberality, kindness, charity – are vices in the public realm because their observance is inconsistent with the promotion of well-being of the state”. Beitz (1999) pp. 22
Beitz provides a detailed set of objections to the Hobbesian assumptions and paradigm of realism, of which I will merely present some highlights. On Beitz’s reading of the Hobbesian state of nature, an agent only has reason to act morally if she has adequate assurance that others will do the same, and she only has all things considered reasons to act when the action is shown to be in the long-term self-interest\(^\text{16}\). In the absence of international authority or a sovereign world government, international actors do not have such an assurance. Hence, the Hobbesian conclusion is that non-self-interested actions are irrational. But Beitz points out that the actors in international affairs are not as radically self-interested as individuals are supposed to be in the Hobbesian state of nature. The evidence shows international action is often cooperative, as in the case of treaties or international coalitions. Accordingly, altruistic action is not necessarily one sided, even if examples like humanitarian aid and development aid are imbalanced between the developed and developing sides of the transaction. Buchanan points to the stable forms of cooperation that have characterized international relations in the late twentieth and early twenty-first centuries. These include, but are not limited to: “financial regimes, trade agreements, structures for scientific cooperation, environmental accords, and international support for human rights, economic development, labor standards, and disaster relief.”\(^\text{17}\) Beitz adds the likelihood of transnational associations of individuals with common interests who exert pressure on states to cooperate\(^\text{18}\). These examples demonstrate it to be empirically false that states only act in self-interested ways, and

\(^{16}\) Beitz (1999) pp. 31, 33


moreover that states are the only actors in international affairs. States often form bilateral agreements, or act in consort in order to achieve some mutually beneficial goal\textsuperscript{19}. Hence, at least some of their interests are held in common, rather than in opposition. The result is the liberal conclusion that the international system cannot accurately be characterized as a Hobbesian war of all against all.

Beitz suggests furthermore that leaders’ pursuit of any national interest is at least subject to some moral constraints as individuals: what states cannot do morally to their own people, or in virtue of their own morality, they also cannot do in pursuit of the national interest\textsuperscript{20}. Individuals such as presidents, diplomats, and bureaucrats act on behalf of the state, but their actions remain somewhat constrained by their agency, which is at least partially constrained by their individual or personal morality. Furthermore, citizens are unlikely to support actions towards other states that would be absolutely prohibited by domestic morality. For example, enslavement of a foreign minority group or of foreign nationals would be prohibited even if it would advance the national interest. Judgments about national interest are in this sense constrained by judgments of national morality understood as composed of the individual moralities that make up the nation.

Thirdly, given the example of the contrast between developed and developing states, it is empirically false that the international sphere functions as a realm of equals, although it might be correct that there is no international authority granted the power to exercise sovereign authority over states. The inequality in bargaining power between the

\textsuperscript{19} Buchanan (2005) pp. 115
\textsuperscript{20} Beitz, (1999) pp. 24
G8 states and the rest of the world is clear\textsuperscript{21}. Moreover, the military and financial inequality between states makes it clear that this element of the Hobbesian characterization of the international realm is not empirically accurate\textsuperscript{22}.

One of Buchanan’s objections to the realist paradigm has been the indeterminacy of the state interest. Buchanan points out that “state preferences are neither fixed nor uniform among states”\textsuperscript{23}. So, the requirement that states must act in their own self-interest radically underdetermines state action. Furthermore, the ‘state interest’ varies over time, and according to the internal character of the state so that democratic and non-democratic states, developed and developing states, each have very different interests and expressions of their interests which furthermore vary at different points in time\textsuperscript{24}.

Buchanan argues that:

> Realism either implausibly denies the existence of significant peaceful international cooperation or assumes without justification that, because the struggle for military dominance is paramount, the extent and nature of cooperation does not and never will provide adequate space for genuinely moral behavior and hence for a moral theory of international law\textsuperscript{25}.

Accordingly, additional principles ought to be admissible in order to break the indeterminacy.

Realism’s denial that moral reasoning applies to the international realm relies on the premise that to act altruistically would go against the state’s interest. Given the

\begin{itemize}
\item \textsuperscript{21} Nussbaum (2005) pp. 201.
\item \textsuperscript{22} Beitz (1999) pp. 41.
\item \textsuperscript{23} Buchanan (2003) pp. 32
\item \textsuperscript{24} Buchanan, (2005) pp. 116
\item \textsuperscript{25} Buchanan, (2003) pp. 34
\end{itemize}
indeterminacy of the concept of state interest, this premise inherits a degree of indeterminacy. As such, liberals can maintain that altruistic actions are not necessarily in conflict with the state’s interests. Given a broader understanding of the state interest (which would exacerbate the indeterminacy problem), a wide variety of moral and non-prudential actions can be seen as in a state’s interest. For example, if the state’s interest is defined in terms of the collective desire of the population, then there is no reason to preclude altruistic actions. Finally, given one reading of the state’s interest as including global and regional stability, it is in their interest to participate in such altruistic projects as foreign aid and humanitarian intervention, as both have stabilizing effects in the unstable context of international relations.

Ultimately, liberal theorists reject realism because it denies the legitimacy of the egalitarian moral theorizing on which liberalism is founded. Liberal theory views autonomy as limited by a normative principle of equality, whereas realism implies that state autonomy should only be limited by other states’ actions. Liberalism requires normative reasoning about state actions, and to this extent it violates the realist picture. Inasmuch as it holds an idealized, determinate ‘state interest’ as the only legitimate reason for action[^26], realism does not reflect either the empirical evidence or the liberal understanding of the purpose of the state. However, it remains to be seen how precisely liberals ought to integrate moral reasoning into international affairs, and so the question of appropriate liberal priorities for the international realm remains salient.

2.2 Liberal Statist Theories

For liberal statist theorists, especially Rawls, global justice cannot be a simple expansion of the scope of principles of domestic justice applied to individuals directly\(^{27}\).

Domestic justice cannot be expanded to apply globally: first, because applying the principles of justice globally is seen as unfeasible; second, because liberal toleration only requires respect for just forms of association; and third, because the definition of justice is indexed to a particular group or association by a strong form of justifiable coercion, and strong global coercion is not justifiable. Each of these claims amounts to a denial that liberal domestic justice can or ought to be universalized as cosmopolitanism claims. I will examine each of these arguments in turn, ultimately suggesting that the third is the strongest justification for a distinct statist position, and in particular for a distinction between ‘justice’ as it applies domestically and globally. The resulting statist position defines global justice and domestic justice as distinct, and in particular denies that obligations of global justice are identical with obligations of domestic justice.

Some of the feasibility constraints denying cosmopolitan responsibility have been surveyed in a literature that examines the difficulty of taking moral responsibility for distant others, and will not be examined in detail here\(^{28}\). Rather, the central thrust of the feasibility argument, at least the portion that can be taken as a positive justification for liberal statism, is the proposal that liberal cosmopolitanism is too idealized, too unwieldy a set of moral requirements, and leads to unsustainably many moral obligations. Much of


\(^{28}\) See, e.g. Singer (1972); Shue (1996); Wenar (2003).
this dissertation will be dedicated to responding to this claim by showing that liberal cosmopolitanism is sufficiently grounded in the real world to offer feasible solutions to the demands of global justice such as human rights, humanitarian intervention, and humanitarian aid, and moreover that liberal cosmopolitanism and liberal statism actually converge on many of their practical injunctions in global justice. Accordingly, feasibility constraints on liberal cosmopolitanism serve as a weak justification for liberal statism that can be undermined by empirical observations, and may even undermine the liberal statist position itself if liberal statism and liberal cosmopolitanism converge on a practical level.

The second argument for statism claims that states are forms of free association, perhaps resulting from a social contract, and that this act of association is worthy of respect and toleration. Nagel draws on Hobbes’s definition of justice as an institutional virtue. Nagel explains, “Justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation. It is, in the standard terminology, an associative obligation.” The underlying normative claim is that self-determination is worthy of respect, and just states are therefore worthy of respect inasmuch as they are a product of an associative form of self-determination. The problem remains that individual membership in a state is rarely, if ever, an individual, autonomous choice.

29 Nagel (2005)
Hence, this argument for toleration of just forms of association relies heavily on two further components of the liberal definition of the just state. First is the implied consent of a social contract. So, for example, Rawls uses the mechanism of the original position to explain what it would be reasonable for an autonomous agent to consent to, and takes it as definitional of a just liberal state that where consent would be reasonable, consent is implied. Secondly, a just liberal state provides for a reasonable right of exit. If these two conditions can be met, a state can be viewed as just because it can be viewed as the product of autonomous choices by its members. Hence liberal respect and toleration of individual choice will require respect and toleration of any and all states deemed just by liberal standards. The concern raised by several critics of statism is over the weakness of the obligations of global justice that follow, on this argument, towards non-members and unjust states. Note that on this toleration-based argument for the statist position, the unfeasibility argument plays a role once again: part of the distinction between domestic justice and global justice arises because of unfeasibility constraints on consent to a global state and moreover on maintaining a right to exit were a global state possible. Since a global state association - worthy of respect in virtue of its origins in autonomous free choice - is deemed unfeasible, respect for autonomous choice merely requires respect for just states where they happen to exist, and not necessarily global respect for individual autonomy.

Finally, the third theoretical justification for statism moves beyond mere toleration. This argument for statism claims that cosmopolitanism equivocates between two distinct meanings of ‘justice’, and suggests a deep foundational disagreement
between liberal statists and liberal cosmopolitans. Statists posit that the very idea of ‘justice’ is indexed to the membership of a particular form of association, that it varies across time and space, and that liberal domestic justice and global justice are necessarily different in each instance because of the differences in the nature of the coercive relationship of association. Here, once again, the argument relies on Hobbes’ claim that sovereign government is a prerequisite for justice. Expanding the scope and size of the society in question changes the definition of ‘justice’ under discussion because it changes the nature of the coercion involved\textsuperscript{31}. The strong distinction between domestic justice and global justice arises because the coercive structure deemed just on a domestic level and the coercive structure deemed just globally are different. Again, the statist position draws the conclusion that ‘justice’ is not a universal, but rather varies between the global context and the domestic context\textsuperscript{32}.

Statists argue that justice arises as a result or requirement of institutions. Institutions put individuals in special relationships with each other, and that special relationship grounds the requirement of justice\textsuperscript{33}. On this point, cosmopolitans and statists alike could share the institutional character of justice. However, statists and cosmopolitans part company as they further specify the type of relationship that grounds justice: namely, statists specify that a coercive institutional relationship alone can ground

\textsuperscript{31} Nagel (2005) pp. 123.
\textsuperscript{32} Rawls (1993); Rawls (1999); Miller (2007); Nagel (2005); Blake (2001).
\textsuperscript{33} Sangiovanni (2008) pp. 140.
justice\textsuperscript{34}. And by the liberal definition of just coercion, global coercion on an individual level would not be just, even were it feasible.

Rawls’ and other statists’ theories start from the position that some domestic societies have already achieved internal justice, and global justice should not disrupt justice wherever it has been achieved. In this sense, again, the domestic sphere of justice remains distinct because of the special relationship of association through social contract shared by individuals within a state. A social contract – even a hypothetical one – serves to justify coercion, and is therefore definitive of the type of association to which justice applies. As Nagel explains: “sovereign states are not merely instruments for realizing the pre-institutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application”\textsuperscript{35}. Amongst various forms of association, states are uniquely the realm of justice. On this view, the duties of justice are associative, and follow from strong political associations rather than giving rise to political associations. And statist theorists deny that any global basic structure can amount to implicit consent to global coercion, even if it shows the existence on some level of transnational or global moral relationships\textsuperscript{36}.

2.3 Rawls and the Law of Peoples

Accordingly, the statist social contract applies the methodology of the social contract to questions of foreign policy for a just society, but applies them anew, and treats states as the analytic units of the global social contract. Rawls posits a ‘global original

\textsuperscript{35} Nagel (2005) pp. 420.
\textsuperscript{36} Freeman (2006) pp. 247
position’ in which ‘peoples’ decide on fair terms of cooperation in the global sphere. The questions of concern for global justice are distinct to the global sphere: questions of the justice of trade with unjust societies, or of humanitarian aid or intervention arise as questions of foreign policy on this understanding, and they are understood to have no domestic analog.

In his *Law of Peoples*, Rawls is the paradigmatic liberal statist. He presents his theory as a foreign policy for a just liberal society. Rawls outright rejects the language of cosmopolitanism, and what he takes to be its central tenets. However, he also shares some foundational liberal assumptions with many of his cosmopolitan opponents. Taken together, his rejection of cosmopolitanism and a series of cosmopolitan objections to Rawls explicate Rawls’s Law of Peoples and what is at stake in the disagreement between statism and cosmopolitanism.

Rawls’s Law of Peoples diverges from cosmopolitan liberal theories in several respects, and these help to demarcate the parameters of his liberal statist theory. First, he suggests that the participants in any global social contract should be representatives of just societies deciding on a foreign policy, rather than individuals determining the shape of a global society as a whole. Secondly, Rawls argues that the content of such a global agreement must accommodate the fact of reasonable pluralism. Finally, he denies that distributive justice can or should be applied in a global context. Rawls’s position postulates a discontinuity between liberal domestic justice and the idea of global justice,

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37 Rawls (1999). See also Rawls (1993)
39 Rawls (1999) pp. 82-82; 119-120.
which gives the Law of Peoples a structural similarity with realism. This section will explicate each of these claims in turn.

Rawls’s *Law of Peoples* takes ‘peoples’, not states or individuals, to be the basic unit within the international social contract. Rawls distinguishes ‘peoples’ generally from the realist conception of states by denying that ‘peoples’ have presumptive sovereignty\(^\text{40}\). The concept of a ‘people’ idealizes the realist model of the state further by suggesting both a shared moral character and a shared cultural character\(^\text{41}\). A ‘liberal people’ is defined by three features: an institutional character specifying its concept of reasonable justice, a minimal culture defined by common sympathies, and an attachment to a liberal political or moral ideal\(^\text{42}\). Under Rawls’s international social contract, liberal peoples embark on a social contract with both liberal and ‘decent’ but non-liberal peoples to form a society of peoples, united by a Law of Peoples. All of the peoples within the social contract count as ‘decent’: that is, whether or not they are liberal, they both meet human rights standards and also support well-ordered institutions and systems of decision-making\(^\text{43}\). In this sense, they must meet a set of internal standards in order to be bound by – and receive the protection of – the Law of Peoples. The group of ‘decent’ peoples in Rawls’s understanding is not coextensive with ‘liberal’ peoples. Rawls argues that non-liberal peoples, provided that they have an appropriate consultation hierarchy, can meet

\(^{41}\) Tan (2008) pp. 77  
the standard of ‘decency’. Hence, such societies should be tolerated, and can enter the society of peoples\textsuperscript{44}.

‘Well-ordered’ peoples acquire sovereignty rights through the international social contract. This benefit of membership functions alongside the benefits of cooperation, which also follow from membership. Rawls thus makes the benefits of membership explicit, and differentiates his concept of the state from the realist’s concept of the state. The law of peoples excludes ‘outlaw states’ that do not meet human rights standards, ‘societies burdened by unfavorable conditions’ who cannot achieve a well-ordered society, and ‘benevolent absolutisms’ that meet human rights standards while denying citizens a meaningful role in decision-making processes\textsuperscript{45}. These groups do not attain sovereignty rights, such as nonintervention and self-determination, because they do not acquire membership in good standing in the society of peoples. Rawls’s social contract thus falls short of a global social contract, given that some societies are excluded. Instead, the Law of Peoples provides the benefit of cooperation to a specified subset of peoples who fall within the scope of the Law of Peoples. In particular, members of the society of peoples gain the rights of sovereignty and non-intervention in virtue of meeting the standard of ‘decency’, and furthermore in virtue of cooperating fairly with other ‘decent’ peoples.

In the Law of Peoples, the content of the agreement is specified by what could reasonably be agreed to by both liberal and non-liberal but decent peoples. The content of

\textsuperscript{44} Rawls (1999) pp. 63.
the agreement includes principles of human rights, which: “express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide”\textsuperscript{46}. He explains, “the violation of this class of rights is equally condemned by both reasonable liberal peoples and decent hierarchical peoples”\textsuperscript{47}. There may be a form of circularity here, given that Rawls appears to define decent peoples by their adherence to human rights, and defines human rights as values that decent peoples would accept, but I will take up this issue in a later chapter.

Rawls denies that distributive justice ought to be part of the Law of Peoples, relying on the distinction between domestic justice and the Law of Peoples to make his point. He argues that the issue of fairness between societies is distinct from the issue of fairness within a society. On this point, statists are generally in agreement\textsuperscript{48}. Rawls argues that abject poverty or a large gap between rich and poor within a society put a strain on the reciprocity that is needed for domestic justice; however, he also argues that domestically just societies do not require an analogous level of reciprocity internationally. Hence, there is no need to narrow the gap between average wealth of different peoples provided that they have sufficient wealth to achieve internal justice\textsuperscript{49}. Whereas individuals may be stigmatized or experience feelings of inferiority for their poverty in the domestic case, a people that has achieved a well-ordered society along

\begin{itemize}
\item \textsuperscript{46} Rawls (1999) pp 79.
\item \textsuperscript{47} Rawls (1999) pp 79.
\item \textsuperscript{48} Miller (2007) pp. 15.
\item \textsuperscript{49} Rawls (1999) pp 114.
\end{itemize}
with respect for human rights has no basis for a feeling of inferiority or stigma\textsuperscript{50}. And finally, fairness amongst peoples follows from the representation of every people behind the veil of ignorance in defining the Law of Peoples\textsuperscript{51}.

Membership in the Society of Peoples has further foreign policy implications for interaction with non-members of the contract. Intervention in the internal affairs of a non-member might be sanctioned to remedy human rights abuse\textsuperscript{52}. Members have duties of aid or charity to societies burdened by unfavorable conditions in order to help them eventually qualify for membership in the Society of Peoples\textsuperscript{53}. These foreign policy directives provide guidance for members in their interaction with non-members, while also specifying content for the system of cooperation. In addition, members lead by example: those peoples initially excluded from the society of peoples are encouraged to move towards the standard of ‘decency’ in order to eventually attain the privileges of membership, especially the privileges of sovereignty and non-intervention by the society of peoples. Under Rawls’s law of peoples, human rights still have universal scope, but the decency requirement for admission to the society of states implies that only peoples that ensure human rights protection while also maintaining a system of consultation will become members in good standing in the Society of Peoples, so only a limited set of peoples will attain the full privileges of membership.

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\textsuperscript{50} Rawls (1999) pp 114.
\textsuperscript{52} Rawls (1999) pp. 81
\textsuperscript{53} Rawls (1999) pp. 106
Rawls’s account implies that the Society of Peoples, and the extent of cooperation, does not need to have a global scope. Only in an idealized world where every state has succeeded in becoming well-ordered would the benefits of membership in the Society of Peoples – in particular, state rights to sovereignty and non-intervention – be universal in scope. Although individual human rights may have a universal scope, wherever human rights are not realized, either because they cannot be, or they will not be, there are consequences in terms of state cooperation and membership in the Society of Peoples. Later, I will argue that these forms of membership privileges and incentives amount to a permissible form of global coercion, sufficient to explain a level of practical convergence between liberal cosmopolitans and liberal statists. For now, my purpose is merely to highlight the existence of incentives for states to cooperate and to work towards full membership in a Society of Peoples.

2.4 Cosmopolitanism

Cosmopolitans are defined by their foundational premise: individuals, and not states or communities, are the ultimate units of analytic concern. Furthermore, the scope of a cosmopolitan theory of justice is global. That is, a cosmopolitan theory of justice applies to all human beings, not merely to citizens of certain states. The argument is simple since liberal justice is defined in terms of the impact of institutions on individuals domestically, liberal international justice ought similarly to focus on individuals.

This leads to several practical differences between cosmopolitanism and statism. First, cosmopolitans appeal to an expansive set of human rights, often co-extensive with liberal domestic rights, which are shared globally and universally, whereas Rawls adopts a much more narrow content for human rights. Secondly, cosmopolitanism is committed to some form of global distributive justice. If we have obligations of distributive justice to our fellow citizens, we must also have some obligations of distributive justice to our fellow man. Rawls suggests that a duty of assistance is sufficient to cover global questions of distributive justice. Finally, cosmopolitans are united in their denial that there is a significant distinction between the domestic sphere of justice and the global sphere of justice. The central objections to cosmopolitanism focus on the contrast between a global community and a domestic community, suggesting that a shared sense of humanity and universal equality is not sufficient to define a system of justice.

Cosmopolitan social contract theorists such as Beitz and Pogge use the methodology of the social contract to ask questions about a global basic structure or the justice of global institutions generally, but maintain a focus on the effect of global institutions on individuals and human rights. Beitz and Pogge adopt the Rawlsian language of a basic structure and the idea of a social contract based around an original position, but unlike Rawls they apply these ideas directly to the global realm. For Beitz and Pogge the key question is what terms of cooperation individuals would agree to in a global original position, and accordingly how the basic structure of the international realm can be made fair for individuals.

55 Beitz (1975); Beitz (1999); Pogge (2002); Pogge (1992); Tan (2004); Caney (2005)
Rawls and the cosmopolitans agree that human rights have global scope, but they disagree over the preferred content of a doctrine of human rights. Fernando Tesón, Allen Buchanan, Kok-Chor Tan, and Simon Caney have each objected to statist accounts generally and Rawls’s account of global justice in particular on the basis of their human rights minimalism, and have each advocated a more extensive list of human rights than that proposed by Rawls. Tesón advocates the wholesale acceptance of the Universal Declaration of Human Rights, and the International Bill of Rights given that these have gained acceptance in international law. He criticizes Rawls in particular for his failure to guarantee democratic governance, gender equality, and political dissent in his account of human rights. Buchanan suggests that Rawls’s conception of human rights is not sufficiently robust to protect individuals from “egregious discrimination”, and instead proposes a much more extensive set of human rights. Tan points out that both Rawls’s conception of toleration and the cosmopolitan conception of human rights are moved by a (liberal) concern for autonomy and independence. For Tan and other cosmopolitans, concern for individual liberty weighs heavily amongst considerations of international justice. Simon Caney argues that a broad doctrine of civil, political, and subsistence rights are universal rights, and furthermore that the state-centered world order can be criticized for its lack of attention to these rights. Instead, Caney argues in favor of

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56 Tesón (1998) pp. 115
57 Tesón (1998) pp. 115-20
60 Tan (2008) pp 86.
61 Caney (2005) pp.70-77
democratic international institutions because they would both improve the global human rights record, and because they give individuals more control over the institutional processes affecting their human rights. A cosmopolitan concern for individual well-being unites these theorists in requiring an extensive list of universal human rights, one largely defined with reference to liberal accounts of domestic rights. This acceptance of non-minimal and long lists of human rights distinguishes their cosmopolitan theories from statist accounts because it suggests a strong level of continuity between domestic justice and global justice.

In addition, Rawls and the cosmopolitans can be distinguished by their conceptions of global distributive justice. Rawls argues that affluent and well-ordered societies have duties of assistance to burdened societies, but cosmopolitans argue in favor of stronger principles of distributive justice. Pogge argues that contingencies such as nationality should not represent such deep inequalities in life expectations. Both Caney and Beitz suggest that the justification for domestic distributive justice provided by Rawls in his Theory of Justice have distributive justice implications at the international level that are not satisfied by the duty of assistance proposed by Rawls, or its equivalent proposed by other statists.

Both of these points of distinction between Rawls’s liberal statism and cosmopolitanism rely on the sharp distinction between liberal domestic justice and liberal international justice maintained by Rawls. However, cosmopolitans maintain a concern

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62 Caney (2005) pp. 264
63 Pogge (2002) pp. 31-34
about the coherence of the distinction between realms of justice. Beitz suggests that a theory relying on the distinction between realms of justice may be unstable, because a duty of assistance will not be sufficient to remedy the forms of economic injustice present at the international level\textsuperscript{65}.

For the domestic case, the Rawlsian concern about economic inequality arises because of its effects on political inequality. Radical economic inequality in a liberal society diminishes an individual’s ability to exercise her voting rights, free speech, or ability to run for office. The liberal emphasis on these political rights makes economic inequality part of the question of domestic justice. In the international case, severe poverty has notable affects on the full range of life expectations ranging from mortality rates to literacy rates. But Rawls denies that it has the same impact on the concept of international justice. Both the cosmopolitans and Rawls agree that severe poverty is tragic and is relevant to global justice. But for Rawls, it is only relevant to the question of how much humanitarian aid is morally required for global justice. For cosmopolitans, the problem of severe poverty has a greater impact.

In contrast with Rawls, cosmopolitans argue that there is no relevant distinction between the liberal domestic sphere and the global sphere of justice. Beitz, for example, argues that, “it is in the interests of \textit{persons} that are fundamental, and ‘national interests’ are relevant to the justification of international principles only to the extent that they are derived from the interests of persons”\textsuperscript{66}. Caney argues, first, that the traditional liberal

\textsuperscript{65} Beitz (2000) pp. 694
\textsuperscript{66} Beitz, (1999) pp. 64
arguments for civil and political rights have implications that extend these rights to all human beings as such, and secondly, that the standard justifications for (domestic) distributive justice have cosmopolitan implications. Similarly, Tan agrees with Pogge and Beitz that the difference principle ought to be used to evaluate the global scheme within which business and international relations are conducted. He argues that global redistribution is a requirement of global justice, and furthermore that civil and political rights are human rights, and ought not to be limited by citizenship or location.

For cosmopolitans, these issues are connected. Human rights are universal because the scope of justice is global, and both of these issues of scope follow from the cosmopolitan focus on the equality of individuals. Global individual equality entails that global differences in ability to live a self-directed life are a basic form of injustice.

There remains a concern that cosmopolitanism, with its global scope for individual rights, will entail that a global democratic state must be a requirement of justice. If so, the worry is that cosmopolitanism would result in an unfeasible requirement of justice that is moreover undesirable. A global democratic state is unfeasible given the sheer diversity of interests, cultures, climate, and terrain that would have to be governed by any such entity. And it would be undesirable because effective rule over such diversity could verge on tyrannical. In light of these concerns, many liberal cosmopolitans interpret global state cosmopolitanism as an indefensible position, and work to stop a

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67 Caney (2005) pp. 77; pp. 121
70 Nagel (2005) pp. 143
slippery slope argument from arising. The most extreme version of cosmopolitanism
denies that local affiliations, such as friendship and kinship, can persist alongside a full
appreciation of the equality of individuals, and moreover posits that a global community
(and only a global community) is necessary in order to achieve global justice. But even if
particularist commitments can be maintained alongside a global community, the very idea
of a global democratic state appears untenable. Hence, many cosmopolitans reject the
idea of a global state, and instead embrace a multi-level system that includes states,
regional communities, and global institutions, but views the interests of individuals as
definitive of justice for each of these levels of governance.

Caney argues in favor of democratic international institutions because they would
both improve the global human rights record, and because they give individuals more
control over the institutional processes affecting their human rights. Caney argues, first,
that the traditional liberal arguments for civil and political rights have implications that
extend these rights to all human beings as such, and secondly, that the standard
justifications for (domestic) distributive justice have cosmopolitan implications\(^\text{71}\). 
However, he does not argue against state legitimacy, or for a system of global governance
that would replace the state system. Instead, Caney argues in favor of suprastate
institutions to implement the requirements of global justice\(^\text{72}\). In this sense, he has a reply
to both the tolerance objection to extreme cosmopolitanism, and the feasibility constraint
on global democratic institutions.

\(^{71}\) Caney, (2005) pp. 77; pp. 121
\(^{72}\) Caney, (2006)
Kok-Chor Tan also denies the need for a system of global governance, but he nonetheless focuses his attention on the supra-state level of governance\(^73\). Tan argues that liberalism generally, and liberal egalitarianism in particular, commit him to a form of cosmopolitanism at the international level\(^74\). He argues that liberal self-determination has institutional prerequisites. Individuals need to attain a level of social and economic stability in order to achieve the form of autonomy, and the ability to make choices, that make self-determination possible. National self-determination, which fulfils these individual justice prerequisites, is in turn required in order to make the interaction of states just. He further argues that other liberals, and in particular Rawls, ought to share his commitments, once the international analogs of the core tenets of liberalism are properly considered\(^75\). For Tan, equality is a fundamental ideal for liberalism, and the idea of equality therefore has implications for any theory that hopes to call itself liberal. Moreover, on Tan’s understanding, real equality requires that certain social and economic conditions be satisfied. Ultimately, he argues for institutional changes to the international system in order to make the system more just to individuals.

For both Caney and Tan, although a global democratic government is not a requirement of justice, global institutions above the state level are needed in order to realize the claims of global justice. Institutional reforms, especially those remedying global economic, health, and educational deficiencies, are required when liberal principles are applied to questions of global justice. Yet nationalism remains a concern

for both theorists, who are at pains to make room for local interpretations of justice as well as local forms of identity.

2.5 Conclusion

Despite distinctions at the levels of theory and justification, we will see that cosmopolitanism and liberal statism demonstrate a remarkable convergence at the level of practical actions. Although they may disagree about the content of a theory of universal human rights, they agree that the justification for humanitarian intervention is grounded in the content of human rights. Their theories of global justice thus demonstrate a similarity in the functions that human rights serve within the theory. In addition, they agree that when human rights are violated by the state, the entire system becomes less stable. Hence, they agree that human rights violations require reaction on the part of the international community of states, and in some cases, that reaction will be humanitarian intervention. However, their arguments demonstrate an interesting divergence arising from their different perspectives and emphasis. The following chapters will discuss these distinctions between statism and cosmopolitanism, and will argue that despite interesting differences in starting points and perspective, they exhibit significant convergence on a practical level.

Despite the variety of liberal approaches to the question of international relations, the individualist ideal serves as a foundation for all of them at some level. A liberal state is justified, on these accounts, because it provides an institutional structure that serves individual interests. Whether the liberal domestic case is taken as continuous with or prior to the question of global justice, both forms of liberalism employ the concept of
equal individual human interest at some level. Human rights often serve as shorthand for explaining the individual interests at stake in global politics, again, whether these are construed as a distinct question or as simply linguistic shorthand. Some liberal theorists advocate a cosmopolitan system of world governance as the logical extension of liberal arguments for the state. Yet there are a variety of feasibility and tolerance objections to the cosmopolitan world state, which leave it an unappealing position to many. Liberal theorists who reject the cosmopolitan world state are left with a choice of either cosmopolitan statism or a liberal social contract international system, both of which adopt human rights and individualism as part of the justification for the international ideal.

The aim of this chapter has been in part, to enumerate a series of liberal accounts of international relations, and in part to argue that the combination amounts to a shared liberal framing of the theoretical issues arising in international relations. The liberal theories presented here, despite their variation, nonetheless demonstrate a variety of shared features, and these are worth making explicit. Although it plays a different role in each theory, the effects of institutions on individual interests turn out to be of central importance in the realm of international relations in both statist and cosmopolitan theorists. And for both statist and cosmopolitan theories, human rights are used to give content to the ideal of individual interests.
Chapter 3
Liberal Approaches to Understanding Human Rights

A practical approach to human rights is widespread in the liberal literature on international relations. Many statists and cosmopolitans take human rights to play a practical role in addition to their more familiar moral role. For example, John Rawls, Fernando Tesón, and Michael Ignatieff explicitly link their doctrine of human rights to the justification for humanitarian intervention. Allan Buchanan links human rights to ‘legitimacy’ in international relations, and makes the right to non-intervention contingent on legitimacy. These ways of employing human rights in the justification of state actions typify what Beitz has labeled a ‘practical’ approach to human rights. In this chapter and the next, I argue that this understanding of human rights is typical of both cosmopolitan and statist liberal approaches to international relations, and is in this sense one of the identifying characteristics of liberal approaches to international relations. I will argue that this link between human rights and practice provides a reason to support liberal approaches to human rights, in that it entails a form of enforcement necessary for construing these moral commitments as ‘rights’.

In a series of articles and his most recent book, Charles Beitz suggests a broadening of the scope of human rights might follow from a practical approach to human rights. He notes that human rights already play more than one practical role in international affairs. His suggestion seems to be that this series of roles could be

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76 Beitz (2001); Beitz (2003); Beitz (2004); and Beitz (2009).
expanded and elaborated on, and that the roles played by human rights in international life are part of a complete understanding of any modern doctrine of human rights. Beitz’s suggestion is that the content of a doctrine of human rights might be linked to more than one aspect of the practice, which would in turn have implications for the content of the liberal doctrine of human rights. In part, this is a modification to existing interpretations of a liberal doctrine of human rights, yet there is evidence that a version of this practical approach is already present in liberal accounts of global justice and international relations. The practical approach to human rights, as articulated here, follows from the work of modern liberal philosophers examining questions of international relations. This chapter is an attempt to explicate and expand on Beitz’s practical approach to human rights.

I begin with an explication of the foundational approach to human rights, elucidating the foundational approach as a broad category of human rights theories that understand human rights as derivable from universal moral foundations. While this section will offer a survey of foundational accounts, it is not meant to be a comprehensive examination of a set of theories that, I argue, liberal accounts of global justice ultimately reject and replace. Next, I will enumerate a series of critiques that have been leveled at foundational approaches to human rights, which again serve to motivate the rejection of foundational approaches without purporting to be comprehensive. These first two sections motivate the move away from human rights conceived of as emerging from considerations about human nature, and lead to Beitz’s practical and pragmatic approach to human rights conceived of as practical imperatives in international justice.
I will argue that Beitz’s theory emerges as a Rawlsian solution to the problem of foundations for human rights. Human rights theory has become mired in metaphysical debates, which can be avoided through agreement on the practice of human rights, or so Beitz argues. The practical approach to human rights has further advantages in that it explains human rights as enforceable and normatively binding on participants in the practice of international cooperation. Moreover, the practice of human rights can be used to derive the content of a practical doctrine of human rights. In the modern world, widespread agreement exists regarding appropriate human rights practice, although disagreement regarding its foundations persists. For these reasons, both liberal statists and liberal cosmopolitans have reasons to adopt a practical or functional approach to human rights, and many have. This chapter argues that the practical approach to human rights is part of a liberal approach to global justice, and that, despite several weaknesses of the account, it increasingly serves as part of the normative foundations for both statist and cosmopolitan liberal accounts of global justice.

3.1 The Foundational Approach to Human Rights

A common and seemingly simple approach to human rights defines human rights as the rights one has simply in virtue of being human. This is sometimes implied to mean that human rights are either pre-legal or in some other sense ‘natural’. Many twentieth century human rights documents rely on these formulations of human rights in their attempts to legalize and formalize human rights in domestic or international law,

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and human rights have been examined within both the positive law and natural law traditions.

The modern concept of a human right, as disseminated in the Universal Declaration of Human Rights (UDHR) and the International Bill of Rights, defines them as universal, inalienable, absolute, and equal\(^78\). Pogge defines human rights as particularly weighty, unrestricted and broadly shareable moral rights\(^79\). Scanlon adds that human rights are an important class of moral imperatives of broad applicability\(^80\). Where human rights are claimed as universal, they are universal in the sense that they are the rights one claims as a human being, irrespective of particulars such as gender, citizenship, cultural identity, institutional circumstances, or race. If they are inalienable, they cannot be forfeited or voluntarily sacrificed. Human rights are absolute in that they are presented as particularly strong moral claims that take precedence over other types of moral claims. And human rights are equal rights: every human being, given their equal membership in humanity, is argued to share equally in the entitlement to human rights\(^81\).

The language of human rights first emerged in the West, specifically in the founding documents of the French and American Revolutions under the guise of the ‘rights of man’. These historic documents posited that the state had a set of basic obligations to its citizens, and these were expressed as minimum entitlements. Many of the values expressed in these early liberal human rights documents emerged out of the

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\(^{78}\) United Nations (2012a)  
\(^{80}\) Scanlon (2003) pp. 113  
natural law tradition, but the language of rights added the positive law implication that these values could be claimed by the right-holder against the sovereign, the state, or the governing structure. The modern form of human rights still maintains this strong political dimension, and is moreover often interpreted as having a social contract derivation.

In the wake of the atrocities of the Second World War, a new model of human rights emerged\textsuperscript{82}. The modern ideal of human rights treats these entitlements as transnational, possessed by all human beings, and as claimed against all human beings. In the context of modern globalization, this gives human rights an institutional dimension. So, although modern human rights are not claimed solely by citizens but are claimed instead by all human beings, they also maintain an institutional dimension because they are claimed against governing structures. Modern human rights documents, such as the Universal Declaration of Human Rights (UDHR), are taken to specify minimum conditions a state must accept in order to be recognized by and recognized as a member of the international community. The UDHR is also interpreted as specifying constraints on interpersonal relationships: the modern ideal of human rights serve as limitations on the way one human can justifiably treat another human being, and thereby continue to specify normative standards an institutional structure ought to aspire to. Institutions such as courts, police services, and state constitutions are supposed to strive to meet these standards, on pain of illegitimacy or, in extreme cases, expulsion from the international community of states. But institutions are furthermore tasked with structuring

interpersonal relations that comply with human rights by means of a criminal and judicial system, again on pain of illegitimacy.

Those who accept a doctrine of human rights do not claim that human rights are universally embraced nor do they claim that human rights are universally complied with. However, a diverse set of countries and cultures have accepted and adopted a shared ideal of human rights, even if the implementation of human rights varies from state to state. The UN General Assembly adopted the UDHR on December 10, 1948 at a time when there were 58 diverse members of the UN. The constitutive act of the African Union affirms a commitment to human rights. The Council of Europe established the European Court of Human Rights in 1950, at the same time as the European Convention on Human Rights (ECHR) was adopted, and again a diverse set of countries and cultures adopted this idea of human rights. The fact that human rights are sometimes violated, or that genocide has occurred on several occasions in the last century, does not undermine the theoretical and legal claim that human rights exist, although there are many other objections that deny the existence of human rights. I will argue that in the modern incarnation of human rights, one central role played by human rights is the provision of a language in which to discuss certain wrongs, and as a result, the provision of a justification for reacting to these wrongs.

The empirical fact of human rights violations is distinct from what is meant in calling human rights ‘universal’. The universality of human rights refers to the scope of the ideal rather than the scope of the practice, and empirical data regarding human rights

83 United Nations (2012b)
violations does not impinge on this claim to universality. Two distinct claims of universality can be distinguished: the ideal of universality is a requirement of a natural law account of human rights where the human nature referred to must be a universal, whereas universal enforcement and practice is an aspiration of both natural law and positive law traditions, but one that has rarely been attained. Nonetheless, many objections to natural law and the universal ideal itself are made in the literature, and some of these will be discussed below.

The historically dominant approach, which I will refer to as the ‘foundational’ approach to human rights, examines the concept of the human in an attempt to reveal a nature or an essence of the human, whose value defines the content of the doctrine of human rights. On this model, it is claimed that whatever is essential or universal about human nature defines the value of the human being. Whatever is not essential, or is not universally shared, cannot amount to a ‘human right’, although it might be some other form of value. Human rights are taken on this model to be the modern incarnation of natural rights and natural law. This type of foundational approach explains the content of the doctrine of human rights in terms of an account of human nature. Jack Donnelly points out that the ‘human’ projected in the language of human rights is aspirational and normative. He explains that human rights specify the minimum conditions for a life with human dignity. Yet the question of the extent to which the idea of the ‘human’ has sufficient normative pull has been a source of objections to both the practice and theory.

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84 H. L. A. Hart (1985); Margaret MacDonald (1985)
85 Donnelly (2003) pp. 15
of human rights. The ‘human’ has been found both too value laden to be universal, and yet too thin to have sufficient normative pull. Later, I will argue that the liberal practical approach provides a response to these objections, but first I turn to the objections as they are leveled at foundational accounts of human rights. It is to these objections that I turn next.

The central attacks on this model of human rights take the form of a denial that any essential and universal human nature exists, and hence a denial that any universal foundation to human rights can be found. Explaining the ‘human’ in a way that both merits and garners universal approval has proven a challenge throughout the short history of the modern conception of human rights. It has often been objected that the foundational approach is misguided because the ‘human’ in human rights cannot be explained in a sufficiently neutral way, or even that neutrality of human rights is a misguided aim.

Several related objections deny that human rights adequately formulate the ‘human’ in ‘human nature’ and ‘human rights’. Feminists have objected that the supposedly neutral ‘human’ underlying human rights is implicitly male, and hence excludes women; cultural rights advocates have argued that human rights are essentially Western, or liberal, or Christian; if either objection were accepted, human rights would turn out not to apply to all human beings. Both the feminist and cultural critic suggest that the ‘human’ relied on in formulating ‘human rights’ is an ideal too detached from

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real lives for individuals to actually recognize themselves in the ideal. These critics often point to the history of rights theories, and they often point out that rights were originally envisaged as entitlements of the male propertied class in Western liberal societies. Women and cultural minorities were explicitly excluded from 19th century guarantees of rights on the basis that they were not ‘human’. Modern theories of human rights do not intend such a restrictive understanding of the ‘human’, but the objection remains that their aspirations to universality fail. In its most general form, this objection targets the very idea of universal human rights. This objection strikes at the heart of the foundational approach but, as I will argue below, the normative ideal of the human on which a foundational account might rest can be revised to include diversity, and moreover there are alternatives to positing an ideal human as the basis for a model of human rights. I will ultimately endorse a functional and non-foundational account.

A further concern with foundational accounts arises on an examination of the breadth of these accounts. The concern is that if human beings share an essence or a nature, this essence must be of a minimal character, and can only serve as a foundation for a minimal account of human rights. The particularities of human lives, including the cultures and attachments that matter to real people, exhibit wide variation, and if enough similarities can be found to serve as a unique foundation for human rights, it can only be a minimal foundation. Chris Brown denies that there are any sufficiently general moral standards that are not vacuous, or at least any that retain critical force, to serve as a
normative foundation for human rights\textsuperscript{87}. His objection is that no robust normative foundation for human rights can be found by surveying value systems in search of common factors. Brown explains: “A common morality which is actually common to all societies is an uncritical notion”\textsuperscript{88}. The upshot is a denial that ‘human’ can be cashed out in a simultaneously robust and universal way. If shared values must be used to define the content of human rights, the resulting content would be minimal, and although human rights would be universally accepted, they would simultaneously be deprived of their critical force.

I find some of these arguments persuasive, and agree that a universal foundation for human rights is problematic, and may be impossible to achieve. Human beings are unique, and the complexity of their value cannot be characterized abstractly. In this sense, the idea of toleration of humanity with its diverse values must be accounted for by any doctrine of human rights. However, I object to the putative entailment that human rights therefore must remain a narrow, uncritical notion. My solution, following from the work of Beitz, is to weaken and eventually break the ties between a neutral, foundational account of the justification for human rights and the content of human rights. The practical approach suggested by Beitz and other liberal theorists, and discussed below, suggests a way to proceed in this process.

Although many theorists agree that human rights do not share a unique foundation, some theorists have suggested an intermediate position: that universal human

\textsuperscript{88} Brown (1999) pp. 108
rights can be justified by adopting a survey approach to the question of foundation. Rawls introduced the idea of an overlapping consensus regarding political norms. The idea of an overlapping consensus allows progress to be made in a political or public realm where answers to contentious metaphysical foundational issues are unlikely to be agreed upon. Charles Taylor, adopting the Rawlsian language of ‘overlapping consensus’, suggests that a diverse set of Asian religions share an understanding of human life as valuable, despite their disagreements on the metaphysical grounding for the normative ideal of human rights\(^9\). Taylor argues that many of the norms embodied in the language of human rights could be analytically separated from their background justification, and thereby gain wider acceptance. His point is that universal human rights might not need to share foundations in order to nonetheless achieve a robust claim to be broadly shareable. Although Taylor denies that human rights have a unique foundation, his argument nonetheless seeks foundations for human rights within local cultures, and so will remain vulnerable to many of the objections to foundational accounts.

On a second examination of the foundational approach by feminists and cultural relativists, their specific demands reveal an additional tension within the content of a doctrine of human rights, even beyond its foundations. When examined more closely, feminist and cultural relativist objections to human rights push the content of a doctrine of human rights in opposing directions, and moreover pave the way for a more pragmatic approach to the question of human rights. Radical feminists such as Catharine MacKinnon have been concerned that rape, and in particular rape as a war crime, has not

been prohibited under the central tenets of international human rights law. Hence, the feminist objection might be thought to require more content, and a longer list of rights to be included in the international doctrine of human rights. Her explanation is that since rape is a crime that primarily targets women, it has been interpreted as non-universal, hence not a human right. In particular, MacKinnon is concerned to highlight the ways in which rape is not simply an example of torture or violation of bodily integrity, but has further sexual dimensions to the harm such as the possibility that pregnancy or infertility could result. MacKinnon captures the problem thus: “What happens to women is either too particular to be universal or too universal to be particular, meaning either too human to be female or too female to be human.” This objection can be formulated as a demand for the broadening of the content of human rights in order to include everyone’s experience of wrongs against the person, rather than restricting human rights to ‘universal’ wrongs understood as wrongs that could be committed against any human being.

Opposing pressure to limit the scope of human rights has been articulated under the ‘Asian values’ and ‘Islamic values’ headings. Both of these sets of objections have attempted to reduce the content of human rights by denying the universality of particular rights articulated in the UDHR. In the 1990s, several prominent Asian leaders, including Lee Kwan Yew of Singapore and Mahathir Mohammed of Malaysia denied the

90 MacKinnon (1993)
91 She argues elsewhere that rape feminizes men, and that rape is essentially a hate crime against women even though not all rapes are committed by men, or perpetrated against women.
applicability of political rights such as free speech and open elections, for the Asian context, suggesting that Asian cultures and values prioritized economic development and social stability over political freedoms\textsuperscript{93}. In support of the Asian values objection, politicians and theorists appealed to religious and culturally-based communitarian values prioritizing the group over individual rights\textsuperscript{94}. The economic successes of the ‘Asian Tigers’ have been interpreted as vindicating these positions. African leaders have made similar arguments for limiting political freedoms and their destabilizing effect in order to achieve community harmony, although in many such cases neither stability nor economic development has materialized\textsuperscript{95}.

Amartya Sen has argued that the correlation between economic growth and restrictions on political rights is “ambiguous and contingent” and is furthermore based on a very selective use of statistics\textsuperscript{96}. Sen’s data suggests that the empirical claims made on behalf of Asian values may not stand up to scrutiny, but the central normative thrust – the suggestion that communities and individual rights have divergent interests – remains a problem for advocates of an individualist model of human rights, even if the empirical argument fails.

The Islamic objection to human rights has focused on equal rights of women, and rights to religious freedom. On certain interpretations of Islamic Shari’a, women are explicitly subordinate to men, apostasy is prohibited, and marriage partnerships are not

\textsuperscript{93} Langlois (2001)
\textsuperscript{94} Langlois (2001); Bell (1996)
\textsuperscript{95} Pollis and Schwab (1980) pp. 1-18
\textsuperscript{96} Sen (1999) pp. 93
individual decisions. Hence, an objection is made to the universality of human rights provisions for equality between men and women, and religious liberty in Islamic countries97. This clearly represents a conservative outlook, but one that has garnered serious attention not least because so many states have implemented legal protections of religious doctrine. And of course, the objection seems to invoke the ideas of toleration and religious freedom of the religious group in its attempt to limit individual freedoms. This set of objections is most clearly in conflict with women’s rights, and when juxtaposed with Asian values objections to political rights such as free speech and other political freedoms the inequality of women and non-Muslims may result in extreme oppression of minorities. These cultural objections, like the Asian values objection, ultimately deny that particular content for a doctrine of human rights can legitimately claim universality, and do so on the basis of claims about fundamental values.

In the case of the Asian and Islamic objections, these theorists are largely relying on outdated models of culture that view cultures as static and monolithic. There is evidence that the objections come from cultural elites, whose views ought to be taken seriously, but ought not to be taken as unquestioningly authoritative. In the Asian cases, political elites have an obvious interest in limiting political dissent by maintaining strict control over speech, political competition, and electoral reform. In Islamic cases, a patriarchal interpretation favors those already in power. Interesting cultural arguments have been made to counter both sets of claims, and these suggest first, that the cultures in question are capable of change from within, and secondly, that the cultures in question

are not monolithic, but rather dissent exists. One example is found in Norani Othman’s reply to the Islamic objection. Othman argues that flexibility and dynamism are Islamic and Qur’anic values, and moreover, she finds evidence within the Qur’an for an interpretation of women’s status that is more sympathetic to human rights ideals.

In defense of the concepts and terminology of human rights, a more important observation is that the feminist, Asian and Islamic objections appear to accept the underlying idea of a human right even while they dispute certain portions of the content of human rights documents. To the extent that human rights documents such as the UDHR or ECHR exhibit cultural, religious, or gender bias, particular rights and documents may be in dispute. However, the idea of human rights is distinct from the content of any particular human rights agenda, and the doctrine of human rights can withstand the objections of bias when they target specific human rights. That is, these types of Asian values, Islamic values, and feminist objections to particular rights do not invalidate the very idea of human rights, and so the criticism remains one that a theory of human rights can withstand. And once we move away from a foundational approach to human rights, the form of the question of content for a doctrine of human rights changes. On a practical approach to human rights, the question becomes whether and how such human rights affect the universality of the practice of human rights, rather than whether or how such ideals can be judged universally valid on their own merits.

A more troubling objection to the idea of human rights targets the language of human rights. The “abstract individualism” implicit in human rights is criticized by both

\[98\] Othman (1999)
feminists and communitarians. Here, the concern is that the language and doctrine of rights attributes value to the generic characteristics of human beings, and in the process abstracts away from the particular attachments and characteristics that are truly valuable in human beings. This objection is in part to the language of rights generally, and in part to the content of international human rights doctrine. Perhaps abstract individualism is a fair characterization of some societies, but this does not entail a denial of human rights values as a whole. Rights to fundamental freedoms, including political rights such as free speech and freedom of association, facilitate many of the attachments in question. Again, Beitz’s practical approach to human rights seems to sidestep this question without directly offering a reply, but his tactic is adequate to allow us to carry on a discussion about human rights without the abstract individualism objection being ultimately damning.

Although I find these objections to be particularly problematic for foundational approaches to human rights, I am not convinced that they undermine the very idea of human rights, nor that they completely defeat the content of actual doctrines of human rights. In particular, they leave space for an alternate approach to human rights, which I turn to next.

3.2 The Practical Approach to Human Rights

An alternative approach to human rights is a Rawls-inspired approach to justifying human rights suggested by Charles Beitz, although also discussed by several

other theorists. I will use Beitz’s terminology in calling it a ‘practical’ approach to human rights, although Beitz referred to it as a ‘functional’ approach to human rights in his earlier work on the topic. Charles Beitz argues that human rights play a central normative role in liberal theories of international relations and moreover in the modern practice of international relations\textsuperscript{100}. Human rights serve a variety of functions or practical roles in international relations, and Beitz proposes that these roles in international practice might be the central defining feature of the modern incarnation of human rights. Taking the functions of human rights as fixed by modern practice elucidates the doctrine of human rights and the practice of international relations at the same time, or so he argues.

Beitz’s idea of a practical conception of human rights “takes the doctrine and practice of human rights as we find them in international political life as the source materials for constructing a conception of human rights”\textsuperscript{101}. Beitz suggests that the full range of the practice itself – including its wide variety of functions in international political life – not only explain, but also define the modern, normative idea of human rights. Beitz contends that this elucidated concept can then be used in answering metaphysical questions about the content and authority of human rights. Beitz is not alone in linking human rights practice to their content and concepts. For example, Rawls focuses on the coercive use of human rights as a justification for intervention. Buchanan similarly explains the legitimacy of humanitarian intervention in human rights terms. On one level, Beitz simply expands this practical model to include discursive practices such

\textsuperscript{100} Beitz (2001); Beitz (2003); Beitz (2004); Beitz (2009)
\textsuperscript{101} Beitz (2009) pp. 102
as public condemnation of human rights violators as amongst the essential defining functions of modern human rights.

Beitz points out that human rights have come to play a central normative role in liberal theories of international relations and moreover in the modern practice of international relations. Human rights serve a variety of functions or practical roles in international relations, and Beitz proposes that we take these roles in international practice as the central defining feature of the modern incarnation of human rights. That is, we take the practice of human rights as the starting point for our examination of the normative pull of human rights. Beitz draws on Joseph Raz, who has closely examined the normative pull of social practice in making certain values possible. The result for Beitz is a denial that the social practice of human rights is merely a relative good. Instead, human rights construed as part of a social practice of international relations are objective goods, objectively defined by the practice itself. Social practices, including the practices involving human rights in international law, have sufficient normative pull that disobeying them has consequences. For human rights, these consequences may include damage to a state’s reputation, treaty relations, opportunities for aid, or humanitarian intervention. These practices amount to enforcement of objective norms understood by the community that participates in the practice. If the international community respects human rights as though they were universally valid, then their independence of the social

102 Beitz (2009) pp. 104; Raz (1999) pp. 187-91. Raz’s focus is on the objectivity of values created through seemingly non-objective social practices. Raz’s point allows Beitz to show that human rights as a practice have normative force.
practice does not also need to be demonstrated\textsuperscript{103}. Taking the functions of human rights as fixed by modern practice elucidates both the debates surrounding human rights practice, and the content of the doctrine of human rights at the same time, or so Beitz’s theory contends.

Drawing on Rawls, Beitz suggests that human rights have become part of a global language of public reason, and moreover part of a practice of public justification. As Beitz explains, “if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights”\textsuperscript{104}. The modern language of human rights is used to publicly justify coercive practices such as interventions, to justify political and economic sanctions, and to justify the provision of aid. All of these justificatory functions connect human rights ideals to the practices of international relations. Beitz points out that human rights have additionally been prerequisites for development assistance programs, justifications for non-military interventions, and have been formalized in various international financial regimes\textsuperscript{105}. Finally, and perhaps most commonly, human rights serve the discursive functions of condemnation and praise in the language of public reason.

According to Beitz’s theory, human rights are neither assumed nor required to be an explication of a deeper layer of fundamental rights. Modern human rights do not constitute international law’s recognition of an independently intelligible idea. Instead,

\textsuperscript{103} And both Raz and Beitz would deny that such values can exist independently of the social practice.
\textsuperscript{104} Beitz (2009) pp. 1
\textsuperscript{105} Beitz (2001) pp. 269
the functions of human rights define both the concept and the content of a modern doctrine of human rights. The discursive functions of human rights include the naming and shaming of human rights violators by human rights monitors, and the justification of coercive practices such as trade embargoes and humanitarian intervention. These are extremely practical consequences. Nonetheless, human rights play an important discursive role in international public reason, and Beitz draws on Rawls in proclaiming this to be an essential feature of the modern understanding of human rights.\textsuperscript{106}

Drawing on twentieth century international human rights treaties, Beitz emphasizes that human rights are understood to protect urgent interests. He explains that their “object is to protect urgent individual interests against certain predictable dangers … to which [individuals] are vulnerable under typical circumstances of life in a modern world order composed of states”\textsuperscript{107}. Beitz is taking the modern practice of human rights to define their content. The interests human rights protect are particularly urgent needs and vulnerabilities, so even if there are disputes over the precise content of human rights, the dispute is not over the type of content. In order to serve the purposes of the practice of international relations, human rights must be urgent enough to be recognized by other members of the international community.

Beitz proposes that these individual urgent interests be protected under what he calls a two-level model of human rights, wherein states are the primary bearers of responsibility for human rights, and the international community acts as guarantor that

\textsuperscript{106} Beitz (2009) pp. 96-97, 99
\textsuperscript{107} Beitz (2009) pp. 109
states fulfill their primary duties\textsuperscript{108}. These two levels explain how human rights are to be enforced. At both levels, human rights are essentially addressed to states and state governments. Human rights are enforced at the first level by the normal coercive apparatus of the state. Legislation, police, and a judiciary will all play a role in enforcing human rights on the first level.

But in the cases where a state fails to protect its citizens from human rights violations, or for that matter turns its coercive powers on its own citizens in violation of their human rights, the international community is called on to act. So, in the second instance, human rights are addressed to an international community of states. Beitz explains, “human rights are standards for domestic institutions whose satisfaction is a matter of international concern”\textsuperscript{109}. The international concern may take the form of praise for successful human rights outcomes, or blame for human rights violations, and it may ultimately call on the international community to act. But at this second stage, just like the first level, states are called on to use their coercive power, this time to coercively apply pressure to another state in recognition of its failure to protect its own citizens’ human rights.

Beitz is not alone in drawing explicit connections between human rights and international practice, and other liberal theorists – both cosmopolitans and statists – have posited that human rights ought to play specified roles in international relations\textsuperscript{110}. In

\textsuperscript{108} Beitz (2009) pp. 108
\textsuperscript{109} Beitz (2009) pp. 128
\textsuperscript{110} The cosmopolitan and statist versions of this commitment will be explored in section 3.4 below.
addition to treating human rights as contributing normative content to the question of the permissibility of humanitarian intervention, several theorists employ human rights as defining legitimacy for the purposes of membership in the international community. Jean L. Cohen points to human rights’ use as a justification for a myriad of international state actions\textsuperscript{111}. Greg Dinsmore points out that permissible humanitarian intervention has often been defined in terms of human rights\textsuperscript{112}. These theorists agree that the use or function of human rights in international relations has a bearing on the content of a doctrine of human rights. All of these justificatory functions connect human rights ideals to the practices of international relations. For Rawls, these human rights practices all lead to stability in the international system, and stability is an independent good that justifies the related practices.

Other liberal theorists make similar connections with respect to the normative role played by human rights. Buchanan draws a connection between self-determination and state legitimacy, on the one hand, and making a credible effort to satisfy a threshold of human rights protection, on the other. According to Buchanan, political power is legitimate only if it makes a credible attempt to secure basic human rights\textsuperscript{113}. Furthermore, such state privileges as the right to non-intervention and the right to make treaties are taken to be contingent on legitimacy in Buchanan’s account. Buchanan explains that, “Any legal system, whether domestic or international, can and should be criticized if it does not include rules and practices that provide adequate protection for

\textsuperscript{111} Cohen (2008)
\textsuperscript{112} Dinsmore (2007)
\textsuperscript{113} Buchanan (2004) pp. 247
human rights"\textsuperscript{114}. And his use of human rights does not stop with criticism. Buchanan discusses how, “Humanitarian intervention is often defined as infringement of a state’s sovereignty by an external agent or agents for the sake of preventing human rights violations”\textsuperscript{115}. Again, human rights are playing the central normative role in the practices of international affairs.

Tesón holds human rights to define legitimacy, and, in certain circumstances, takes human rights violations to entail the permissibility of military intervention\textsuperscript{116}. Tesón posits a duty to assist victims of injustice, and defines injustice in terms of human rights violations\textsuperscript{117}. Human rights violations undermine a state’s claim to legitimacy, and hence to sovereignty and non-intervention. States that fail to meet minimum human rights standards forfeit the privileges associated with sovereignty.

Finally, Ignatieff suggests that humanitarian intervention may be, in some cases, the only way to enforce human rights norms\textsuperscript{118}. Ignatieff points to the practice in international relations of treating state sovereignty as conditional on human rights performance\textsuperscript{119}. For Ignatieff, a practical role for human rights in justifying humanitarian intervention entails that human rights content must be minimized.

These liberal theories take human rights to play the type of practical and functional role in international relations that Beitz is concerned with: human rights

\textsuperscript{114} Buchanan (2004) pp. 119
\textsuperscript{115} Buchanan (1999) pp. 71
\textsuperscript{116} Tesón (1998) pp. 7, 16, 40
\textsuperscript{117} Tesón (2003) pp. 97
\textsuperscript{118} Ignatieff (2001) pp. 37
\textsuperscript{119} Ignatieff (2001) pp. 42
constitute the minimum requirement for legitimacy, and legitimacy is necessary for full participation in the international system. Human rights violations define permissible humanitarian intervention. To the extent that a state, agency, or ‘people’ is ‘excluded’ because of human rights violations, it can be excluded from lucrative treaty memberships, may be denied foreign aid or assistance, and may lose the prima facie presumption of non-intervention. So legitimacy or decency serves an important normative role in both defining a threshold of acceptable behaviour, and defining membership criteria, and all of these norms are defined in terms of human rights.

Under Beitz’s proposal, these theorists share Beitz’s practical understanding of the role of human rights in international relations, and the practical role that I am suggesting typifies the use of human rights concepts within liberal theories of international relations. Beitz’s theory explains that human rights are employed as normative standards for many practices in international affairs. Human rights play this legitimating role in liberal theories in particular. They define legitimate states and legitimate membership in the society of states, but at the same time they define legitimate interventions and criticisms. Many liberal theorists take human rights to either constitute or contribute to an articulation of the normative standards of state conduct, and this pattern extends to both cosmopolitan and statist liberal theories of international relations.

3.3 Hobbes and Global Justice

A significant objection to the concept of international human rights is their supposed lack of enforcement. According to the Hobbesian version of the objection,
rights can only exist in a context where they can be enforced. Government is an enabling condition of justice, and there is simply no global government. Hence, there cannot be any global justice, and in particular, there cannot be any valid global form of rights. In the absence of a global sovereign or other coercive global structure of justice, human rights can never be any more than aspirational value terms. In the absence of an international social contract, and in particular an international coercive structure, human rights cannot be enforced, or so the objection claims. The international system remains a state of nature to the extent that no entity has the legitimate authority to enforce human rights internationally, and in particular to punish human rights violations. Individual states have this authority over their citizens, but there is no reason to expect them to be bound to human rights in particular, nor for human rights to be uniform across states and cultures.

Both Rawls and Nagel adopt a version of this objection when they deny the legitimacy of any cosmopolitan world government, although they do not employ it as an objection to human rights per se. Nagel suggests that he, Rawls, and Hobbes are in limited agreement about the link between justice and sovereignty. According to these liberal theories, justice is at least partly a collective action problem, requiring the law to be backed by an exclusive use of coercive power in order to guarantee sufficient levels of compliance\(^{120}\). According to the social contract theories endorsed by all three, the exclusive use of coercive power must also be justified and justifiable in principle to those

\(^{120}\) Nagel (2005) pp. 115
over whom it is exercised. Although Nagel and Rawls do not endorse the Hobbesian account of self-interested motivation for entering the social contract, they nonetheless endorse the claim that coercive uses of power must be justified to those bound by coercion. For Rawls, this is overcome through his original position thought experiment, and also his idea of justice as fairness. The social contract tradition requires justice to be backed by enforcement, on pain of the failure of collective action. For Rawls, the enforcement and coercion must be justifiable to those subject to coercion. For these theorists, the problem of global justice is that in the absence of a global justification for coercion, global coercion is unsustainable, and no putative global law can be enforced. Hence, human rights as international standards remain mere aspirations. Human rights can only exist within the states that endorse some domestic theory of justice, and there is no reason to expect human rights to be unified across states. This position fits clearly within the statist framework, wherein global justice is primarily directed at internally just states, and has only limited applicability beyond the borders of internally just states.

Yet, following the atrocities of the Second World War, there has been fairly widespread agreement that the Hobbesian picture of unchecked sovereignty should be revised. The revision has typically involved viewing sovereignty as a limited concept. It has come to be accepted that there are some actions a state or a sovereign cannot legitimately take. In particular, a state cannot use its coercive power against its own people in a way that undermines the justification of the social contract. Each liberal

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121 Each theorist endorses a different account of what constitutes a justification for coercive power, although all three rely on a social contract model.
theorist will have her own account of the ultimate purpose of the state and social contract, and each will accordingly have a different story to tell about what types of state action undermine the legitimacy of state power. For Walzer, this is explained in terms of membership in a community. For Rawls, the internal justification for a liberal state involves fair terms for the social contract, and the minimum threshold for a non-liberal state are defined by the evaluative concept of ‘decency’. Suffice it to say that the state sponsored genocides in Rwanda and Cambodia would violate any social contract justification for the state. Nonetheless, violations short of genocide might violate only some liberal justifications for the state but not others.

Twentieth century liberals, including Rawls, have explicitly restricted sovereignty, making it conditional on fulfilling certain social contract requirements. Many liberals agree that the sovereign only acts legitimately when she restricts her use of coercive power according to international norms. For Rawls, this includes meeting human rights requirements. So, although human rights requirements cannot be enforced internationally, they can nonetheless enter Rawls’s theory as part of the Law of Peoples, and thereby form part of an international agreement. Buchanan and Tesón capture a similar point using the language of ‘legitimacy’. According to this modified liberal picture, the exclusive use of coercive power by the sovereign remains officially unchecked, and so remains consistent with the Hobbesian account in terms of the link between justice and sovereignty. No supranational power is granted the authority to coerce states, and states maintain a monopoly on the use of coercive power. However, the state’s monopoly has its limits. The sovereign’s exclusive use of power takes place within
the global public sphere, and that public sphere has its own powers of coercion through interference and cooperation. Although the state’s use of power may still be enacted differently in each state, sovereignty is restricted by the potential for other states to intervene to prevent illegitimate uses of power.

To return to Beitz’s theory, Hobbes and Beitz might be in agreement over the topic of human rights at the first level of Beitz’s two-level theory. For Beitz, all individuals will be protected by human rights in the first instance because human rights are addressed to states, and all human beings are assumed to be members of some state. For Hobbes, the globe is covered with states that necessarily have internal justice, and therefore global justice protects all individuals. However, our modern definitions of justice leads us to disagree with Hobbes’s inference that states controlled by a sovereign are necessarily just. There is no space for any limitation on sovereignty within Hobbes’s account, especially not the modern conception of human rights as universal entitlements.

Hence, the second level of Beitz’s theory puts in place a practical limitation to sovereignty, while it also creates the possibility of enforcement of universal principles without the need for a global sovereign or global state apparatus. Human rights are no longer limited solely to domestic enforcement. International forms of coercion, such as international censure and intervention, explain how universal principles of human rights can be enforced by international practice. When a state fails to guarantee the human rights of its citizens, according to Beitz, the burden of responsibility shifts to the international community because the state has failed to meet the test of sovereignty. States bear the primary responsibility for the respect and protection of human rights, and
the international community acts as guarantor that these responsibilities will be fulfilled.
As a result, human rights practice demonstrates a form of enforcement of universal
principles that does not rely on a global sovereign, nor on a global police force. Human
rights can be seen as more than just aspirations. Human rights are universal entitlements,
and the form of enforcement Beitz emphasizes reinforces this status without the need for
agreement on the metaphysics of human nature.

3.4 Cosmopolitan Commitments and a State Focused Theory

Liberal commitment to a practical approach is evident in both the assurances that
human rights will be enforced, made by cosmopolitans such as Buchanan, Pogge, Tesón,
and Beitz, and in the obligations to recognize just states, as advanced by Rawls, Nagel
and others. That is, the practical approach to human rights is a strongly liberal approach
to understanding international human rights instruments, and it is implicitly or explicitly
endorsed on both sides of the cosmopolitan/statist divide. It is endorsed in Rawlsian
statism when Rawls claims that human rights “restrict the justifying reasons for war and
its conduct, and they specify limits to a regime’s internal autonomy”\textsuperscript{122}. A version is
endorsed by cosmopolitans like Buchanan when he explains that “human rights impose
constraints on how institutions should be”\textsuperscript{123}. And of course, it is endorsed by its leading
cosmopolitan proponent, Beitz\textsuperscript{124}. Hence, the practical approach as defining what is
meant by the term ‘human right’ is not unique to either side of the cosmopolitan-statist

\textsuperscript{122} Rawls (2000) pp. 79
\textsuperscript{123} Buchanan (2004) pp. 125
\textsuperscript{124} Beitz (2009)
debate, although, as I will argue in the next chapter, a division involving the scope of the content given to human rights nonetheless follows the cosmopolitan/statist divide.

Beitz’s commitment to states as both the addressees and the enforcers of human rights is part of the novelty of the practical approach to human rights, and moreover part of the appeal for liberal theorists. It is appealing because it provides a reply to the objection that human rights are merely aspirational because they are unenforceable. In the modern practice of human rights, Beitz has shown that a form of enforcement is already in place that sustains international human rights norms. When human rights enforcement is understood broadly as including mere monitoring, incentives to adhere to human rights norms, and consequences of failure to adhere to these norms, human rights can be seen to be enforced and enforceable. On this model, human rights are enforced in virtue of the practical repercussions of both human rights achievements and human rights failures. Attaching human rights prerequisites to international treaty memberships, revoking international treaty privileges in virtue of human rights failures, and doing both alongside monitoring of human rights compliance demonstrates a form of inter-state enforcement of human rights. Beitz’s theory does not commit to an additional global level of human rights enforcement such as a global police force or global judiciary, but it nonetheless achieves the virtue of enforceability. This reply to the enforcement objection provides a justification and motivation for Beitz’s emphasis on states within his cosmopolitanism, and moreover one that statists such as Rawls, Blake, and Nagel could find acceptable, and statist cosmopolitans such as Tan and Caney can also endorse.
However, this same focus on states might undermine the universality of the human rights claim, and thereby undermine the critical power of human rights, or so I worry, and it is to that worry I turn in the final section of this chapter. The problem, if arises, is all the more serious for Beitz and the liberal cosmopolitanism side because cosmopolitanism aspires to include the discursive practice of criticism of human rights failures within the spectrum of human rights practice. Therefore, many of the types of wrongs that are typically labeled as egregious ‘human rights failures’ – such as genocide, war crimes, and crimes against humanity – are particularly important to the theory. But they are also the type of marginal cases most likely to fall outside the scope of a functioning state, and therefore may tend to fall outside of the range of enforceability by states. At the very least, Beitz’s use of statist commitments generates additional tension within the theory that threatens to undermine Beitz’s ability to describe human rights failure outside of a functioning state in particular.

My concern is that Beitz’s theory faces this tension precisely because it addresses the theory of human rights to states. He addresses the theory to states in order to make his theory compatible with Rawls and other statist and anti-cosmopolitan theories, but he thereby inherits a tension between statist and cosmopolitan commitments. This tension is brought to light by thinking about the plight of stateless people and failed states. Although Beitz and other cosmopolitans clearly define human rights as universal, and aspires for human rights protections to be in place for every individual, his focus on states may nonetheless undermine this aspiration. The concern arises over the possibility of
stateless persons, state failure, and moreover of states deliberately excluding persons so as to deny them access to human rights.

States are clearly the addressees of Beitz’s conception of human rights. The naturalistic account of human rights achieves a universal commitment to individual human rights through its focus on human nature. Beitz’s state-focused theory might achieve the same result given the universality and ubiquity of states. However, individual human beings are not necessarily attached to states, and the concern is that the scope of a state-focused account of human rights might not be wide enough. Beitz’s commitment to states seems at odds with the inherent individualism of human rights, and moreover with Beitz’s cosmopolitanism.

Three examples of stateless people will illustrate the concern. The first is the example of rendition, the practice of deliberately removing an individual from the protections of state membership. Whether the practice is in some way deserved (by an individual who engages in the activities of an ‘enemy combatant’) or whether the practice serves the interests of a coercive state (say, one that wishes to engage in illegal torture or interrogation), is irrelevant. The net result is that these individuals are not recognized as subject to human rights conditions precisely because they are not viewed as members of a state. They are not viewed as members of a state because they have been removed from a state, which is blameworthy in itself, but the action serves to cut the ties between individual human being and state- or institutionally-defined human rights. Perhaps the example demonstrates the descriptive adequacy of Beitz’s theory of human rights in that states actively seek to sever the ties between an individual and a state in order to engage
in practices of torture. Even so, a concern remains that Beitz’s theory of human rights cannot be used to criticize the practice of rendition in human rights terms. For Beitz’s theory of human rights, the example of rendition demonstrates that by removing the connection between human beings and state institutions, we remove the entitlement of individuals to human rights and even the criticism of these practices as human rights violations. The direct link between states and human rights might therefore create a perverse incentive for states to find ways to sever the link between a particular individual or group of individuals and states in general, or states that respect human rights in particular. Although the practice of rendition has been widely condemned, in this light it becomes more understandable, although certainly not forgivable.

The second case is the example of the citizen of a failed state, whose rights cannot be protected by her own state, but nor is there a state to which the coercive apparatus of international pressure can be applied. In such cases, Beitz’s theory of human rights seems not to apply, even in the discursive sense that is central to Beitz’s account of human rights practice. There is no human rights failure because there is no state that could commit the violation. But there is also not a human rights solution, given the type of actions and coercive resources Beitz uses to define human rights.

A final troubling example would combine the two worries already on the table. Perhaps a state-defined account of human rights creates perverse incentives to bring about state failure, or to undermine state-building, in order to maintain some stateless spaces, perhaps for rendition. If human rights are defined in state terms, then any stateless
space becomes a human rights-free space. Human rights are not protected in these spaces, but more disturbingly they cannot even be invoked.

All three examples exist at the margins of human society, where human rights violations are most likely to occur. But this marginal status also undermines the enforceability virtue of the practical account of human rights. Beitz seems to operate under the assumption that addressing human rights to states will result in universal human rights. Human rights are addressed in the first instance to states, and even the enforcement at the second level relies on states applying coercive pressure to other states. Elsewhere, Beitz is committed to cosmopolitanism, and to the universality of human rights. Yet, addressing human rights to states rather than persons seems to undermine this commitment. To the extent that the state system is the current reality, Beitz is correct to address his theory to states. However, the problem remains that the state system is not absolutely universal. In particular, it seems to undermine our ability to explain state failures in human rights terms. In that sense, Beitz’s human rights theory fails to protect a set of individuals who are extremely vulnerable.

In cases of state failure, there is no longer a primary addressee of human rights discourse, nor is there an institutional apparatus to be coerced. But given Beitz’s emphasis on the discursive practice of human rights, it is not even clear whether the language of human rights can still be used to describe the situation of those in the Democratic Republic of Congo, Rwanda at the time of the genocide, or Guantanamo Bay today. Accordingly, Beitz’s state focus undermines human rights discourse in precisely

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125 Beitz (1999)
the cases where it is most needed. Ultimately, Beitz’s focus on states creates a perverse incentive to create state-less spaces, and moreover removes our ability to criticize such actions as human rights failures (although certainly not our ability to criticize them generally). This state focus in a theory of human rights generates a tension between the universal aspirations of individual human rights and the vulnerable individuals who through rendition or state failure find themselves outside the international state system.

### 3.5 Conclusion

My objections to Beitz’s state focus is not insurmountable, and certainly does not amount to a wholesale rejection of the practical account of human rights. Beitz’s state focus means that his theory of human rights does not account for phenomena outside of states, and in particular phenomena outside of functioning states. However, he is nonetheless correct that the state system is pervasive, and is the background against which individual state failures occur. So, given that addressing human rights to states explains the enforcement of human rights, the state focus of Beitz’s practical account of human rights gives his account a significant advantage over naturalistic theories of human rights. Beitz’s practical account of human rights cannot be accused of being merely aspirational and unenforceable given that it explains clear consequences of human rights violations.

However, at the same time, Beitz’s state-focused account of human rights sits uneasily with his cosmopolitanism. The next chapter will examine more closely the relationship between human rights content, human rights scope, and the scope of the
resulting account of global justice. On the issue of the scope of global justice, Beitz’s account approximates the cosmopolitan ideal of universality even if it falls short of it in exceptional cases. However, on the issue of the target of justice, a cosmopolitan account takes individuals as the basic units of global justice, and Beitz seems to deviate from that definition in virtue of his state focus. In that sense, Beitz’s state focused account of human rights sits uneasily with his cosmopolitan commitments regarding global justice.

Nonetheless, in the light of the strong objections to naturalistic theories of human rights proposed by feminists and cultural relativists, Beitz’s Rawls-inspired account provides a way to move forward without requiring agreement on the metaphysical question of human nature. By explaining the normative basis of human rights as arising out of international practice, rather than from agreement about human nature or overlapping consensus regarding human nature, Beitz offers a reply to the objection that the ‘human’ in human rights is in some sense too limited. Human rights practice includes both compliance with human rights norms, and explicit demands that human rights be respected. This practice of demanding respect for urgent interests is universal, and has been formulated in the language and exercise of international relations over the last century. This practice is powerful, and asserts independent normative force within international relations, as we will see in the remaining chapters.

Finally, a note on the liberal credentials of Beitz’s account. I have discussed Beitz’s practical theory, up to this point, in terms of its Rawlsian and Hobbesian pedigree. To the extent that Beitz attempts to justify coercion to the coerced, his theory is paradigmatically liberal and plausibly understood as statist in its formulation. To the
extent that the practical theory of human rights explains human rights as defining the terms of international cooperation, and as part of a language of international public reason, the theory is liberal in a very Rawlsian and social contract sense as well. In these senses, Beitz’s account of human rights remains a liberal attempt to grapple with the theoretical questions of international relations. His theory, as we will see in the next chapter, explains a general pattern amongst liberal theories of human rights. The practical theory of human rights and its link between human rights and enforcement forms a background against which liberal theories of international relations attempt to explain the appropriate scope of the content of an international doctrine of human rights, which is the topic of the next chapter.
Chapter 4
The Practical Approach to Human Rights and Liberal Minimalism

This chapter discusses another central issue that arises in liberal attempts to deal with the problems of global justice, and its implications for the form of a liberal theory of global justice. The issue under discussion is how human rights should be understood, and in particular what values should be included in the content of a liberal doctrine of human rights. Underlying any liberal account of the content of human rights will be a commitment to basic liberal values of toleration, liberty, and equality. But as is the case with liberal responses to questions of global justice, differences in priorities amongst these values by statists and cosmopolitans have been interpreted to entail differences in commitments to the content of human rights. Statists and cosmopolitans partially agree on a definition of human rights: human rights are universal imperatives and their violation constitutes a significant moral failure. Yet cosmopolitans and statists continue to engage in a debate over the content of the doctrine of human rights, or over what values qualify as the universal imperatives in question. Statists, who view justice as a question internal to states, argue that toleration requires that only minimal content can function in the capacity of international human rights norms. Cosmopolitans, who view human rights as defining the content of universal justice, offer a more expansive view of the content of human rights.

This division is fundamental to other statist and cosmopolitan disagreements because different answers to the content question bring the enforcement commitments of
statism and cosmopolitanism closer together or farther apart. Liberal theories of global justice, both statist and cosmopolitan, tie the question of human rights content to the question of the appropriate scope for enforcement of global justice. Therefore much of their disagreement over the content of human rights has implications for enforcement, and hence for the reach of any system of global cooperation and justice. In the light of Beitz’s practical theory of human rights, as well as Rawls’s comments on the scope of global justice, Rawls and other statists can be seen to prioritize questions of sovereignty and toleration over breadth of content for human rights. For statists, these issues are further complicated by the methods of enforcement available within the international system, and moreover by the need for a robust justification for intervention as a means of enforcement. Cosmopolitans, on the other hand, are better able to disentangle the content issue from the enforcement issue, although it is not clear that their resulting account of human rights necessarily retains all the virtues that Beitz’s practical account of human rights aspires to.\footnote{\textsuperscript{126} Tan (2005) pp. 703}

The answers to the related questions of the scope of human rights content, on the one hand, and the reach of human rights enforcement, on the other, also exhibit interesting patterns. These patterns, and especially their division along statist and cosmopolitan lines, provides further evidence that the treatment of human rights questions by both statists and cosmopolitans shares an underlying liberal character, but that differences in statist and cosmopolitan priorities have significant implications for the resulting theory of global justice. Although cosmopolitans tend to object to statist
theories of global justice on the basis of their human rights content, they do so on
grounds that demonstrate the two groups to be engaged together in an underlying project:
the project of explaining the international realm in a distinctly liberal way.

4.1 Minimalism or Inflation?

There are a variety of pressures on both cosmopolitans and statists regarding
human rights content. Several factors push towards human rights minimalism on the one
hand, while other factors push towards human rights inflation or human rights
maximization, on the other hand. In particular, statists and cosmopolitans are deeply
divided over the extent to which liberal domestic rights ought to count as human rights in
the international realm. Liberal statists are particularly exercised over the cosmopolitan
contention that distinctly liberal rights such as free speech, freedom of the press,
democracy, non-discrimination, and even welfare should be included amongst human
rights. Cosmopolitan and statist liberals of both minimalist and inflationist persuasions
agree that these liberal rights ought to be protected domestically by any society aspiring
to call itself liberal. Their dispute is over the international status of such rights, and in
particular over their putative status as ‘human rights’, which is a distinctly powerful
status in liberal international theory.

And their dispute is therefore also about the extent to which liberalism aspires to
its own universalism, or whether universal toleration is the liberal international norm. In
other words, is liberal internationalism committed to tolerating illiberal states, as

cosmopolitans contend that Rawls and other statists are? Or, is liberal internationalism an imperialist project, as statists and opponents of cosmopolitanism worry? On the statist side, Rawls in particular is often accused of erring on the side of minimal content for his doctrine of human rights, and thereby accused of inconsistency with his own liberal domestic doctrine, and of tolerance of illiberal states\(^{128}\). On the anti-minimalist side, cosmopolitans are accused of imperialism and intolerance of non-liberal modes of state organization, and moreover of setting up a slippery slope towards frequent humanitarian intervention. This chapter will argue that although there are valid concerns on both sides, there are nonetheless points of agreement available once we accept the liberal starting point for both sets of theories, and furthermore examine the implications of Beitz’s practical account of human rights for the question of minimalism.

I will, moreover, take a side in this debate: given the liberal background assumptions against which this debate takes place, the reasons against human rights minimalism seem to me to present a more consistent picture of a liberal account of international justice. In particular, liberal minimalists seem to be committed to liberal values domestically that tell against minimalism internationally. My conclusion will not take the cosmopolitan side against the statist. Rather, I will suggest that the statist and the cosmopolitan are committed to much more similar positions than their arguments suggest, at least once the internal logic of their positions is adequately considered.

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Caney defines human rights minimalism as an account that “ascribes some very fundamental human rights to persons but excludes others”\textsuperscript{129}. That is, human rights minimalism entails that the content of a doctrine of human rights ought to be limited in scope to only ‘minimal’ content. Minimalism might be endorsed using an argument that a short list of human rights ought to be prioritized, or by an argument that only a short list of human rights is sufficiently neutral and universal to qualify under the definition of a ‘human right’. The arguments for minimalism posit that for reasons of agreement or neutrality or universality, the UDHR and the international bill of rights, as it currently stands, are too extensive. Moreover, the argument continues, many philosophical accounts of human rights similarly overreach and attribute too much content to a doctrine of human rights. Minimalism about human rights claims that the appropriate and justifiable scope of a doctrine of human rights is more limited, and perhaps much more limited, than these doctrines allow.

The opposing view, sometimes referred to by its opponents as human rights inflation or human rights maximalism, includes much greater content within the doctrine of human rights\textsuperscript{130}. Caney explains that a maximalist account:

\begin{quote}
ascribes the traditional liberal democratic set of rights to all persons. This would comprise rights such as the right to freedom of action as long as it does not limit the liberty of others; the rights to freedom of belief, association, and speech; the right to vote; the right to a fair trial; and so on.\textsuperscript{131}
\end{quote}

\begin{flushright}
\textsuperscript{129} Caney (2005) pp. 65
\textsuperscript{130} Caney (2005) pp. 65; Ignatieff pp. 90
\textsuperscript{131} Caney (2005) p. 65
\end{flushright}
That is, human rights maximalism identifies the content of the liberal domestic doctrine of rights with the liberal international doctrine of human rights. For Caney, “the standard justification of rights to civil and political liberties entail that there are human rights to these same civil and political liberties”\textsuperscript{132}. Yet, although there is widespread liberal consensus that rights to bodily integrity, and rights not to be held in slavery form part of the content of a universal doctrine of human rights, statists and cosmopolitans, and in this context human rights minimalists and human rights maximalists, disagree over the extent to which political, economic, social, and cultural rights count as protecting universal human interests in the sense that is prerequisite for the special status accorded to ‘human rights’ in liberal accounts of global justice\textsuperscript{133}.

Liberal theorists, regardless of their positions about the scope of the content of human rights, do not deny the existence of other moral values in addition to ‘human-rights’. That is, human rights do not constitute the entirety of justice or moral claims for either the human rights minimalist or the human rights maximalist. There remain additional value considerations, perhaps described as moral rights or moral duties, which function alongside human rights. However, given that liberal theorists hold the language of human rights in particular to have a special status within global justice and international relations, the debate regarding the appropriate content for a theory of human rights is a debate about the appropriate scope for this special status.

\textsuperscript{132} Caney (2005) pp. 66
4.2 Arguments for Minimalism

Under a minimalist theory, human rights might be restricted to rights of bodily integrity, or might be limited to negative liberties. On either interpretation, minimalism takes human rights to exclude social, cultural, and economic rights, as well as many of the political rights viewed as fundamental domestic liberal rights. The move in favour of minimalism suggests that although the language of human rights has been attached to a myriad of political, social, economic, and other values, only a narrow set of values genuinely merit the full force of the status of ‘human rights’. Any other uses of the language of human rights are either mistaken or merely rhetorical. Sometimes minimalism is couched in terms of ‘basic’ human rights, or ‘real’ human rights, or ‘human rights proper’. In any case, minimalism suggests that the doctrine of human rights ought to have only minimal content.

Amongst the group of theorists who adopt a form of minimalism, Ignatieff appears to be alone in arguing for the position explicitly. It is not surprising, then, that Ignatieff’s list of human rights might be the shortest of all the theorists who are accused of minimalism about human rights. But additional justifications for minimalism can be reconstructed from the discussions of the content of human rights by statists, especially as formulated in the objections to the doctrine of human rights adopted by Rawls, so these will also be examined in what follows.

The first and most common argument in favour of minimalism could be described as the argument from universal acceptance. Human rights are, by definition, universal principles, and the liberal formulation of human rights requires their universality if they
are to serve as practical imperatives in international relations. But when this feature is emphasized as part of an argument for minimalism, the underlying suggestion is that only when a doctrine of human rights has a narrow scope and minimal content can it possess the likelihood of near-universal assent. This worry seems to be implicit in Michael Ignatieff’s claim that “The universal commitments implied by human rights can be compatible with a wide variety of ways of living only if the universalism implied is self-consciously minimalist”\textsuperscript{134}. A minimal set of values can profess to represent an overlapping consensus on human nature and human value, and hence might more easily meet Charles Taylor’s test for the adequacy of a universal doctrine of human rights\textsuperscript{135}. Moreover, minimalism derived from near-universal acceptance helps a doctrine of human rights to avoid objections of cultural imperialism, parochialism, or bias in general, because the values expressed are so thin as to trivially enjoy near-universal acceptance. But the thinness of the content and triviality of the assent are of concern on a practical account of human rights, and I will return to these below.

If the content of human rights is sufficiently thin, it avoids having to reply to the objection of liberal bias or liberal imperialism altogether because no one could reasonably object to sufficiently thin content for human rights. And, inasmuch as any group or culture objects to a thin account of the content of the doctrine of human rights, their rejection can easily be dismissed as unreasonable. Versions of this argument in

\begin{footnotesize}
\begin{enumerate}
\item Ignatieff (2001) pp. 56
\item Taylor (1999)
\end{enumerate}
\end{footnotesize}
favour of minimalism are relatively common amongst statists. The central component of the argument can be seen as positing the reasonableness of a narrow but nonetheless universally shared set of values.

Yet, the thinness of the content that is universally endorsed on this view, and moreover the implicit endorsement of relativism remain sources of concern, especially on a practical and functional account of what human rights ought to be. If human rights are to be sources of critique and justifications for action, then the reasonableness of the assent, rather than the mere fact of assent, is at issue. Moreover the unreasonableness of the content excluded from the doctrine of human rights will be just as important as understanding the reasonableness of the content endorsed by minimalism.

Furthermore, given the feminist objections to a human rights universalism that precludes including rape as a crime of war precisely because of its particularity, the requirement of universality is significantly weakened. The universal validity of human rights does not require their universal acceptance, nor does it require their universal applicability. Rather, the universal validity of human rights will follow from (1) the objective urgency of the human interests protected, regardless of whether they are recognized as such, (2) the reasonableness of the content espoused, and finally (3) the unreasonableness of enforcing the content excluded. The argument from universality therefore needs to be supplemented by directly content-focused arguments if minimalism is to go through.

Ignatieff obliges with additional considerations in favour of minimalism. Ignatieff’s second argument will be described as the argument from priority. Ignatieff suggests that a short list of human rights ought to be prioritized: “to stop torture, beatings, killings, rape, and assault and to improve, as best we can, the security of ordinary people”\textsuperscript{137}. He effectively restricts the proper scope of human rights to bodily integrity on the basis that this is the urgent priority. This argument can be interpreted as appropriately content-focused: he views this content as defining the minimum conditions for protecting life, hence its priority\textsuperscript{138}. But the minimal content proposed by Ignatieff does not follow from a priority-based argument, especially given that some economic and welfare rights such as access to clean water are biologically fundamental priorities, and some cultural rights may be prerequisites for a life that is truly ‘human’\textsuperscript{139}. If the prerequisites for survival or life or human life are viewed as defining the appropriate content for human rights, then the argument from priority will endorse a fairly broad scope of human rights potentially including the political, social, economic, and cultural pre-requisites for a life with human dignity\textsuperscript{140}. Hence, the argument from priority would no longer define minimalism about human rights. If, on the other hand, politically, socially, economically, and culturally contentious content is excluded, the argument from priority is significantly weakened, and may indeed collapse back into the argument from universal agreement.

\textsuperscript{137} Ignatieff (2001) pp. 173
\textsuperscript{138} Ignatieff (2001) pp. 56
\textsuperscript{140} e.g. Kymlicka (1995); Nussbaum (2000)
Some of Ignatieff and other minimalists’ concerns center around content-based objections to maximalism and over-inflation of human rights. Ignatieff worries that “rights inflation – the tendency to define anything desirable as a right – ends up eroding the legitimacy of a defensible core of rights”\(^\text{141}\). This third objection is a modified version of the argument from priority, and concerns a slippery slope involving the imposition of values. The worry is that if the entire doctrine of human rights stands or falls together, then both undisputed content and disputed content might be rejected together when they are equally couched in human rights terms. This worry that the human rights doctrine as a whole stands or falls together can be described as the argument from holism. Better to restrict the content of the doctrine of human rights to an easily defensible minimalist core, and explain other values in other language, in order to avoid the possibility that human rights may be rejected.

Notice, however, that there is plenty of space between Ignatieff’s human rights minimalism and his description of rights inflation: human rights would have to be ‘inflated’ quite a long way before every desirable value constituted a right, and his version of ‘inflation’ might include more content than even cosmopolitan maximalists like Caney and Tan endorse. Ignatieff’s worry remains that a more extensive list will not only result in disagreement, but it will furthermore diminish the normative force of the very concept of a ‘human right’. Ignatieff blends universalism and priority when he explains that “Human rights can command universal assent only as a decidedly “thin” theory of what is right, a definition of the minimum conditions for any kind of life at

\(^{141}\) Ignatieff (2001) pp. 90
all”. In explaining the unity of these concerns, Ignatieff reveals one way that minimalism might follow from Beitz’s definition of human rights as protecting urgent individual interests: namely, Ignatieff endorses a requirement that human rights protect only the most urgent interests. I will reply, however, that human rights holism is also not a decisive argument in favour of minimalism, and might even provide an argument for a more robust doctrine of human rights, as we will see below. Human rights maximalism can furthermore be defended by exploring Beitz’s contention that human rights are distinctly modern protections of individuals from predictable vulnerabilities arising in a world order composed of states. In a modern world order composed of states, such vulnerabilities are neither minimal nor restricted, although they certainly remain urgent.

All three of the arguments offered by Ignatieff are motivated on some level by a worry about imperialistically imposing liberal values, and more generally assuming the universalism of an extremely biased view. Yet, the argument from universal assent is not sufficient to ground minimalism, and neither the argument from priority nor the argument from holism decisively favours minimalism in the context of a practical approach to human rights. Rather, each of these three arguments justifies reasonable but urgent content for a liberal doctrine of human rights, but does not pre-judge the appropriate scope of the content, and hence does not sufficiently ground minimalism.

Rawls’s justification for his own form of minimalism provides a stronger basis for limiting the actual content of human rights, or so it seems. Rawls’s argument relies on

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142 Ignatieff (2001) pp. 56
both prudential and political justifications framed in the language of the Law of Peoples. On the prudential side, Rawls argues that minimalism about human rights, as a result of a modified form of the argument from universality, helps achieve stability for the Law of Peoples. The argument from stability is not unique to the Law of Peoples, although Rawls’s particular formulation of it is. Rawls explains that by restricting human rights to a limited but urgent set, “The violation of this class of rights is equally condemned by both reasonable liberal peoples, and decent hierarchical peoples”\textsuperscript{144}. That is, Rawls suggests that only when the content of human rights is restricted can the doctrine of human rights be endorsed by the Society of Peoples. And in Rawls’s Law of Peoples this endorsement entails stability for the system. Hence, minimalism is prudentially justified.

Erin Kelly agrees, arguing for the position that only human rights minimalism is sustainable in the language of her own account: “Human rights must be conceived of narrowly if they are to play the role spelled out for them by the principle of International Responsibility for Human Rights”\textsuperscript{145}. Otherwise, she suggests that the prospects for joint deliberation and collaboration around human rights would be slim. The prudential move towards a narrow conception of human rights has appeal, given that it seems to entail near universal acceptance of a human rights doctrine, and therefore stability for the international system. In aiming for stability through restricting intervention and interference, liberal statism draws on realist and Westphalian lessons.

\textsuperscript{144} Ignatieff (2001) pp. 173; Rawls (1999) pp. 79
\textsuperscript{145} Kelly (2004) pp. 177
Rawls can offer an additional justification for minimalism that arises as part of his argument for international toleration of decent peoples. I will refer to this as the argument from toleration. Just as the liberal restriction to public reason in domestic theory requires toleration of a variety of comprehensive views, Rawls suggests that a liberal international system employing public reason must tolerate ‘decent’ peoples. He explains:

The Law of Peoples provides a content of public reason for the Society of Peoples parallel to the principles of justice in a democratic society… The argument for toleration derived from the idea of the reasonable holds equally in the wider Society of Peoples.\textsuperscript{146}

Given that human rights compliance is a necessary component of ‘decency’ and hence a prerequisite for membership in the Society of Peoples, the content of human rights can be seen to define the limits of toleration\textsuperscript{147}. Rawls aims to show that the Law of Peoples is not ethnocentric\textsuperscript{148}. International liberalism requires toleration of non-liberal ways of organizing society, and in the society of peoples, toleration means

not only to refrain from exercising political sanctions – military, economic, or diplomatic – to make people change its ways. To tolerate also means to recognize these nonliberal societies as equal participating members in good standing in the Society of Peoples, including the duty of civility […]\textsuperscript{149}

Given the practical understanding of human rights that Rawls operates with, this amounts to a requirement that the human rights basis for international toleration and respect be relatively minimal, and that it stop short of the full requirement of a liberal system of

\textsuperscript{146} Rawls (2000) pp. 18-19
\textsuperscript{147} Rawls (2000) pp. 80
\textsuperscript{148} Tan (2005) pp. 689
\textsuperscript{149} Rawls (2000) pp. 59
rights\textsuperscript{150}. As Tan explains, for Rawls “the principle of toleration is concerned foremost with the boundaries of judgment rather than with enforcement”\textsuperscript{151}. Rawls extends the principle of toleration into the international realm by suggesting that universal liberalism would be an unreasonable demand for a theory of global justice, even a liberal one. Accordingly, the Society of Peoples includes decent but non-liberal peoples as full members. And given that Rawls defines a ‘decent’ people in terms of human rights fulfilment, human rights minimalism entails that ‘decent’ will not be reducible to ‘liberal’.

Nonetheless, some societies are excluded by the Law of Peoples. These are outlaw states, and their toleration is not required by the Law of Peoples either because they do not respect human rights, or because they are not well-ordered. Tan points out that the principles that unite liberal and decent peoples “are principles that can be affirmed by different reasonable peoples for different reasons”\textsuperscript{152}. So the boundaries of toleration are defined by Rawls’s underlying understanding of the ‘reasonableness’ of global principles of justice\textsuperscript{153}.

Tan’s central cosmopolitan objection to Rawls’s account of toleration, however, is one that is most visible through a cosmopolitan individual-focused lens: Tan is deeply concerned about the status of dissenting individuals within a decent hierarchical

\textsuperscript{150} Buchanan (2008) pp. 162
\textsuperscript{151} Tan (2005) pp. 691
\textsuperscript{152} Tan (2005) pp.689.
\textsuperscript{153} Tan (2005) pp. 695.
In chapter 6, I will discuss a fuller range of the epistemic objections to both statism and cosmopolitanism. Tan’s cosmopolitan objection to Rawls is that individual dissent, be it political, cultural, or social, cannot adequately be identified from a statist perspective if it occurs within a decent but non-liberal state. Since the state or People’s position is taken as a unified whole under statism, individual and minority dissent cannot or should not be supported by outsiders on pain of intolerance and imperialism. Since Rawls’s law of peoples prohibits liberal governments from even criticising or publicly condemning decent societies, liberal governments or individuals operating in their official capacity within a liberal state are also not allowed to show support for dissenting movements within a decent society, even when the basis for dissent is itself liberal. Of course, Rawls’s law of peoples – along with Kelly’s and Ignatieff’s account of international justice – is a definitively liberal account of international justice, so the protection or support for weak liberal movements internationally should be in the liberal interest. I will return to this issue below.

Human rights minimalism is compatible with a robust account of toleration, and minimalism therefore supports stability for the international system. The appeal of minimalism for statism is therefore clear. But in light of Beitz’s analysis of the practical approach to human rights that underlies Rawls’s account of global justice, a final distinctly liberal argument against human rights inflation also emerges. Since human rights are envisaged as primarily practical tools, then a worry arises about a slippery

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slope from human rights inflation to an excessively permissive account of humanitarian intervention, and an extremely unstable system\textsuperscript{156}. This worry is related to the argument from tolerance, as the underlying question is about the erosion of sovereignty and the right to self-determination. If human rights content is broadly defined, then human rights will be more easily violated and more easily disputed. If human rights furthermore serve as prerequisites for legitimacy and recognition by the international community, then the broader the scope of human rights, the more easily defeasible the principal of non-intervention. If human rights are to play the role of universal principles, and are furthermore to entail practical consequences, then they must be minimal in order to serve as prerequisites for sovereignty, international recognition, and non-intervention, or so the argument would go. Otherwise, humanitarian intervention will be too easily justifiable, and the practical consequences for human rights enforcement will unfeasibility.

4.3 Rescuing the content of human rights

Yet even given the strength of this set of objections to human rights inflation, there remains a strong case against human rights minimalism as well, and these arguments take aim at both the argument from stability and the argument from toleration. The principal objection, particularly leveled from cosmopolitan camps, is the lack of critical force retained by a minimal set of human rights\textsuperscript{157}. The worry, given the practical role played by human rights in liberal theories of international relations, is that exclusion


of deeply held but not universally shared values from the content of the doctrine of human rights weakens the critical force of the doctrine of human rights. Worse still, the weakened doctrine of human rights entails legitimizing otherwise objectionable practices.

Buchanan emphasizes that, “any legal system, whether domestic or international, can and should be criticized if it does not include rules and practices that provide adequate protection for human rights”\(^{158}\). Beitz and Pogge use similar language\(^{159}\). Given the cosmopolitan emphasis on the rhetorical and critical force of the language of human rights, the argument from critique points out that the set of values deserving of rhetorical and critical force is far greater than the minimalist allows, and may indeed include political, social, economic, and cultural rights. In removing the critical force of the language of human rights from all but a short list of rights, the minimalist effectively concedes legitimacy to any and all state actions that meet this low threshold of requirements, despite widespread objections to and condemnation of many non-minimal practices.

Furthermore, given that minimalist human rights content is defined by widespread agreement, the rhetorical and critical force of calling these ‘human rights’ violations may be unnecessary. That is, since there is such widespread agreement that, for example, torture and slavery are wrong, describing these acts as human rights violations does not seem to add critical and rhetorical condemnation to the thick evaluative claim that they are examples of ‘torture’ or ‘slavery’.

\(^{158}\) Buchanan (2004) pp. 119
The context in which legitimacy is conceded remains important. Recall that for a significant proportion of liberal theorists about global justice – including those on both statist and cosmopolitan sides – the realm of global justice employs a global analog of the social contract: states benefit from multilateral cooperation, but do so by placing limitations on their own sovereignty. And the global social contract, as posited by statist and cosmopolitan theorists ranging from Rawls to Pogge to Buchanan is characterized in particular by its use of human rights as defining appropriate constraints on legitimate state action. States, governments, and multinational corporations that meet human rights standards gain entry into an international system of cooperation, and this system of cooperation provides them with certain rights, such as the right of non-intervention, and the opportunity to apply for financial and humanitarian aid from states that adopt the same standards. Member states must concede that their sovereignty has both internal and external limitations. But if human rights are limited to a minimalist set, no such concession is entailed. To the extent that a state benefits from participation in the international social order, it accepts obligations under the standards of participation, and the standards of participation include human rights compliance. Framed as an argument against minimalism, my claim here is that accepting human rights constraints on sovereignty ought not to be an easy or vacuous concession. Yet accepting restrictions on sovereignty that are limited to a prohibition on torture and state-sponsored slavery and murder might turn out to be such a vacuous concession.

Within liberal accounts of global justice, human rights constitute internal limitations on the sovereignty of a state. By the same token, states that violate basic
human rights are recognized as illegitimate and therefore cannot enter the social contract. Legitimacy in these senses is required for entry into lucrative international treaties in the modern world – such as membership in the EU or NATO. To be clear, the actual membership requirements for these lucrative international treaties are not minimal at all, and arguably explicitly liberal. But in any case, failure to satisfy the broad requirements for liberal legitimacy, and in particular failure to comply with human rights, has the potential consequence of exclusion or marginalization from the international system of cooperation. States that meet these requirements are required to respect each other’s sovereignty. They are not, however, required to respect the sovereignty of states that are non-members in the same way. Hence, states that do not respect human rights cannot be members, and may be vulnerable to military or non-military intervention and coercion.

So, human rights compliance is an essential part of liberal legitimacy in liberal accounts of global justice. The use of human rights to underpin the international social contract gives human rights a central normative function in these theories. Legitimacy or decency serves an important normative role in both defining a threshold of acceptable behaviour, and defining membership criteria.

Given this background, it becomes clear that the content of a human rights doctrine is a central normative question for liberal theories, and that the content of the doctrine of human rights will have ramifications for the scope of legitimacy and global cooperation. Both the stability-based argument against human rights inflation and the cosmopolitan argument against minimalism employ this connection between legitimacy and human rights. But for liberal theories adopting a practical role for human rights,
especially those employing a global social contract, the scope of the doctrine of human rights takes on a special significance. If human rights are narrowly construed, decency and legitimacy will have a wide scope, and the set of states or peoples counting as decent or legitimate will be a large set. Hence, the set of states or peoples with whom liberal peoples are eligible to cooperate will also be large. If, however, human rights have a broad scope, decency and legitimacy will be narrow, and relatively few states or peoples will gain the privileges of decency or legitimacy. The question for liberal international theory that seemed at first to be a simple choice determining the bounds of toleration becomes a foundational question once human rights are understood as practical imperatives. In the context of the internal liberal debate over cosmopolitanism and statism, and over individually defined global justice or state-centered global justice, explicit minimalism appears to be problematic.

When human rights minimalism is endorsed and the content of human rights is accordingly narrow, it is not clear that human rights are sufficiently robust imperatives to play the central normative role in a liberal theory of international relations. Furthermore, minimalism and basic rights include the minimum necessary conditions for life, but it is not clear that they protect a sufficiently liberal doctrine of justice. On a narrow conception of human rights, there is nearly universal condemnation of human rights violations, but limited critical force left for the doctrine of human rights, and hence for the concepts of legitimacy and membership.

The question takes on a particular character for a liberal theorist who endorses a practical conception of human rights, as I am arguing liberal statists do. The choice
becomes between liberal bias and intolerance, on the one hand, and a low threshold for legitimacy and standard of admission to the international social contract, on the other hand. The more the liberal theorist tries to avoid encountering the parochialism or bias objections by limiting the scope of human rights, the more that they must concede legitimacy to internally intolerant states. Ultimately, I argue that liberal theorists in particular ought to accept their inherent liberal bias, and work with a broader scope for human rights, rather than making concessions in terms of legitimacy. In particular, I claim that the role that ‘decency’ or legitimacy plays in defining liberal international relations commits liberal theorists to a broader scope for a liberal doctrine of human rights, and that statist therefore misunderstand the nature of the question facing them when they construe the question of the content of a human rights theory primarily in terms of universal assent.

One way that the argument from tolerance may seem to carry more weight than it deserves is if toleration of non-liberal comprehensive doctrines in the domestic case is interpreted to entail toleration of non-liberal forms of association in the international case. In both cases, tolerance of pluralism is important. More than one way of life is valuable, and liberalism requires a level of pluralism. But pluralism about ways of life does not necessarily entail pluralism about systems of state organization. And in this case, toleration of decent peoples as Rawls has defined it entails legitimation of illiberal states and practices. Both domestic and international liberalism are committed to

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individual autonomy, but individual autonomy frequently conflicts with unmitigated state sovereignty. Although the commitment to individual equality is supposed to be at stake between cosmopolitans and statists, Rawls’s own domestic starting point provides a reason to suggest that individual equality plays a role in both theories.

In the domestic case, liberal toleration is restricted for the purpose of protecting autonomy. My autonomy has limitations determined by the autonomy of others. I cannot sell myself into slavery, nor can I limit the autonomy of other people by committing assault or murder. And the same ideal of protecting autonomy is used to justify the explicitly liberal principles of free speech, freedom of association, due process, and even the right to subsistence in some cases. I can use my autonomy in a myriad of ways provided that others are free to do the same, and provided that my autonomy is consistent with equal autonomy for all.

The concern for the move to the international case is over the international analogue of autonomy. My suggestion is that there is no relevant analog, and that individual autonomy remains the relevant level of analysis as a result of the liberal statist’s underlying commitment to domestic liberalism. In this move, I might seem to side with the cosmopolitans. However, my claim remains sympathetic to liberal statism: I suggest that liberal statism’s commitment to an associationist argument for the state entails a non-minimalist commitment to human rights. If liberalism is committed to the state serving the interests of its members as the associationist argument claims, then individual interests and individual autonomy are still at stake in any examination of the legitimacy of the state. If state sovereignty in the international case is interpreted as
equivalent’ to individual autonomy in the domestic case, then states ought to be tolerated regardless of their internal effect on individuals. But to interpret toleration at the international level thus would be to imply that state sovereignty is intrinsically valuable, and would moreover leave individuals extremely vulnerable to state coercion.

This objection is one shared by Rawls’s cosmopolitan critics: Buchanan claims that moral minimalism rests on a false dichotomy between domestic and international realms\textsuperscript{162}. Tan worries that the analogy between domestic tolerance of comprehensive metaphysical views in political liberalism and global tolerance of decent peoples in the Law of Peoples cannot hold, because liberalism cannot tolerate illiberalism\textsuperscript{163}. Buchanan worries that moral minimalism rests on a claim that domestic justice requires a shared set of ends whereas the international realm cannot adopt a shared set of ends. I take the fact that Rawls places human rights constraints on sovereignty, membership, and legitimacy as evidence that he remains at least somewhat concerned about the effect of states on individuals even at the international level. If state sovereignty in the international case is interpreted as analogous to individual autonomy in the domestic case, then states ought to be tolerated regardless of their internal effect on individuals. But to interpret toleration at the international level in this way would be to imply that state sovereignty is intrinsically valuable. And given what he has said in his work on domestic justice, Rawls cannot make that claim.

\textsuperscript{162} Buchanan (2004)
\textsuperscript{163} Tan (2005) pp. 696.
Liberalism’s toleration of diverse ways of life does not entail that state sovereignty ought to be viewed as absolute under liberal internationalism. Instead, liberalism at both the international and domestic levels claims to value autonomous choices leading to diverse ways of life and diverse comprehensive views, so long as these are compatible with liberal values. Hence, liberalism is committed to toleration of diverse exercises of autonomy, not toleration of diverse exercises of sovereignty.

My objection to minimalism about human rights ultimately has two components: the lack of critical force for a minimal set of human rights, and the implied endorsement or legitimation of illiberal practices that follows on a practical account of human rights. The lack of critical force in a minimalist set of human rights undermines Ignatieff’s initial universalist argument in favour of minimalism: the argument from universal acceptance supports only a weak and uncritical notion of human rights that would not serve the purposes required on a practical account of human rights. Moreover, the arguments from priority and holism can actually lend support to a non-basic account of human rights, given that the urgency of the rights in no way prejudges the breadth of their content\textsuperscript{164}.

But for any theorist endorsing a practical account of human rights, the legitimizing force of endorsing a human rights doctrine with minimal content clarifies what is at stake in the strongest prudential and stability-based argument for minimalism. Limiting the content of the doctrine of human rights is significant for any theorist who implicitly or explicitly endorses a practical or functional approach to human rights. The general worry is that liberal internationalism will lose its normativity by weakening its

\textsuperscript{164} Such as that offered by Nussbaum (2000) and Nussbaum (2003) pp. 41-42
central critical tool. But for social contract accounts of global justice in particular, the
global social contract will have a low threshold for admission, and the benefits of social
cooperation will be widely shared. In that case, the global principles of justice will no
longer function as an incentive to change. In Rawls’s case, he argues that liberal peoples
will lead by example, and decent societies will find it desirable to become more liberal.\textsuperscript{165}

Yet, given that decent peoples are full members of the Society of Peoples under Rawls’s
scheme, it is not clear what incentive is left once human rights minimalism is endorsed.

The objection to minimalism continues by examining liberal commitments at the
domestic level, insofar as these are relevant to the international realm of justice. In this
way, the argument from toleration sits at the heart of the dispute between cosmopolitans
and statists: are individuals or states the appropriate unit of toleration? For liberal statists,
human rights are distinct from liberal domestic rights just as international justice is
distinct from domestic justice. For liberal cosmopolitans, human rights are part of the
extension of liberal domestic justice to the international realm, and liberal civil and
political rights, and perhaps social, economic, and cultural rights, are therefore included
in the content of a universal doctrine of human rights.

For statists, human rights must be limited to minimal content, because to do
otherwise would be to imperialistically and paternalistically impose Western liberal
values and violate the principle of toleration. For cosmopolitans, human rights are simply
international analogs to liberal domestic rights, and serve as the language of international
social justice. To the extent that any rights can be justified as constitutive of or necessary

\textsuperscript{165} Buchanan (2008)
for liberal domestic justice, they can be seen as universally valid. This expansive human rights content is absurd and unjustifiable according to the liberal statists, while the minimalist content for human rights adopted by the statist seems like a concession to unjust and illiberal states according to the cosmopolitan.

Recall that the requirement of tolerance partially rests on the prudential requirement for stability within the international system. This issue arises in part because liberal theorists fundamentally disagree with the realist position that moral reasoning in international relations will be fundamentally destabilizing. Yet the stability of the international system cannot rest solely on the question of content of human rights. For one, a large number of factors play a role in the coercive international actions of a state. The full range of just war considerations come into play against the possibility of a minor human rights violation successfully serving as a self-sufficient just cause for humanitarian intervention or war. And furthermore, even in the case of public condemnation, diplomatic protocol plays against the destabilizing effects of excessive use of human rights condemnation. So minimizing the content of human rights is not sufficient for international stability, and international stability can be maintained despite a maximalist or inflationist conception of human rights.

4.4 Conclusion

The central objection to Rawls’ adoption of a minimalist conception of human rights, made by Tesón and Tan in particular, is that he concedes legitimacy to too broad a range of peoples, at least in consideration of the fact that his theory remains a liberal
Rawls’s minimalist human rights move precludes everything from criticism to intervention or justified war, while going further and permitting foreign aid and treaty membership, with illiberal states. Tan notes that: “While nonliberal societies may find a strong cosmopolitan commitment an imposition, this is not an unreasonable imposition from the liberal point of view”\textsuperscript{167}. Regardless of how states exercise their sovereignty, it is an illiberal limitation on the autonomy of individuals that is a problem rather than illiberalism generally. Again, toleration of illiberalism per se would not be a problem except that Rawls’s theory entails that ‘toleration’ of illiberalism amounts to legitimation of illiberalism. This is a problem because the theory is paradigmatically a theory of liberal foreign policy. Rawls’s theory of human rights is meant to define decent peoples, and thereby grant such groups membership in a beneficial system of cooperation. As a result of their designation, decent peoples constitute legitimate trading partners for liberal states, legitimate recipients of foreign aid from liberal states, and legitimate members of the society of peoples. Humanitarian intervention is only justifiable as a corrective to human rights violations. Foreign aid is only granted to legitimate states, and even bilateral and multilateral treaties are usually signed between legitimate states playing by the rules of human rights.

My claim here is not that the bias objection should be ignored, or that tolerance is a mistaken ideal for liberals. Rather, I hope to have shown that broader content for the doctrine of human rights is reasonable on a liberal understanding of ‘reasonable’, and

\textsuperscript{167} Tan (2008) pp. 88 (emphasis originates with Tan).
moreover that broad legitimacy is itself objectionable for any account that explicitly or implicitly endorses a practical account of human rights. Although there is pressure on liberal states to avoid bias in their international relations and foreign policy, the question remains: which types of toleration is liberalism concerned with? That liberal theories connect the scope of legitimacy to the scope of human rights may be a reason to object to liberal ways of understanding international relations altogether, but I argue that it is also a reason to endorse a maximalist or non-minimalist scope for human rights and thereby allow the social cooperation or social contract-based international theory to maintain its cogency. Narrowing the scope of human rights and thereby conceding broad legitimacy deprives such theories of their primary mechanism for objecting to illiberal practices, and moreover of their justification for acting to improve the situation, and so seem to deprive liberal theories of even their coherence.

Although restricting the doctrine of human rights to a brief but weighty set of concerns may leave the set of human rights immune to objections of bias, the same restriction deprives human rights of the normative force that is required of a practical account of human rights. In particular, minimalist theories of human rights are insufficient to serve as the basis for criticism of objectionable and illiberal practices. Statist theories that use a minimalist doctrine of human rights lose critical force in precisely the cases they should be most concerned with. While this may not be a problem for other theories, this is clearly problematic for liberal theories of international relations. If only rights to bodily integrity ‘count’, as it were, then human right violations turn out to be rare, and widespread agreement about these rights follows. To many, the move
towards reducing human rights to ‘basic’ rights seems obvious and uncontroversial. In this chapter, however, I have argued that for liberal statists in particular, the move to basic human rights is a mistake, and that liberal statists in particular are faced with the choice of either accepting their inherent liberal bias on the one hand, or conceding legitimacy to state actions that should be of central concern to liberal statists.

Liberal theories have occasionally claimed to be neutral with respect to conceptions of the good, yet there is reason to be suspicious of this claim in the international context. For the liberal individual, the question of the good is a metaphysical question over which the polity tries to remain agnostic. But for the question of liberal international relations, the question of the collective good is a political question that liberalism necessarily takes a stance on. Insofar as one is committed to liberalism domestically, one ought to be committed to some form of liberalism internationally. In virtue of a commitment to a liberal theory of international relations, these theorists are therefore committed to a non-neutral account of the good that can stop short of the metaphysical, and moreover stop short of commitment to universal liberalism, while extending far beyond ‘minimal’ content for human rights. Accordingly, I have tried to argue here that liberal statist theorists such as those offered by Rawls and Ignatieff make a mistake when they advance only a minimalist doctrine of human rights in the context of international relations.

Cosmopolitans and statists are engaged in a liberal project together, identifiable in part by their treatment of human rights. Both groups will agree that human rights compliance is part of the minimum requirement for a state to achieve legitimacy for the
international realm. However, they disagree over the relationship between human rights and liberal domestic rights. For liberal statists, human rights are distinct from liberal domestic rights just as international justice is distinct from domestic justice. For liberal cosmopolitans, human rights are part of the extension of liberal domestic justice to the international realm, and liberal civil, political, social, economic, and even cultural rights are therefore included in the content of a universal doctrine of human rights. For statists, human rights seem as though they ought to be limited to minimal content, because to do otherwise would be to imperialistically and paternalistically impose Western liberal values and violate the principle of toleration. For cosmopolitans, human rights are simply international analogues to liberal domestic rights, and serve as the language of international social justice.

Yet, as I have argued here, the underlying commitment of both cosmopolitans and statists to liberalism domestically may have implications for the validity of the distinction the statist draws between domestic and international toleration. The cosmopolitan argues that to the extent that any rights can be justified as constitutive of or necessary for liberal domestic justice, the resulting principles are universally valid. This expansive human rights content seems absurd and unjustifiable according to the liberal statists, while the minimalist content for human rights adopted by the statist seems like a concession to unjust and illiberal states according to the cosmopolitan.

I have tried to show that statists, including Rawls despite his protestations to the contrary, are committed to a broader scope for human rights. The logic of the liberal statist position relies fundamentally on the justice of the domestic sphere, and despite
Rawls’s suggestion that human rights minimalism is necessary at the global level, I have argued that liberal statist commitments at the domestic level have implications for the international realm of justice. Rawls’s position internationally, I argue, is inconsistent with his position domestically if he limits the capacity for critique of illiberal practices internationally. And those statists who follow him in this regard find themselves committed to the same fallacious conclusion. The logic of liberal domestic justice carries over into the global realm, and as such the human rights commitments of even liberal statist theories of global justice ought to be interpreted as having a broad scope similar to that proposed by the cosmopolitans. I argue that human rights minimalism is unsustainable, and conflicts with liberal statist commitments elsewhere, and hence that liberal statism collapses into liberal cosmopolitanism with respect to the appropriate content for a liberal theory of human rights.
Chapter 5

Liberal Humanitarian Intervention

Humanitarian intervention is used as a central test for a liberal conception of international justice. As Jamieson explains, “humanitarian intervention directed toward the promotion of human rights has seemed to be the fullest expression of our duties to the distant”\textsuperscript{168}. Humanitarian intervention is also a controversial format that human rights enforcement might take: primarily, because it can potentially be in the form of war, but secondarily, because even when it does not constitute war, intervention necessarily violates the sovereignty and by-passes the self-determination of a state. Both of these objections to intervention are, I argue, defeasible, and so humanitarian intervention is occasionally justifiable. In the last two decades, a liberal consensus that humanitarian intervention is in principle justifiable has emerged\textsuperscript{169}. Rawls explains that violation of human rights by outlaw states is not to be tolerated, although human rights violations will only result in intervention in extreme cases\textsuperscript{170}. Cosmopolitans such as Kok-Chor Tan work hard to defend their position against the charge that cosmopolitanism is interventionist\textsuperscript{171}. Even Fernando Tesón, perhaps the most prominent cosmopolitan supporter of humanitarian intervention, denies that intervention is necessarily or always the appropriate liberal reaction to human rights violations\textsuperscript{172}. Theorists on both liberal

\textsuperscript{168} Jamieson (2005) pp. 163
\textsuperscript{169} See, e.g. Altman and Wellman (2008); Tesón (1997); Nardin and Williams (2006). For a dissenting view, see Chomsky (1999).
\textsuperscript{171} Tan (2005) pp.701; Tan (2008)
\textsuperscript{172} Tesón (2011) pp. 193
sides of the statist-cosmopolitan divide agree that humanitarian intervention is a last resort, and this chapter will explore their commitments with regards to humanitarian intervention.

For my purposes, the principle question concerning humanitarian intervention is whether liberal statism and liberal cosmopolitanism entail different positions regarding legitimate humanitarian intervention. Humanitarian intervention is a central application of a functional approach to human rights, and is at issue in liberal debates over how international justice, and human rights in particular, ought to be conceived. Given the differences and similarities between statist and cosmopolitan commitments regarding human rights, what will the implication be for the test case of humanitarian intervention?

Humanitarian intervention is of particular importance in the liberal challenge to realism. In particular, liberal discussions of humanitarian intervention test whether a liberal account of international relations can coherently make space for moral reasoning, and moreover for morally motivated action. Humanitarian intervention seems to be the practical application that leads Rawls to limit the scope of his account of human rights, as well as the action in international law that motivates cosmopolitans like Tesón and Tan in framing their accounts of international justice in opposition to realism. Importantly for my purposes, it appears to be a test case for practical and functional accounts, especially those offered by Beitz and Donnelly. Here, too, humanitarian intervention will serve as a test for the relationship between human rights content and the practices of human rights enforcement, and for their implication for statist and cosmopolitan forms of liberalism.

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This chapter will argue that humanitarian intervention is permissible on a liberal account of international justice. I will suggest that humanitarian intervention drives the practical approach to human rights, but that it need not be used as an excuse for human rights minimalism on the statist side of the debate. In particular, I argue that permitting humanitarian intervention as a response to human rights abuse while simultaneously broadening the scope of the content of human rights does not necessarily lead to a slippery slope problem for humanitarian intervention, and hence that this part of the statist argument for human rights minimalism fails. I will argue that when the full array of just war arguments for and against humanitarian intervention are taken into account, although cosmopolitans and statists may disagree about the occasions on which a right to non-intervention fails and a state ceases to be legitimate by international standards, cosmopolitan and statists accounts nonetheless virtually converge on the question of when humanitarian intervention is all things considered justified. And this convergence at the level of the practical implies that another putative division between liberal statists and liberal cosmopolitans is merely a superficial disagreement.

5.1 Just War Theory and the Liberal Argument for Humanitarian Intervention

For liberals concerned about international relations, humanitarian intervention is a moral exception to the general prohibition in international law and international convention of all forms of intervention in the domestic affairs of a state\textsuperscript{174}. The prohibition arises in order to maintain the stability of the international system, and in

\textsuperscript{174} See, e.g. Walzer (1977); Tesón (2005) pp. 193
particular in order to protect the sovereignty and self-determination of the state. The exception is made on the basis of humanitarian need, often defined in terms of human rights. Whether the intervention is undertaken as a requirement of law under Chapter VII of the UN Charter, or as a requirement of morality and a responsibility to protect, humanitarian intervention is put forward as a moral and legal exception to the rules in international law that explain sovereignty as inviolable\textsuperscript{175}.

Donnelly defines intervention generally as “coercive foreign involvement in the internal affairs of a state; violation, short of war, of a state’s sovereignty rights”\textsuperscript{176}. In the case of humanitarian intervention, this is “undertaken to halt, prevent or punish systematic and severe human rights violations or in response to humanitarian crises, such as famines or massive refugee flows”\textsuperscript{177}. Note that non-military forms of intervention in the domestic affairs of a sovereign state, such as direct distribution of food aid by a foreign agency, are sufficient to constitute an intervention and a violation of state sovereignty, and hence are included in the general prohibition on intervention. Humanitarian justifications for intervention are taken to constitute a possible exception to the general prohibition on intervention, and they arrive at this exceptional status in virtue of their moral character. That is, the humanitarian motivation or aim of intervention is essential to distinguishing possibly permissible humanitarian intervention from strictly impermissible non-humanitarian intervention, and the moral features of this exception are essential to understanding the distinction.

\textsuperscript{176} Donnelly (2002) pp. 93.
\textsuperscript{177} Donnelly (2002) pp. 94
The liberal argument for humanitarian intervention owes a lot to the framework of just war theory in that an intervention must have a just cause, be undertaken only as a last resort, be proportional to the situation, have a reasonable likelihood of success, and be consistent with the doctrine of double-effect. Although just war theory historically applied only to war, these criteria can also be used to justify the non-military forms of intervention that are relevant to any contemporary discussion of sovereignty and non-intervention.

First, if humanitarian intervention is ever justifiable, it must have a just cause. In general, in order to justify a humanitarian intervention, the question of just cause will rest primarily on the type and degree of human rights violation that is perceived to be either imminent or actually occurring prior to the intervention. This is the point on which the questions of the content of the doctrine of human rights and the permissibility of humanitarian intervention are taken to be tied together. In order for a human rights violation to constitute just cause for the violation of a state’s sovereignty, the human rights violation will have to be severe. Even the non-military violation of a state’s sovereignty will require a weighty humanitarian justification. The need for a weighty justification for the violation of a state’s sovereignty explains Ignatieff’s preference to limit the scope of human rights altogether, and Walzer’s limitation of humanitarian intervention to cases of genocide or massacre. In general, the just cause requirement for humanitarian intervention can only be met by pointing to the harm that would be stopped or avoided by intervention. But many feel that the bar justifying humanitarian

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178 Ignatieff (2004); Walzer (1977)
intervention must be set extremely high, since the harms of intervention are significant enough that full-scale military intervention cannot be justified as a solution to sporadic or minor human rights violations, and even the violation of a state’s self-determination is not a trivial matter. I will return to this point below.

An alternative framing for the question of just cause is available, and this is frequently invoked by liberal cosmopolitans who endorse a broader scope for human rights. The alternative framing focuses on the sovereignty and legitimacy of states. The argument posits that any state committing human rights violations against its own citizens, or any state that fails to protect its citizens from egregious human rights violations, has thereby forfeited its legitimacy as a state, and has furthermore forfeit any putative right to non-intervention, or right to sovereignty. Underlying this claim is a liberal definition of the purpose of the state: the state is an association whose purpose is to further the interests of its members. A state whose continued existence is not in the interests of its members has forfeit its right to sovereignty and non-intervention, although intervention does not necessarily follow from the fact that the state is not entitled to a right to non-intervention. Further just war requirements must be met. Even so, human rights violations do not automatically entail the permissibility or justifiability of intervention. Rather, human rights violations may undermine the justification for a principle of non-intervention without thereby constituting a justification for humanitarian

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179 Tesón (1997); Tesón (2011); Buchanan
180 This is Nagel’s view in Nagel (2005), but also Buchanan (2004) pp. 259.
intervention. Much more is needed in order to justify an intervention in anything but a
general sense.

Rawls’s position sits between the two, in that he distinguishes the idea of states
from his definition of peoples by denying that peoples as such have unmitigated
sovereignty to begin with, and furthermore denies that peoples are protected by a right of
non-intervention when they fail to meet their human rights obligations\textsuperscript{181}. Instead, he
argues that sovereignty as internal autonomy and a right to non-intervention are
privileges of membership in the society of peoples, and are tied to and limited by the
human rights pre-requisites for ‘decency’\textsuperscript{182}. Hence, his argument for individual cases of
humanitarian intervention follows the liberal pattern of resting on claims of state
legitimacy first and foremost, but also follows the just war pattern of resting on the
urgency of human rights claims.

Given the liberal commitment to human rights as global norms, the two
explanations of just cause are clearly related. The distinction is that the liberal pattern is
only available to those theories that are committed, on some level, to a liberal purpose for
the state: namely, that the state is an association for advancing the interests of its
members. The traditional just cause justification for intervention is available as a pure
response to humanitarian need across the board, regardless of any underlying claims of
state legitimacy. But note, too, that both patterns only provide an answer to the question

\textsuperscript{181} Rawls (1999) pp. 26, 81
\textsuperscript{182} Rawls (1999) pp. 81
of just cause, not just war as a whole. So, both patterns of justification rely on the remainder of just war theory to define permissible means and occasions of intervention.

Given the value of sovereignty and self-determination, just war theory requires that intervention and especially military intervention be undertaken only as a last resort, after diplomatic and non-interventionist options have been exhausted. In cases of immanent or ongoing human rights violations, this criterion is satisfied through the urgency of the situation. But the point requires that diplomatic and non-coercive methods of persuasion be tried first, if possible. Patterns of public criticism by world leaders, especially in international fora such as the UN Security Council and G20 meetings, thus serve the purpose of persuading a state to stop human rights abuse for the self-interested reason of preserving its reputation and diplomatic ties. This form of coercion can be acceptable even within a realist framing of international relations.

A third requirement of just war theory is that humanitarian intervention must be a proportional response to the situation. Tesón focuses on the doctrine of proportionality to suggest a threshold level of human rights violations below which humanitarian military intervention is impermissible and above which the question of intervention must be further investigated\textsuperscript{183}. Jeff McMahan argues that proportionality does more work in explaining what humanitarian aims and needs are sufficient justifications for humanitarian intervention\textsuperscript{184}. Other theorists define a narrow set of human rights as ‘basic’ or core rights, on the ground that states that violate these rights are undermining

\textsuperscript{183} Tesón (1997)  
\textsuperscript{184} McMahan (2005) pp. 3
their own right to sovereignty and non-intervention\textsuperscript{185}. The doctrine of proportionality requires that any humanitarian response be tailored to both the circumstances and the humanitarian need that justifies it. Some deaths might be justifiable in order to save lives, but large-scale loss of civilian life would be more difficult to justify in a context of less severe violations of human rights. The doctrine of proportionality also explains how non-military forms of coercive intervention can be justified as a response to lesser human rights violations.

Just war theory furthermore requires that any just war be undertaken only if it has a reasonable likelihood of success. Hence, the limitation on the use of humanitarian intervention does not end with human rights considerations. Specific conditions within the offending state may make humanitarian intervention unfeasible regardless of the strength or condition of the intervening force. Geography or climate, deserts, mountains, or dense jungle, or proximity to hostile allies can make intervention less likely to succeed, while military intervention in the affairs of a nuclear power would be fraught with danger, and extremely unlikely to be successful regardless of terrain or climate considerations. Too many simultaneous military engagements would over-extend any particular army, and would make humanitarian military engagement unlikely to be effective in attaining its humanitarian goals. Hence, an already over-extended army ought to refrain from further military interventions, humanitarian or otherwise. For these reasons, many agree that intervention should have a reasonable prospect of achieving its goals in order to be justifiable.

\textsuperscript{185} Walzer (1997); Rawls, Buchanan, Tesón
Finally, humanitarian intervention must be undertaken in a way that is consistent with the doctrine of double effect. The doctrine of double effect asserts the permissibility of bringing about the death of innocents as a foreseeable but unintended side effect to an intentional action, while maintaining the impermissibility of intending death or harm to innocents deliberately\textsuperscript{186}. Although the harmful consequences of intervention are foreseeable, they ought not to be part of the intention with which the intervention is undertaken. Instead, the targets of legitimate acts of humanitarian military intervention must be carefully considered, and must be justifiable as targets of a humanitarian intervention. Civilian targets are never justifiable as direct targets of humanitarian intervention, even if their deaths would be proportional to the harm avoided by intervention or would make success of the intervention more likely.

On a liberal reading of just war theory, then, intervention must still be decided on a case-by-case basis since no fixed threshold alone can determine the permissibility of humanitarian military intervention prior to holistic analysis of circumstances surrounding human rights violations. That is, just cause does not act independently of the other just war criteria\textsuperscript{187}.

The connection between human rights violations and the permissibility of humanitarian intervention is definitional. Whether intervention is only deemed permissible in exceptional cases such as genocide, as suggested by Michael Walzer, or obligatory and part of a duty to protect, as argued by Fernando Tesón, the positive case

\textsuperscript{186} Nagel (1972) pp. 130.
\textsuperscript{187} McMahan (2005) pp. 712-713
for intervention is always made in terms of human rights or human need\textsuperscript{188}. These theorists agree that humanitarian intervention is justified in part because of its humanitarian and human rights aim, and in part because the state intervened against has in some way forfeit its sovereignty and inviolability. Given the liberal reading of the requirements of just war theory, humanitarian intervention is at least justifiable in principle on a liberal account of international relations. Whether it is ever all-things-considered justified is another question, one whose answer is dependent on facts about the world, and about particular violations of human rights, not about general principles of intervention and just war.

5.2 The Practical Approach to Human Rights Revisited

In Chapters 2 and 3, I argued that liberal theories of international affairs are committed to a practical approach to human rights. This approach ties the rhetoric of human rights to practical implications for international affairs, including humanitarian intervention to stop egregious human rights abuse when necessary. It should, at this point, be fairly obvious how the practical approach to human rights applies to humanitarian intervention, but this section will make explicit how the practical approach to human rights applies to humanitarian intervention. In particular, I will explicate how the content of a practical approach to human rights is, and is not, tied to humanitarian intervention.

The Second World War brought about the introduction of the modern concepts of ‘human rights’ and ‘crimes against humanity’, both of which have ramifications for the

\textsuperscript{188} See: Walzer (1977); Tesón (1997)
justification of humanitarian military intervention. The language of the preamble to the UDHR and the emergence of the language of ‘crimes against humanity’ in the context of the Nuremberg trials are evidence of the deep connection between human rights and limitations on sovereignty. There are some things that states cannot legitimately do, but more importantly for the question of humanitarian intervention, these are limitations on what a state can be allowed to do. However, the introduction of human rights into international law alongside the persistence of the Westphalian system generates a tension. Under the Westphalian system, sovereignty is absolute and whosoever controls power within a territory can do with that power as they will. The origins of the principle of non-intervention lie here. Insofar as sovereignty is respected, the international system remains stable. However, the concepts of human rights and crimes against humanity together suggest that sovereignty has limitations and furthermore suggest that the international community will not tolerate widespread or institutional human rights abuse.

As Beitz has argued, modern human rights as practical imperatives emerged following the Second World War, but their use has exhibited an additional shift in the post-Cold War era\(^\text{189}\). Perhaps because the general stability of the international system has become more secure, states have been more willing to take action to protect human rights in the last two decades. Human rights are increasingly interpreted as pre-requisites of legitimacy, and furthermore generating obligations on the part of the international community. Modern human rights define the parameters of interactions between states, as

\(^{189}\) Beitz (2009) pp. 1
well as limitations on internal state actions. And this shift is especially visible in post-
Cold War liberal discussions of humanitarian intervention and international relations.

Rawls, for one, explains that human rights fulfillment is sufficient to preclude
justified intervention by other peoples. For Rawls, human rights both define ‘decency’
and determine the permissibility of military intervention. In this sense, human rights
explain the normative basis for membership in the system of cooperation as well as
interaction between members and non-members.

Other theorists follow in Rawls’s footsteps with respect to the normative role
played by human rights. Allen Buchanan draws a connection between self-determination
and state legitimacy, on the one hand, and making a credible effort to satisfy a threshold
of human rights protection, on the other. According to Buchanan, political power is
legitimate only if it makes a credible attempt to secure basic human rights. In
particular, state privileges such as the right to non-intervention and the right to make
treaties are contingent on legitimacy. Buchanan discusses how, “Humanitarian
intervention is often defined as infringement of a state’s sovereignty by an external agent
or agents for the sake of preventing human rights violations”. Here, human rights are
playing the central normative role in defining a state interaction as ‘humanitarian
intervention’.

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192 Buchanan (1999) pp. 71
Fernando Tesón takes human rights violations to entail the permissibility of military intervention\textsuperscript{193}. Tesón posits a duty to assist victims of injustice, and defines injustice in terms of human rights violations\textsuperscript{194}. Human rights violations undermine a state’s claim to legitimacy, and hence to sovereignty and non-intervention. States that fail to meet minimum human rights standards forfeit the privileges associated with sovereignty.

Finally, Michael Ignatieff suggests that humanitarian intervention may be, in some cases, the only way to enforce human rights norms\textsuperscript{195}. Ignatieff points to the practice in international relations of treating state sovereignty as conditional on human rights performance\textsuperscript{196}. In these ways, Ignatieff explicitly links human rights with the definition of legitimate humanitarian intervention, and points out that the principle of non-intervention is contingent on human rights norms.

These liberal theories, taken together, demonstrate humanitarian intervention to be a driving motivator behind the practical account of human rights. To the extent that a state, agency, or ‘people’ is ‘excluded’ from the international system of cooperation because of human rights violations, it can be excluded from lucrative treaty memberships such as NATO or the EU, may be denied foreign aid or assistance, and may lose the prima facie presumption of non-intervention. Yet this group of theorists converge on the

\textsuperscript{193} Tesón (1998) pp. 7, 16, 40
\textsuperscript{194} Tesón (2003) pp. 97
\textsuperscript{195} Ignatieff (2001) pp. 37
\textsuperscript{196} Ignatieff (2001) pp. 42
normative implications of one function of human rights in particular: namely, human rights as defining the permissibility of humanitarian intervention.

This focus on one particular practical use of human rights has been taken to have minimalist implications for the content of human rights. Where the only function of human rights under consideration is humanitarian intervention, the drive to minimize the use of humanitarian intervention entails minimal content for human rights for these theories. In the previous chapter, I argued that this drive to minimalism can be interrupted and a broader scope for human rights is supported by a practical approach to human rights. Linking human rights to their practical roles only justifies minimalism about human rights if functions and practice are narrowly construed as limited to humanitarian intervention. In this sense, functionalism and the practice-based account of human rights does not entail human rights minimalism.

5.3 Cosmopolitan and Statist Convergence

On the part of statists, a worry remains that cosmopolitans, in virtue of their inflationary but practical and functional commitment to human rights, may be over-committed to human rights enforcement. In particular, the worry is that cosmopolitans may face a slippery slope in the direction of too many interventions.

The response to this concern is simple: even granting that human rights violations and humanitarian need are necessary components of any case in favour of intervention,
they are not sufficient\textsuperscript{197}. A right to non-intervention may not protect a state that systematically violates human rights in the modern international system, but such a state is still not necessarily vulnerable to intervention because there are so many additional considerations relevant to any decision to intervene, and so many good reasons not to intervene. In addition to arguments in favour of non-intervention rooted in tradition and international law, the justifications for non-intervention include pragmatic and consequentialist considerations, and these justifications operate independently of any putative right to non-intervention. Any positive case for intervention made in terms of human rights must always be weighed against the case for non-intervention, which includes centuries of history of just and unjust wars. As Tan explains:

judging a regime to be illegitimate is still many steps away from the conclusion that the regime may be attacked. Cosmopolitan toleration provides a benchmark for legitimacy, but some account of just war (which a complete cosmopolitan theory must offer) is needed to provide the bridging premises towards the conclusion that intervention is required\textsuperscript{198}.

In this sense, the just war argument for humanitarian intervention stops the slippery slope to excessively permissive humanitarian intervention that minimalists are concerned with. The justification for humanitarian intervention makes necessary reference to human rights violations, but it is not clear that human rights content makes even implicit reference to humanitarian intervention. Any human rights violation that could serve the function of justifying humanitarian intervention could surely also serve the rhetorical function of critique, or the social contract function of exclusion. In this second sense, the

\textsuperscript{197} Altman and Wellman (2008) pp. 231.  
argument for minimalism fails because even the suggestion that only a narrow set of norms can justify humanitarian intervention does not limit the functions of human rights.

As Tan argues, a cosmopolitan account must rely on additional just war theory premises to justify humanitarian intervention. Tan explains:

Cosmopolitans can recognize that while many societies are lamentable and open to criticism for their failure to respect individual rights and liberties, intervention is not necessarily the best strategy for protecting these rights and liberties, or even a morally acceptable course of action (in the intervention would violate the moral limits of just war)\(^\text{199}\).

To this end, a variety of consequentialist and non-human rights reasons suggest that humanitarian intervention ought to be limited, even where egregious violations of human rights exist. The consequentialist and just war arguments against humanitarian intervention take into account a multitude of harms that inevitably accompany military engagement of any sort, including interference in the domestic affairs of a state. Military intervention predictably carries with it the possibility of deaths of both combatants and civilians, including members of both intervening and defending forces. Furthermore, war inevitably causes harms beyond physical injury to participants and bystanders on all sides of a conflict. Foreign intervention in general, whether military or otherwise, is likely to damage the ability of a state to view itself as sovereign, and hence compromise its ability to achieve self-determination. War, justified or otherwise, is a terrible thing, and it ought to be minimized. All of these considerations explain the strength of the sovereignty principle and the presumption of non-intervention in international relations, even in cases

\(^{199}\) Tan (2008) pp. 91
where non-intervention might not be thought of as an entitlement, and even in cases where human rights violations raise concerns that an international duty to protect might be in play.

So, given that further considerations will be at play in any decision to intervene, there is no reason to maintain that the content of a human rights doctrine must be limited by the scope of justifiable humanitarian intervention. Rather, the content of human rights can be expanded well beyond the justification for humanitarian intervention by its other functions – as justification for membership, for foreign aid, for trade relations, for critique. Accordingly, rights that could not plausibly justify intervention – rights such as education and health care, free speech and political participation – maintain their proper role within the realm of human rights within a revised and expanded functional approach, because these rights serve important justificatory purposes in international relations.

Ultimately, a broader scope for a doctrine of human rights is supported by the methodology of the practical approach to human rights, even though many liberal theorists have chosen to limit the scope of human rights in consideration of the practice of humanitarian intervention in particular. A more complex practical approach to human rights better explains existing norms of international relations than a minimalist approach to human rights, or so I have tried to argue here.

If humanitarian intervention is justifiable or permissible under a liberal account of global justice, it is because of overwhelming humanitarian need, defined in terms of
human rights violations. For Beitz, humanitarian intervention is a central example of the practical implications of human rights in international practice. To the extent that an international moral code exists, human rights are the language in which it is expressed, and humanitarian intervention is one of several forms that enforcement takes. The argument for humanitarian intervention generally occurs in two stages. First, the state is found to be illegitimate, or to have otherwise forfeit any putative right to non-intervention. Secondly, the moral criteria of jus ad bellum or just cause for war must have been satisfied.

In this sense, both liberal statist and liberal cosmopolitans potentially agree on the occasions of humanitarian intervention.

5.4 Conclusion

Humanitarian intervention drives the practical approach to human rights, but it need not be used as an excuse for human rights minimalism. Permitting humanitarian intervention as a response to a broad array of human rights abuse does not necessarily lead to a slippery slope problem for humanitarian intervention, and hence this part of the statist argument for human rights minimalism fails. When the full array of just war arguments for and against humanitarian intervention are taken into account, although cosmopolitans and statists may disagree about the occasions on which a right to non-

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202 Beitz (2009)
203 Tesón (2011) pp. 193
intervention fails, cosmopolitan and statist accounts nonetheless virtually converge on the
question of when humanitarian intervention is all things considered justified.

Ultimately, the two theories converge on many practical decisions regarding when
intervention is an appropriate solution, and what actions global justice requires. For one,
they both have recourse to further justifications for non-intervention and to the totality of
just war theory, even if they disagree about what constitutes just cause. Hence, neither
theory is committed to intervention whenever human rights are violated. However, the
difference between the state-focused perspective offered by statism and the individual-
focused perspective offered by cosmopolitanism remains salient in evaluating the
theories. The individualist-perspective of the cosmopolitan makes certain forms of
injustice more visible, even if the cosmopolitan is unable to bring about change in a
direction of justice. The injustices of forced marriages or illiteracy are much easier to
identify, although just as difficult to remedy, on a cosmopolitan theory. The injustice of
rendition and injustices committed in the name of disputed (non-state) territory are
particularly difficult to identify on a state-centered approach, even if they are exceptional
elements. The state-focused perspective makes it difficult to identify certain forms of
injustice, even though the enforcement mechanisms available to the statist may also be
better able to remedy injustice where it can be identified. Where a state can be identified
as the perpetrator of injustice, the statist system provides clear, practical directives about
how best to remedy the injustice.
Chapter 6

The Perspective of Justice

This chapter introduces a final worry about the epistemology of injustice, which I call the problem of perspective for a theory of global justice. The previous three chapters have argued that statists and cosmopolitans converge on several important points regarding the practical implications of their respective theories. They agree that humanitarian military intervention may occasionally be a permissible response to state perpetrated injustice, and that lesser injustices may warrant lesser violations of sovereignty. Statists and cosmopolitans furthermore agree that a full right to non-intervention and non-interference in global contexts requires a judgment that the state is internally legitimate, at the very least, or, in an ideal case, a judgment that the state is fully just. The practical implications of both formulations of liberal global justice are therefore heavily reliant on judgments about the justice or injustice of a practice, of a government, or of a state in its entirety. In a limited sense, they therefore face the same epistemic problem: how to make the determination of justice or injustice, and furthermore how to calculate the relative extent of injustice or illegitimacy.

Statists and cosmopolitans ultimately agree that the definition of justice on which these judgments rest should be defined in individual or human rights terms. A just state will be one that protects human rights within its borders, and an unjust or fully illegitimate state will lose its claim to non-interference. The ‘unjust’ and ‘illegitimate’ side in particular will require further scrutiny to determine whether intervention is required, feasible, or merely permissible. Yet they differ with respect to the epistemic
resources available for making such judgments, and are each burdened with epistemic barriers that make identification of injustice, and determination of the form of injustice, difficult.

The Rawlsian and statist perspective defines the state as the fundamental unit of analysis for questions of global justice, and therefore relies on the perspective of one state for evaluating the justice of any other state. Accordingly, the question of the internal justice of a state must be determined from a situated perspective outside the state in question. In particular, the question of the legitimacy of humanitarian intervention must be decided from an external vantage point.

The cosmopolitan account, in contrast, relies on a global or universal perspective to evaluate the internal justice of any state, but ultimately relies on the individual as the fundamental unit of analysis for any question of global justice. Hence, both the external, objective, ‘view from nowhere’ perspective, and an aggregation of individual, situated perspectives, are available to the cosmopolitan. Yet these perspectives offer their own epistemic challenges.

The worry that this chapter attempts to answer has an epistemic framing: which perspective or perspectives will best reveal the injustice of a state? I will argue that cosmopolitanism’s dual vantage point offers better epistemic resources from which to determine the form that injustice takes, but that statism offers a clearer account of the solutions available. Each of the three epistemic perspectives – the situated state perspective offered by statism, the cosmopolitan situated individual, and the
cosmopolitan universal view-from-nowhere – gives rise to its own set of advantages and challenges.

Moreover, this chapter argues that in the light of the epistemic problem of perspective, a statist theory of global justice can be revealed as worse for women and the marginalized than a cosmopolitan theory of global justice\(^{204}\). Within a liberal domestic theory of justice, the public/private distinction has been repeatedly shown to be bad for women and the marginalized because it creates a domain for injustice that becomes invisible to public policy and the law. I argue that state-centered theories of global justice, especially those that draw on a robust account of sovereignty, create an analogous space that is cut off from questions of global justice, and for this reason, I suggest that this way of framing questions of global justice is mistaken, and is bad for women in particular.

I will argue that just as the public/private distinction in liberal domestic justice leaves real cases of injustice outside the jurisdiction (and epistemic vision) of the law, the hard distinction between the domestic (state) sphere and the international realm of justice leaves real cases of injustice invisible to international law. In both cases, the domestic and private sphere is deemed invisible from a legal and political perspective, in one case in order to protect the autonomous choices of the individual, and in the other case in order to protect the sovereignty of the state. And in both cases, the net effect is to leave a significant space for injustice. For the question of global justice, the privileging of

\(^{204}\)Walker (2012) makes a related objection to cosmopolitanism.
sovereignty and non-intervention compromise the ability of the theory to achieve universal justice because it creates epistemic space for injustice to hide.

I will begin with a brief explanation of liberal multiculturalism, followed by an examination of Okin’s objection that multiculturalism is antithetical to fundamental liberal values. I will argue that Okin’s argument is, ultimately, an epistemic objection to multiculturalism given that intercultural judgments about injustice are difficult and fraught. The dialogue between Okin and Kymlicka is a particularly clear example of the epistemic barriers to uncovering conflict between women’s rights and cultural rights within a liberal context. Next, I will draw out the structural similarities between the liberal domestic question of culturally hidden injustice and the questions of hidden global injustice. Finally, I will explicate the epistemic lessons that can be drawn from a comparison between the two cases, focusing on how I conclude that liberal statism arrives at an epistemic impasse similar to the one Okin points out in liberal multiculturalism, while cosmopolitanism faces its own dilemma of dual perspectives.

6.1 Liberal multiculturalism and Okin’s objection

Liberalism values free, autonomous agency, and defines the fundamental equality of persons in relation to this value. While liberalism has been criticized for its reliance on an overly individualist conception of reason or agency\textsuperscript{205}, various liberal theorists over the last century have responded to these objections, and have endeavored to espouse a

\textsuperscript{205} Okin (2005); Taylor (1985)
liberalism that includes relationships of care, that understands personal development, and that better accounts for the complex interconnectedness of persons.206

In this spirit, Will Kymlicka argues for liberal multiculturalism on the basis that it provides individuals who are members of minority cultures with a basis of self-respect that is a pre-requisite for agency in a liberal society.207 Individuals in a liberal society require a context of choice in order to become autonomous agents, capable of making the decisions required of citizens. And liberalism requires citizens who, through this context of choice, achieve autonomous agency. For individuals who are members of majority cultures, this context of choice is easily reinforced through the state’s choice of languages and national holidays, through public education and in mass media.208 For individuals who are members of minority cultures, the context of choice can be more difficult to attain and the constant confrontation with a conflicting majority language, education system, media, and culture can be disempowering and disenfranchising. Accordingly, special exemptions and protections, ranging from self-determination to cultural exemptions, are needed in order to level the playing field. The concern remains that the context of choice be one that supports rather than limits autonomous choice. So, liberal multiculturalism suggests that only sufficiently liberal minority cultures ought to be granted group rights or other privileges of multiculturalism. The problem then becomes an epistemic one: how to determine which minority cultures are sufficiently liberal to warrant these protections.

207 Kymlicka (1995)
208 Kymlicka (1995) pp. 51, 111
Let me take a moment to reiterate that the liberal reason to support multiculturalism is the liberal desire that citizens in a liberal society become agents and decision makers. Liberalism hopes that citizens will participate in democratic processes, and function as agents in control of their own life choices. In its multicultural guise, this entails a fundamental liberal commitment that individuals be offered the background conditions needed to develop the capacity for agency, and hence the capacity to turn latent human agency into meaningful citizenship. Multicultural accommodations are intended to make the exercise of choice both plausible and meaningful. In their absence, the liberal state would be enabling decision-making in fora such as voting and deliberation, but would be systematically depriving some culturally defined yet marginalized groups of the ability to develop these decision-making capacities.

In arguing that multiculturalism is bad for women, Susan Moller Okin focuses on several important gendered features of culture in order to undermine Kymlicka’s liberal multicultural argument, and to demonstrate an epistemic weakness of intercultural theories of justice. First, she points out that cultures are often falsely perceived from the outside to be monolithic. Cultures, whether defined by a religion, a language, an ethnicity, or a common history, can exhibit variation along a variety of dimensions. For my purposes, it is important to point out that different members of a group may experience the same culture differently, in part because a variety of prescribed roles may be involved in membership. In a context of liberal multicultural accommodations, this

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209 Okin (1998). Her objection is further reaching than I give it credit for here, but I limit my discussion because only the epistemic component of the objection is relevant to my argument.
can have the harmful effect of obscuring inequalities and marginalizations within the culture, such as those experienced by women. Okin points to a myriad of examples where women are systematically marginalized, such as cases of polygamy, clitoridectomy, and purdah. The general point for my purpose is that the experience of group membership can be one of inequality within an already marginalized culture, and the inequalities may exhibit religious, racial, gendered, or other discriminatory patterns. This double marginalization may occur even where the group is outwardly liberal in its public interactions with other cultures. Moreover, culture can be unequal and can marginalize individuals, even when the culture is already marginalized within wider society.

Secondly, Okin points out that a significant proportion of multicultural protections occur within the private sphere, outside of the scrutiny of a public liberal culture. Given that so many cultures link women to work in the private sphere of reproductive and domestic labor, Okin points out that cultural responsibilities of language and religious transmission often fall primarily on women. Hence, protecting cultural practices is likely to place a further burden on women. At the same time, women’s exclusion from the public sphere can leave women shut out of decision-making or advocacy work regarding cultural rights. In this way, cultural rights can often have distinctly gendered effects, even if these are unintended. Protecting the group’s right to determine its internal governance can be bad for women where women are likely to be left with additional cultural responsibilities, and moreover where women’s traditional roles are likely to leave them without choice regarding these responsibilities.
Okin’s conclusion is that multiculturalism is bad for women. While Kymlicka would concede several of Okin’s epistemic objections since these are not devastating to Kymlicka’s project as a whole, there are several important lessons that can be drawn from Okin’s argument. Okin’s critique troubles both the public/private distinction and the liberal understanding of free choice, and these turn out to be objections to liberalism in general rather than liberal multiculturalism in particular.

First, the public/private distinction has been widely criticized for its potentially detrimental effect on the status of women, and this detrimental effect is not mitigated by the fact that it may occur in a context that aims for equality. Liberal theory and practice imply a distinction between the public sphere and the private sphere, such that the public sphere encompasses political and economic life, and these are protected by a constitution or constitutional practice. The private sphere includes family life, religious practice, and issues of love and care. The legal system applies to and bridges these two spheres, but in many respects remains more grounded in the public sphere alone. The familiar feminist critique of liberalism points out that the gendered division of labor has tended to fall along these lines, often leaving women with the greater proportion of the responsibility for unpaid reproductive and domestic labor, and thereby effectively excluding women from the public sphere while at the same time freeing men’s time to pursue paid labor in the public labor market.

Layered on top of the public/private distinction is the issue of free choice. Individuals are assumed to be capable of making free choices, and to exercise this choice both in the public and the private spheres. Yet a concern arises because decisions in the
public sphere are the subject of justice, but decisions within the private sphere are not\textsuperscript{210}. The public sphere is governed by collective agreement moderated by an ideal of collective good. The private sphere is governed by the ideal of individual pursuit of the good life, and by autonomous choice. The private sphere is deemed to be the realm of private decisions and personal preference, and is therefore protected regardless of the extent to which it is actually the result of choice, and irrespective of the extent to which such choices are fair or equitable. The private sphere is protected from state interference by such liberal ideals as freedom of choice, freedom of thought and freedom of conscience. As a result, choice of a marriage partner, many choices regarding styles of child rearing, and questions of religious affiliation remain unregulated as though they were necessarily and inherently the product of un-coerced and free decision-making.

Okin’s objection to liberal multiculturalism is just one of many examples of the ramifications of the public/private distinction. The many problems with this distinction can be found in the paradigms of gender roles in many societies, Western and non-Western, minority and majority. Given the gendered dimensions of the private sphere, state non-interference in domestic affairs on the basis that they are the product of individual choice makes it extremely difficult for the state to identify domestic violence and other oppression within the home as illiberal, illegitimate, or unjust. First, the state turns its blinders on and agrees not to peer into the internal workings of the domestic sphere on the basis that it is the product of free choice. Even on the most charitable reading of free choice, care ethics has taught liberalism to remember that we often

prioritize the preferences of those we love, and thereby complicate the assumption of
free, atomistic, individual preference.

And secondly, to the extent that the state agrees to regulate the internal workings
of the family or the private sphere, as an outsider, the state is left in a poor epistemic
position from which to judge the relationship between an individual’s preferences and her
choices, and hence the internal justice of the family or the private sphere. Perceived harm
within the family might turn out to be the product of individual choice, or individual
choice within the family might be another illusion that follows from the atomistic and
individualistic assumptions of liberalism. Once we examine the ways in which choice can
be perceived to be free at the same time as it is limited by oppressive contexts, the state
faces a dilemma regarding the extent to which it ought to limit free choice in order to
prevent real harm.

Now, liberal states have improved in this regard in the last few decades. Marital
rape has been recognized as a crime in many Western liberal democracies, and
criminalization and prosecution of domestic violence have become more common. The
state regularly reaches through the epistemic barrier of the illusion of the happy family in
order to protect abused children, and to punish those who would use religious and
cultural protections in order to hide crimes committed against individuals. In these and
other ways, liberalism has overcome its aversion to regulating the domestic and private
sphere, and moreover has taken these small steps to overcoming its assumption that the
internal workings of the family are necessarily the product of free choice. However, the
problem remains that liberal theory creates a tension with its own provisions for freedom
of conscience and freedom of religion when it interferes in domestic affairs. Liberal protections of the private sphere on the basis that it is the product of personal choice are at odds with liberal protections of freedom and equality and the very idea of choice, and prosecution of domestic violence is an excellent example of where the tension arises. Although liberalism ultimately aims at individual liberty and individual freedom, it has also come to recognize that individuals can be coerced by the people they love, and that the complex web of human interrelations has an effect on the context of choice. This internal tension in liberalism generally, and liberal multiculturalism in particular, has been made abundantly clear by feminist critics such as Okin. In this sense we can see how the public/private distinction, while putatively protecting individual choice in a liberal state, can also hide limitations on free choice and other real harms to individuals, especially in the private sphere.

6.2 Liberal statism and liberal cosmopolitanism

Next, I turn to what I see as an analogous objection in international affairs. According to statist accounts of global justice, states are valuable associations that further the interests of their members, and justice is an institutional virtue defined by success in this regard\textsuperscript{211}. In the absence of state sovereignty or non-interference, the state and the individuals that make up the state cannot adequately support democracy, civil liberties, equality of opportunity, and social justice generally. Liberal statists note that no global

\textsuperscript{211} Nagel (2005) pp. 120, 140; Sangiovanni (2008)
state exists, hence the space available for justice is finitely defined by the borders of just states.

This is in contrast with the cosmopolitan account that holds individuals to be the primary analytic unit of global justice\textsuperscript{212}. Recall that a key distinction is in the value afforded to the state and to sovereignty: a cosmopolitan can only argue that a state is instrumentally valuable to the pursuit of individual interests and rights. The state cannot be necessary for justice, nor can sovereignty and non-intervention be anything more than pragmatic principles. Justice, on this view, is defined in human and individual rights terms, and so the state can only be just if it furthers these individual interests. Note that for both statists and cosmopolitans, the definition of legitimacy for the state remains the same. The difference is in the necessity of the state in the pursuit of justice. For cosmopolitans, justice (merely) requires equality of individuals. Accordingly, institutions including states are only just to the extent that they help realize equality. A global state or individual states might be instrumentally justified in the pursuit of global justice, but in either case, global justice will be defined by the freedoms and capacities of individuals globally. Finally, notice that according to liberal cosmopolitanism, justice is universal. A cosmopolitan justice has a global range that includes all people, regardless of the internal makeup of the state they happen to find themselves in. This can contrast with statism, which views justice as merely ranging over just states, and hence not ranging over all states.

\textsuperscript{212} Pogge (1992)
The concern I want to highlight in this chapter is that the way the statist creates a space for justice can also result in the creation of a space for injustice. Positing statehood as necessary to the pursuit of justice gives internally unjust states an advantage. The analogy I draw with Okin’s multicultural argument is meant to suggest that privileging the state as an ideal is dangerous in precisely the way that privileging the family as an ideal is. In both cases, the paradigmatic ideal is the result of free and fair choices by individuals, and protecting these free and fair choices from external interference creates a social value that would not be attainable otherwise. Yet, in both cases the internal structure of the institution has the potential to be hierarchical, unequal, and therefore unjust in liberal terms. Worse still, the external perspective is unlikely to reveal the extent of violence, marginalization, or other internal forms of injustice. Herein lies the problem, which is essentially an objection to the epistemic privileging of the sovereign state.

The family can easily put on a public face of equality and harmony while concealing domestic inequality and internal violence, just as a state can easily put on a public diplomatic face of justice while persecuting its citizens. Yet both are protected by liberal policies of non-intervention: the state is expected not to interfere with the family’s internal makeup, and global institutions are expected not to interfere with the sovereign state’s internal makeup. In both cases, the justification for non-intervention assumes that the internal makeup of the family or state is already the product of a set of free and fair individual choices. This policy of toleration regardless of internal makeup is explained in part with reference to the value of association, and is furthermore how liberal statists have typically proceeded in their dealings with unjust states. But the analogy with the
family is revealing. The practice of non-interference in the internal affairs of the family has had a legacy of protecting domestic violence and child abuse. And non-interference in the internal affairs of the state has protected genocides and disappearances amongst a multitude of human rights violations and harms to individual freedom.

To return to the liberal options for international justice, neither liberal statism nor liberal cosmopolitanism aims to tolerate injustice. Both statists and cosmopolitans can differentiate just and unjust states, and both share a definition of just states relying on liberal terms. For both theories, a just state is defined as one that supports and pursues the interests of its members. Hence, for both statists and cosmopolitans, an unjust state will be one that thwarts its members’ interests. But since statists examine the realm of global justice as a society of states, they have limited epistemic resources with which to examine the internal justice of a foreign state.

Recall that Rawls takes toleration to be a fundamental component of global justice. Rawls argues, “it is surely, ceteris paribus, a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life”\(^{213}\). Toleration requires a high level of respect for these forms of association with a common public and civic life. Indeed, he argues:

> It is … part of a people’s being reasonable and rational that they are ready to offer to other peoples fair terms of political and social cooperation […] The criterion of reciprocity applies to the Law of Peoples in the same way it does to the principles of justice for a constitutional regime. This reasonable sense of due respect, willingly accorded to other reasonable peoples, is an essential element of the idea.

\(^{213}\) Rawls (2000) pp. 61
of peoples who are satisfied with the status quo for the right reasons\textsuperscript{214}.

For Rawls, provided that a society’s basic institutions satisfy the criteria for decency, fairness dictates that they should be accorded respect. And the point from a statist perspective like Rawls’s is that liberal and just are not identical. It is unfair to the members of a potential state association to deny that any non-liberal forms of association could ever meet the requirements of justice, especially given that according to the statist view non-association cannot qualify as just\textsuperscript{215}.

The problem that I am attempting to highlight, however, is a different one: even if there are non-liberal but nonetheless just states, the liberal statist has an epistemic disadvantage. From the statist perspective on global justice, judgments about the internal justice of a state are difficult if not impossible to achieve. Yet these judgments are constantly required in order to understand, and moreover implement, a liberal form of global justice.

So while both cosmopolitan and statist accounts object to internally unjust states, the statist model is saddled with a problem of perspective that is analogous to the feminist objection to liberal multiculturalism. The concern arises at the level of the epistemic, but the epistemic problem leaves the theory unable to affect needed change. The statist believes in toleration of states because of the possibility that they could be internally just. But through a policy of non-interference, the liberal statist makes it incredibly difficult to determine whether a given state actually meets the requirements of internal justice, and

\textsuperscript{214} Rawls (2000) pp. 35
hence leaves states in a position where they must err on the side of toleration of the intolerable.

A further complication, and one inspired by Okin’s objection to multiculturalism, is the potential for gendered effects to result from this form of blind tolerance. For both the liberal domestic case and the statist form of global justice, the injustice hidden by an insider/outsider bifurcation is more likely to affect women, children, and the otherwise marginalized. For reasons pointed out by Okin, the unequal status of women and children is often seen as particularly central to maintaining the value of culture. That is, women and the domestic sphere are often painted as the locus of culture, and culture is often interpreted in a conservative and static manner by those whose power is safeguarded by conservatism. As such, the liberalization and equality of women is seen as a particular affront to culture, in a way that the liberalization of men and boys is not. In the same way, I would suggest that global equality of women under a cosmopolitan framing can be perceived as an affront to the value and diversity of culture. Yet, from a woman’s perspective, the value and diversity of culture might be required to cede priority to women’s individual rights.

Significant arguments against the universality of human rights have come in the name of culture: the Asian values critique, the Islamic critique of human rights, and the African critique of human rights, to name a few. The Islamic critique of human rights in particular has disputed the equality of women and apostates, and has done so on conservative and cultural grounds. But any objection to free speech, equal political participation, and even democracy, such as the communitarian versions of the Asian
values and African values critiques of human rights, are likely to have the effect of hiding marginalization wherever it exists. And my suggestion, in drawing the analogy, is that women’s marginalization is particularly likely to be hidden by both liberal multiculturalism and liberal statism.

The idea of toleration and accommodation of difference is leveraged in both cases, and arguably to the same effect. Within the statist account of global justice, this privileging of state sovereignty is particularly bad for marginalized groups including women, just as the public/private distinction is particularly bad for women because significant yet predictable harms to women occur within the private sphere.

6.3 A Cosmopolitan Epistemology of Injustice

Lest liberal cosmopolitanism be seen to avoid this objection, liberal cosmopolitanism also faces a worry that it is at best unclear about its perspective on questions of global justice. Cosmopolitanism’s universalism and emphasis on individual human rights seems at times to require that questions of justice be settled from the perspective of a universal view from nowhere, and at other times to require individual perspectives, perhaps through democratic means, to take precedence. I will examine the epistemic value of these two perspectives in turn.

Injustice defined in liberal human rights terms seems to rely fundamentally on an individual perspective. But justice is not an individual virtue. Rather, justice is a virtue of collectives and associations, so a determination of justice cannot be made directly on the basis of an individual perspective. Some form of aggregation or systematic analysis is required in order for individual experiences to amount to knowledge of injustice. The
individual situated perspective on injustice therefore faces three problems. First, individual experiences of injustice face the problem of incommensurability. A holistic evaluation of injustice will require similar wrongs to be counted similarly, with the worst transgressions counting with the greatest gravity. But how are rape and torture to be compared? Is the systematic persecution of a very small minority group worse than random transgressions against an equally powerless but more numerous group? The incommensurability of human rights violations will amount to a problem for determining whether injustice within a particular state has passed a threshold that makes intervention permissible, or whether the state retains enough legitimacy to retain sovereignty rights.

The injustices with which global justice is concerned include such transgressions as genocide, summary justice, and systematic suppression of free speech. In order to count as ‘injustice’ in the sense relied upon by theorists of global justice, these transgressions must be systematic. The second problem, then, is that the individual victim of a human rights violation may be in a very weak position from which to view the systematic nature of these transgressions. To the extent that individual testimony is sufficient to demonstrate serious human rights transgressions against the individual, it may not be sufficient to demonstrate or even testify to full-blown ‘injustice’. Finally, the individual perspective faces many of the same intercultural communications barriers as statism. Once injustice is discovered from an individual perspective, and appropriately aggregated to demonstrate its systematic nature, the advocate of global justice must additionally overcome a linguistic and cultural barrier in her attempts to demonstrate that this transgression qualifies as an instance of the universal ‘injustice’. So, the specificity
of the individual perspective makes the systematic nature of injustice difficult to perceive, while also making it difficult to communicate even where it is visible.

The virtue of the individual perspective is, of course, that the individual by definition understands the value, or disvalue, of the practice in question to its participants. But here a different aggregation problem arises: who speaks on behalf of a practice? If there is disagreement over the value of a practice within a culture, typically cultural elites have spoken on behalf of a practice, and these have typically defended conservative interpretations of practices that define them as elite. Hence, dissenting voices offer an important perspective on practices that they feel are unjust. But are all dissenting views to be taken at par? How much dissent is required to define a practice as unjust?

The alternative perspective available to the cosmopolitan is a ‘universal’ perspective, sometimes objected to by labeling it a ‘view from nowhere’. One problem with this perspective on injustice is its abstract impersonal nature, while a second problem is its outsider perspective on cultural matters. It remains difficult from the universal outsider perspective to understand the value of a practice to its participants, which is the insight offered by the statist definition of justice as association.

If a universal perspective is required, then it may face the same epistemic barriers as the outsider perspective of statism. Or, inasmuch as cosmopolitanism relies on situated individual perspectives, it overcomes one epistemic barrier only to face an objection arising from incommensurability. So, although my focus in this chapter has been on an epistemic burden faced by statist accounts of global justice, the question of perspective for global justice will be a complex one even if we reject statist accounts. The solution for
the cosmopolitan seems to be mediation between individual situated perspectives and universal aggregations. And this does indeed seem to amount to an advantage of cosmopolitan epistemology over statist epistemology.

6.4 Conclusion

Within a liberal domestic theory of justice, the public/private distinction has been repeatedly shown to be bad for women because it creates a domain for injustice that becomes invisible to public policy and the law. I have argued that state-centered theories of global justice, especially those that draw on a robust account of sovereignty, create an analogous space that is cut off from questions of global justice.

Just as the public/private distinction in liberal domestic justice leaves real cases of injustice outside the jurisdiction (and vision) of the law, the hard distinction between the domestic (state) sphere and the international realm of justice leaves real cases of injustice under the guise of sovereignty invisible to international law. In both cases, the domestic and private sphere is deemed invisible from a legal and political perspective, in one case in order to protect the autonomous choices of the individual, and in the other case in order to protect the sovereignty of the state. And in both cases, the net effect is to leave a significant space for injustice to remain hidden. Within the state, this privileging of sovereignty is particularly bad for marginalized groups including women, just as the public/private distinction is particularly bad for women because women are more likely to be marginalized within the family. The privileging of sovereignty and non-intervention thus compromises the ability of statist theories to fully achieve the equality required of
global justice. For these reasons, this chapter concludes that the statist account of global justice has a serious epistemic weakness.

Cosmopolitans, on the other hand, may inherit a level of indeterminacy from their dual reliance on a view from nowhere and an individual perspective aggregated, but they are therefore privileged in their ability to mediate between insider and outsider perspectives. Statists, and cosmopolitans when they rely on a universal perspective, are explicitly tied to an outsider perspective, and this gives rise to the epistemic problem.

While both liberal statist and liberal cosmopolitan accounts of global justice may have difficulty making the determination of whether a particular state is just and hence entitled to a principle of non-intervention, statist accounts in particular are burdened with a specific and explicit perspective from which to make such decisions. Cosmopolitans on the other hand, are burdened with a choice of epistemically weak perspectives from which to make the same determination. The worry, then, is that statism and cosmopolitanism in their universal guises will both be vulnerable to errors that arise in virtue of an explicit outsider perspective. Statism will have the advantage that it offers an explicit national interest, but this advantage will be undermined by its difficulty in making international, inter-cultural determinations of what constitutes injustice. And cosmopolitanism in its situated individual perspective will lose any perspectival advantage through the requirement of aggregation. Both liberal statist and liberal cosmopolitan theories explicitly require states to make frequent practical judgments about whether a foreign state is legitimate, and, hence, whether worthy of trade, aid, or non-interference.
And it is this practical judgment requirement that entails that any epistemic barriers to judgments of injustice – and I have argued that these arise for both liberal theories – will undermine both the feasibility and the justifiability of human rights enforcement. Feasibility will be undermined for both statists and cosmopolitans because it may become impossible to determine when a particular state or set of institutions has crossed a threshold into unjust practices. And the justifiability of human rights enforcement will be undermined because of a persistent worry that the wrong reasons are ultimately holding too much weight. For cosmopolitans, the appropriate epistemic perspective from which to determine the justice or injustice of a state may be one of two equally abstract perspectives: either a ‘view from nowhere’ or an aggregation of situated individual perspectives. And statists may, indeed, have to adopt this cosmopolitan insight in order to overcome their epistemic barrier. The worry ultimately remains that liberal theories of global justice require judgments of justice and injustice, but remain saddled with epistemic barriers that prevent them from making these judgments.

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Chapter 7
Concluding Remarks

In the preceding chapters, I have argued that liberal statists misidentify their own commitments regarding human rights, and that once these implications are drawn out, many statist and cosmopolitan theories of global justice converge on several of their central positions. Although statists and cosmopolitans differ in their methodologies, emphasis, and some logical commitments of their respective positions, I have argued that they are nonetheless committed to many of the same positions about practices in the sphere of global justice. They share elements of a logical structure, based in liberal domestic principles, which commits them to similar practical implications. But they differ in their analytic priorities, and hence in the ease with which they arrive at many of their insights. They furthermore differ in the epistemic ease with which they arrive at their insights. Despite Rawls’s denial of the desirability or feasibility of cosmopolitanism, he shares many practical commitments with cosmopolitans such as Tesón, Beitz, Buchanan, Tan and Caney. Their shared liberal egalitarian positions on questions of domestic theory, along with similar foundational premises, result in convergence on what they take to be the central questions of global justice, and moreover on their answers to these central questions.

In particular, I have argued that both liberal statism and liberal cosmopolitanism, in many of their forms, endorse a practical approach to human rights that links human rights compliance with such practical global justice privileges as non-intervention, humanitarian aid, treaty relations, and even tolerance. The latter practical link between
human rights and tolerance significantly undermines the human rights minimalism espoused by Rawls, Ignatieff, and Kelly. For this reason, to the extent that statists commit themselves to a practical approach to human rights, and in virtue of this commitment, statism and cosmopolitanism share commitments to a broad scope for the doctrine of human rights.

Liberals discussing the global sphere, including Rawls, the liberal cosmopolitans, and the liberal statists, hold human rights to play a fundamental normative role. For liberal cosmopolitans, this fundamental role follows easily from a premise of the universal moral equality of individuals. Human rights provide content to the idea that individuals are equal, thereby elaborating on the fundamental equality underlying cosmopolitanism. Cosmopolitans such as Tan suggest that the liberal justification for valuing individual equality domestically has social, economic, and institutional implications at the global level, too\(^{217}\). Caney argues that the standard liberal justification for civil, political, and economic rights entail that these rights are human rights in the sense that they attach to interests that all human beings have\(^{218}\). In both cases, the argument for cosmopolitan global justice starts with an analysis of liberal domestic principles of justice and of what is owed to individuals as a matter of justice.

Many of the liberal cosmopolitans discussed here explicitly rely on Rawls’s *Theory of Justice* and *Political Liberalism* as a starting point, and although these theories diverge from Rawls’s own international theory of justice in *The Law of Peoples*, they

\(^{217}\) Tan (2004) pp. 4; 68-9;
nonetheless take themselves to be proposing ‘Rawlsian’ theories of global justice. Although strong disagreements arise between statism and cosmopolitanism over the content of a liberal theory of global justice, statists and cosmopolitans are more closely allied than many statists accept. And they turn out to be allied on the issues that liberal theories take to be central issues of global justice: fundamental rights, and the legitimacy of enforcement of those fundamental rights. Their shared genealogy provides a partial explanation for their convergence, but I have provided further explication of how the shared practical commitments emerge despite differences in analytic priority and theoretical commitments. Convergence on a liberal theory of international relations between Rawls and cosmopolitanism is evident: once Rawls’s theory is made internally consistent, convergence on the central questions of the scope of human rights, the appropriate use of humanitarian intervention, and the question of legitimacy for international relations follows.

This convergence, I argue, emerges as a result of shifting the focus away from the distributive commitments of cosmopolitan and statist forms of liberal global justice, and focusing instead on the fundamental rights commitments of each theory from the outset. Whereas commitments for and against global redistribution seem to drive cosmopolitanism and statism further apart, convergence regarding the appropriate scope of human rights brings these opposing liberal accounts of global justice closer together, and allows a way to move forward out of a seemingly intractable impasse.

Liberalism values autonomy, choice, and self-determination because these represent part of what liberalism takes to be valuable in humanity. Accordingly, when
cosmopolitans want to promote and protect equality, they also want to promote and protect expressions of autonomy, choice, and self-determination, along with the pre- and co-requisites for autonomous choice. In liberal cosmopolitan theories of global justice, this is expressed using the language of human rights. These human rights are then used to explain and justify restrictions and imperatives on the use of international force and coercion, and to specify the domestic and foreign obligations of the state.

For liberal statists, human rights enter the equation where the boundaries and parameters of the international social contract need to be given content, and they similarly have implications for the use of force and coercion. They define legitimacy and entail state rights such as non-intervention. Human rights compliance is required as a pre-requisite for membership, or at least membership in good standing, in any international social contract or international system of cooperation. Thus, human rights serve the practical purpose of defining the scope of legitimacy for liberal statism. A liberal account of human rights expresses limits on the legitimate internal sovereignty of states, and hence defines the parameters for admission to a liberal society of states. The scope of the global social contract, and the state privileges and responsibilities implied by it, turn out to be more limited than the universal scope of cosmopolitanism because liberal legitimacy is not universal. Human rights compliance thus defines the parameters of global responsibility under both liberal forms of global justice.

Although differences remain, the ultimate distinction between cosmopolitanism and statism turns out to be epistemic. A statist theory’s ability to identify injustice, and hence its ability to discharge acknowledged duties to remedy injustice, is much more
limited than the cosmopolitan’s. And yet, each also retains a justificatory advantage arising out of its analytic priorities. Statism, given that it is framed as a foreign policy for a liberal state, retains an account of domestic interests that will factor in to global justice deliberations. And cosmopolitanism, given that it is focused on individual interests, retains a clear metric for making such judgments. Their divergence regards the ease with which these factors in the deliberative process can be used to arrive at conclusions. Yet their convergence on the important human rights questions entails that they can remain in dialogue, and this ongoing dialogue offers the possibility of limited resolutions to some portion of their disagreement. The logic of liberal domestic justice carries over into the global realm, and as such the commitments of liberal statist theories of global justice are to a broad and liberal scope for human rights similar to, although slightly narrower than, that proposed by the cosmopolitans.

Furthermore, once convergence on the practical account of human rights, and on the content of that account of human rights, are in place, the insight of a broad account of the content of human rights has broader implications for the content of a liberal theory of global distributive justice. My final remarks, therefore, will suggest that liberal convergence on the practical questions of human rights and the bounds of toleration can be fruitfully used to shed light on the questions of global distributive justice.

The global interactions whose legitimacy is defined with reference to human rights norms include, of course, humanitarian intervention, toleration, and, I have emphasized, appropriate norms of critique. But the international practices associated with human rights violations also include such economic sanctions as trade embargoes and
expulsion from international forms of cooperation. Consider, for example, Apartheid era
South Africa’s expulsion from the Commonwealth and exclusion from international
sports competition. Or, consider the ongoing international economic and trade sanctions
against North Korea. And, similarly, human rights compliance has frequently been a
prerequisite for entry into free trade agreements, or, more commonly, a prerequisite for
eligibility for humanitarian aid. In these ways, human rights compliance has become tied
to the redistributive practice of humanitarian aid, and, through some multilateral free
trade agreements such as the European Union’s common market, to the redistributive
effects of open free markets. None of this suggests that the full obligations of global
cosmopolitan redistribution is implicitly endorsed in contemporary practice. Rather, it is
to suggest that many contemporary redistributive and market practices are explicitly tied
to human rights prerequisites.

I have argued that cosmopolitan and statist liberal theories of human rights
exhibit a level of convergence in their scope. That is, statists cannot consistently
subscribe to only a minimalist content for their doctrine of human rights, but must
broaden the scope in the direction of cosmopolitan doctrines of human rights. My
suggestion, then, is that as the scope of the appropriate content of the doctrine of human
rights for statist and cosmopolitan theories of global justice converges, this will also
entail convergence on the question of the appropriate occasions for humanitarian aid and
the duty to assist. Hence, commitment to an imperfect and voluntary but nonetheless
significant form of redistribution can be seen to follow from refocusing the debate on its
human rights implications.
Ultimately, despite the important distinctions between cosmopolitans and statists of international relations, I find that we are left with convergence on a liberal position regarding the practical implications of global justice. Both groups begin with similar premises – the liberal values of freedom, equality, and autonomy. Their shared starting point, moreover, is an egalitarian liberal domestic theory. Their methodologies and arguments take them along distinct routes, where their focus and emphasis differs. Statists are more concerned with an international norm of legitimacy than justice, whereas cosmopolitans remain focused on an ultimate goal of global or universal justice, which might still require mere legitimacy in the non-ideal situation of the world we live in. Yet both theories arrive at what we can label a ‘liberal’ theory of global justice. They are furthermore committed to a liberal justification for the state as only instrumentally valuable\textsuperscript{219}. Humanitarian aid and institutional reform are liberal duties, whether or not redistribution per se is a requirement of global justice. Human rights define the permissibility and priority of humanitarian intervention, although intervention is nonetheless to be minimized. And states, as institutional means of protecting individual interests, are both desirable and unavoidable.

There remain deep divisions between cosmopolitans and liberal statists about global justice, for example regarding the question of the level at which questions of global justice ought to be answered. For cosmopolitans, with their unequivocal individualism, the questions of global justice are questions about justice for individuals. The value of autonomy for individuals is universal, hence the question of justice is a

\textsuperscript{219} e.g. Tesö\textsuperscript{n} (1998)
question of how best to frame international institutions to take account of this fundamental equality. For statists, the questions of global justice are questions of global internationalism. Given the fact that states have varying degrees of justice and legitimacy domestically, how ought the international system be designed so as to at least achieve legitimacy, if not also justice? For statists, then, institutional reform may be a priority, and also the focus of a theory of global justice.

I have not tried in this thesis to defend the superiority of one approach over the other, or to develop a hybrid approach that combines the best of both approaches. I do not believe that any one approach to global justice can ever capture the full range of considerations that are morally salient, nor that it can ever fully endorse both individualist and state-centered perspectives simultaneously. Hence, I believe that we will need to draw upon diverse interpretations of the liberal tradition, and indeed on non-liberal traditions, in order to achieve the global justice to which both statist and cosmopolitan liberal theories aspire. My aim therefore has not been to endorse one account while dismissing all others, but rather to come up with a more balanced picture of the points of convergence and divergence between the two most influential strands of contemporary liberal global justice theory – a picture which has been distorted by the almost exclusive focus to date on the issue of distributive justice as the central point of contention.

Liberalism is, and has, a theory of the state: the state must be in the interests of individuals in order to be justified by liberal standards. For liberal theories of global justice, human rights are the language in which this commitment is expressed. And I have
argued here, that human rights, once properly understood as a fundamental question for a theory of global justice, can have far reaching theoretical and practical implications.
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