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ARTICLES

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Left Libertarianism and the Ownership of Natural Resources

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Abstract. In this paper I develop a natural resource based account of just redistribution. First, I show how rights to natural resources derive their singular importance from conditions rights have to meet. Then, I turn to the problem of self-ownership and defend a natural resources based solution against the view that we should state by moral fiat that everyone just *is* a self-owner. After discussing why my solution is a unifying handle on diverse intuitions we have about differential abilities and the fair distribution of their results, I conclude that our just rights to natural resources entitle each of us to an unconditional initial capital grant (not as a basic *positive* right). In the end I criticise Rawls' classification of abilities and disabilities as products of circumstance and list some pre-theoretical intuitions my account succeeds in sustaining.

Key words: resource, ownership, rights, redistribution, abilities, libertarianism.

To start off: Why should libertarians be bothered about, specifically, rights to natural resources? Why single out *these* entitlements, rather than looking at property rights in general and asking how *any* of them can be justified, if they can be justified at all? After all, the domain of distributive justice - of moral rights - includes much more than merely rights to natural resources. Natural resource rights are only a subset of moral property rights. And it has to be acknowledged that, for most people interested in problems of distributive justice, questions about the nature and location of rights specifically to natural resources are still not seen as being of any singular importance.

So I'm going to devote the first part of this paper to saying why I think they *are* of singular importance. That is, I'll try to set out the conditions under which their special importance emerges more clearly. I won't, however, spend a lot of time justifying or explaining these conditions and shall, instead, supply references to where I've done this elsewhere at some length.

One obvious condition for according singular importance to natural resource rights is that, like Locke, we see them as having a special generative or foundational relation to other moral property rights. Property rights to other things are, in some sense, *derived* from natural resource rights and their justifiability is therefore seen as at least partly predicated on the justifiability of natural resource rights.

Another, logically anterior condition is that we see property rights, in general, as libertarians standardly see them: that is, as being parametric for any other rights and liberties people can have. Here I'm alluding to the idea that any coherent set of rights and liberties needs to satisfy the requirement of *compossibility* – a requirement that the various correlative duties entailed by any such set of rights must all be jointly performable[1] and none can

1] Or jointly redressable, in the case of duties which have been breached.

be mutually obstructive. This implies that these duties must be the correlative entailments of mutually differentiatable claims: that their respective compliances must take place within non-intersecting portions of action-space. And there are good reasons for holding that only action-spaces whose descriptions are, or are reducible to, references to things can be mutually differentiated in the requisite way. In a compossible set of rights, all rights are *funded*: that is, the sets of items respectively required for compliance with each of their entailed duties are specifiably distinct from one another. Rights to actions (performances or forbearances) which can be described only in irreducibly intensional terms - in terms of their purposes or intended consequences - lack the requisite mutual differentiatability. They are ones which can be incompossible and, hence, the principle implying them needs to be modified in order to eliminate the contradictions they would otherwise generate.[2]

Finally, a still more anterior condition is that we understand the concept of rights along the lines proposed by the Will or Choice Theory of rights. That is, that rights are things whose correlative duties are *controllable* - permissibly waivable or enforcible – solely at the discretion of their holders. On this account, a necessary and sufficient condition of being the holder of a Hohfeldian claim-right (or immunity) is being vested with the powers to waive and, alternatively, demand/enforce compliance with that claim's correlative duty (or disability). Since property rights are standardly like this anyway, I won't here try to mount any general defence of the Will or Choice Theory.[3]

Granted these three conditions, we pretty much have the basis of the case for the salience of natural resource rights. In fact, the last two conditions strongly point to the first. That is, if coherent sets of rights just are (or are reducible to) sets of property rights, and if their correlative duties are controllable by rights-holders, then, since all *non*-natural (i.e. made) things are immediately or ultimately derived from natural resources, the validity of any *rights* to those made things inescapably depends on the validity of the rights to their natural antecedents - since those made things can only have come about precisely through various permissible or impermissible uses of those natural resources and of the things successively created by those uses.

Justified titles to made things therefore have *pedigrees* exhibiting two key features: (i) they consist in a series of previous justified titles to those things or their component factors; and (ii) they thereby originate in justified titles to natural resources. Or to put it only slightly more concisely, *nothing gets made from nothing*. All made things have natural

2] Incompossibility is what often underlies the complaints of many libertarians (and others), when they deplore the "rights explosion" implicit in many policy proposals and the theories offered in justification of them; cf. Nozick 1974, 238; also Sumner 1987, 1-8. On the nature and conditions of rights-compossibility, see Steiner 1994, ch. 3(C, D); Steiner et al. 1998, 262-274.

3] An elaboration and defence of the Will or Choice Theory is to be found in Steiner 1994, ch. 3(A) and Steiner et al. 1998, 233-301. The rival Interest or Benefit Theory, in regarding possession of such duty-control as neither necessary nor sufficient for having a right, is incompatible with libertarianism inasmuch as it thereby underwrites the possibility of right-holders' rights being exercised paternalistically (i.e. by others) on their behalf.

resources as ancestors. And hence rights to those made things can be no more valid than the titles to each of their ancestors, in roughly the same sense that Elizabeth's title to the throne of England depends on those of William the Conqueror and his predecessors.

But, of course, natural resources can't be the *only* ancestors of made things which, *ipso facto*, must also include various bits of labour among their ancestors. Labour is the stuff that does the making. Since the justified ownership of made things depends on pedigrees, it depends on the justified ownership of that labour as well as of natural resources. So, to whom does that labour justifiably belong? I think there are good reasons for holding, and libertarians *do* hold, that justice vests all persons with the titles to any labour which they haven't contracted away to others. And it does this on the basis that each person is what has come to be called a self-owner', the owner-occupier of his/her body. This premiss seems to be the clearest basis - and perhaps the only one - for explaining our fairly fixed conviction that the titles to things made from the labour of slaves are not justifiably vested in slave-owners. And, by a complex extension of this argument, things made from exploited labour don't morally belong to exploiters.

At this point, we need to take a detour into what has seemed to many to be a serious problem besetting this idea of self-ownership and, hence, the labour ownership that's said to derive from it. The problem is worth the detour, I think, because its appropriate resolution has important implications for our understanding not only of natural resource rights, but also of several other seemingly unrelated issues lying very much at the heart of arguments about distributive justice. This problem arises from the fact that *persons themselves* are clearly products of other persons' labour. Regardless of the circumstances of our conception and gestation - whether by conventional means or in some clinical test-tube - other persons were evidently hard at work in operating these processes. It is, I take it, a conceptual truth that *owners cannot be owned*. How, then, can the ownership of our selves - as made things - be permissibly vested in us and not in our makers? [4]

Students of the history of political thought will know that the answer given by Locke's contemporary adversary, the royalist Sir Robert Filmer, is, simply and boldly, that it *can't*. On the basis of the very libertarian principle we've been exploring - that made things belong to the owners of the labour that makes them, or to whomever they choose to transfer that ownership to - Filmer argued that, as the Bible suggests, God the maker transferred human species ownership to Adam, from whom that title legitimately descends, primogenitally and patriarchally, to some current person who, as the only self-owner in town, is a rightful absolute monarch.

Now the difficulty here is that, even if we set aside Filmer's historical, theological and sexist premisses, we appear still to be left with the question of how *we* - as made things - can own ourselves and our labour. Why aren't we owned by our makers or by whoever owns them? My proposed solution to this problem relies on the claim that, notwithstand-

4] I address this "paradox of universal self-ownership" in Steiner 1994, ch. 7(B).

ing the fact that labour - usually considerable labour - is involved in making us, it's not the *only* kind of production factor involved.

Again, nothing can be made from nothing. And in this particular case, the labour required has to be applied to - or in Locke's terminology, "mixed with" - a lot of other stuff, including germ-line genetic information. That appropriated genetic information, I want to suggest, is a *natural resource* because, as Darwin and Dawkins tell us, it's been transmitted from creatures who were neither persons nor made things.[5] So although Adam and Eve, as primordial moral agents, might truthfully claim that they made their children, they have to acknowledge that one of the factors used in that manufacturing process was made neither by them nor by any other person. Accordingly, their rights over those children cannot be derived *exclusively* from rights to self-ownership and to labour. Their rights over those children must partly depend upon - and can be restricted by - whatever rule applies to the ownership of natural resources.[6] And cutting a long story short, I suggest that one element of that restriction can be the standard limitation on the *duration* of parental rights over their children: namely, that those rights expire upon their children's attainment of adulthood or moral agency, which is a necessary condition of being an owner (including a self-owner).

Now my guess is that many libertarians (and others) will think that this solution to the universal self-ownership problem looks a bit like using a sledgehammer to crack a nut. Why not simply lay it down and declare by moral fiat, so to speak, that everyone just *is* a self-owner? What I'd like to suggest, however, is (i) that this is an unsatisfactory way of proceeding within the terms of the larger argument we're considering and, further, (ii) that the genetic information solution implicitly supplies a unifying foundation for many of the otherwise conflicting intuitions we all have about the vexed issue of how justly to distribute the results of persons' differential endowments of abilities and disabilities.

Let's take the first of these arguments first. Simply declaring each person morally to be a self-owner is unsatisfactory because it's going to leave open a question that libertarian and many other conceptions of justice and unjust exploitation want to close: namely, the question of who is morally entitled to his/her labour and to the products of that labour. For if the labour of conception, gestation and post-natal nurturing *doesn't* in some way entitle the labourer, then it's entirely open to others to advance the unwelcome suggestion that neither do other types of labour. Much better, for a variety of reasons including congruence with a large array of our own intuitive judgements in these matters, is a strategy that can *consistently reconcile* what we all recognise to be the special claims of parents - a strategy that can sustain some entitling effect of their labour - with an affirmation of their offspring's self-ownership. The fiat strategy of simply declaring all persons to be self-own-

5] An adaptation of this argument, in the light of the possibility of synthesizing germ-line genetic information, is developed in Steiner 1999.

6] Compare the claims, to their respective herds of livestock, of those owners who are breeders with those who are not. Ceteris paribus, natural factors account for more - and human labour for less - of the latter's herds than the former's.

ers not only has the theoretical disadvantage of simply overriding the libertarian principle that labour entitles, but also, and counter-intuitively, it leaves entirely indeterminate the location of liability for the injuries and damage that *pre*-adult children can cause to others. For we obviously cannot impose that liability on those children themselves. It's surely myself, and not my three year old son, who should bear the liability for his injuring your child or damaging your property. Our understanding of distributive justice, and of where (in whom) it locates rights and duties, needs to be carefully contoured so as to take account of such considerations. The fiat strategy simply can't do that.

Why does this way of resolving the self-ownership paradox give us a unifying handle on many diverse intuitions we have about differential abilities and the fair distribution of their results? It's a common thought – and one by no means confined to libertarians - that, *ceteris paribus*, people are entitled to the fruits of their abilities. That is, we think this is especially true if those abilities were themselves mainly acquired through their possessors' own efforts. When it comes to abilities that are primarily the products of others' efforts, we hesitate a bit. And when those abilities are largely attributable to favourable genetic endowments, we hesitate *a lot*.

Why these graduated hesitations? Why does it seem to make a morally relevant difference whether the wonderful state of Pavarotti's vocal chords was chiefly the result of disciplines he imposed on himself, or the result of childhood training secured by his parents, or the result of sheer genetic good fortune? And something more or less symmetrical with this can be said about *dis*abilities and the suffering they engender. Self-inflicted injuries entitle least, brute misfortune entitles most, and harms inflicted by others may come somewhere in between. No doubt, in the real world, all three sorts of factor combine in the production of many instances of ability and disability. And countless research projects and judicial proceedings are devoted to sorting out the relative contribution of each such factor to these production processes.

Now I want to suggest that what these graduated hesitations reflect is a wider distributive intuition we have about what I'll call choice and circumstance. Gains and losses are *most* acceptably shifted when they're primarily the results of circumstance, and *least* acceptably shifted when they're principally the products of choices made by those who incur them. And what counts as circumstance, I suggest, is pretty adequately captured by what we would include under the heading of "nature." "Nature" covers a lot: there are places where it rains all the time and places where it never rains; places with oil deposits and places with serious geological faults; crowded and less crowded cyberspace locations; and genes that code for Kentucky blue grass, poison ivy, viruses, koala bears, cystic fibrosis, schizophrenia, Pavarotti-type vocal chords, some elements of human intelligence, and so forth.

Rights to natural resources - to *nature*, compendiously construed - are rights to bits of all these various, and variously valued, things. So if we follow Locke and a number of other thinkers in that tradition, if we hold that anyone claiming ownership over some bits of nature must leave "enough and as good for others", we're led by a series of plausible steps

to the conclusion that, in a fully appropriated world, each person is entitled to an equal portion of the *value* of these bits of nature. That is, all owners of natural resources must pool the value of what they own in a *fund* - ultimately a *global* fund - to an equal portion of which everyone everywhere has a moral right.

In that sense, our just rights to natural resources entitle each of us to what has come to be called an "unconditional basic income" or, non-paternalistically, an unconditional initial capital grant.[7] And what's especially important for libertarians to note in this regard is that we're owed this grant *not* as a basic *positive* right - for on this sort of theory, there are *no* positive rights which are basic, but only negative ones, with all positive rights being derived solely from antecedent contractual understandings or rights-violations. Rather, we're owed it as a matter of *redress* by those who do not forbear from acquiring or retaining more than "enough and as good" natural resources - a negative duty which they have by virtue of our ultimately foundational right to equal freedom. It's this fundamental right to equal freedom that gives us both our rights to self-ownership and our rights to natural resources.[8] And all our other just rights are created by exercises of these two rights and of the rights successively derived from those exercises.

Before concluding, however, I think I need to say a bit more about abilities and disabilities. As was suggested previously, our distributive intuitions about choice and circumstance tend to allow self-chosen gains and losses to stay where they are and to require circumstance-caused gains and losses to be shifted. And I argued, in essence, that circumstance-caused gains and losses are ones due to nature: they are, if you like, "nature-chosen" ones. As such, they're required to be pooled and divided equally.

Now the question that needs to be addressed here is this: Is the set of abilities and disabilities that we're equipped with from childhood a product of choice or circumstance? Rawls and many others seem to take the view that these come entirely under the heading of 'circumstance' and, hence, are eligible for pooling. But there are at least two reasons for rejecting this view: one moral and the other empirical.

The moral reason, which is one internal to libertarianism and to many other theories as well, is simply that a pooling of abilities and disabilities - that is, enforced compensation of the disabled by the enabled - is, in itself, an incursion on self-ownership. It implies an enforcible duty on the enabled to deploy their abilities in ways sufficient to generate the amount of compensation they're each assessed as owing. Doubtless, most of us firmly believe that the enabled *should* make transfers to the disabled. And we would be absolutely right to criticise - and even stigmatise - those who don't. But many of us also believe that such transfers must be voluntary and, in that sense, cannot be a requirement of rights and justice.

7] An initial capital grant allows each individual's own time- and risk-preferences to determine his/her disposition of this natural resource entitlement in ways which a basic income does not.

8] An unredressed acquisition/retention, of a greater-than-equal portion of natural resources, violates others' rights to equal freedom inasmuch as they are thereby forcibly excluded from the use of resources which they would, in the absence of that acquisition/retention, be equally free to use.

The empirical reason for rejecting Rawls' classification, of children's abilities and disabilities as products of circumstance, is simply that it's *false*. And you certainly don't need to have raised a child yourself to know that it must be false. What's broadly true, of course, is that children's abilities are not *self*-chosen. But the fact that they're not self-chosen doesn't even remotely imply that they're unchosen. What are people doing, if not engaging in just such choices, when they spend long hours in ante- and post-natal clinics, in teaching at home and in schools, in working to pay for kids' music lessons, holidays and baseball equipment, and so on and so forth? If children's abilities were typically products of circumstance and not of choice, it would be pretty difficult to know what conceivably *could* count as a product of choice. Or to put it in Dworkinian terms, a distribution that claims to be ambition-sensitive and endowment-insensitive can hardly afford to ignore the fact that children's abilities reflect some of the most deeply felt ambitions that adults standardly have.

Well then, what's the kernel of truth that lies at the core of that otherwise entirely mistaken view? It is, surely, the undeniable fact that, along with the many hard-earned, labour-embodying inputs used to construct children's abilities, there's another essential factor employed in these processes that is a deliverance of nature: namely, those children's genetic endowments. It's *this* production factor of those abilities that properly falls under the heading of "circumstance" and that is therefore eligible for pooling.

So, cutting another long story short, the inference seems to be that, under the general rule for rights to natural resources, we should tax *parents* on the value of their children's genetic endowments. Or more precisely, we should tax them on the value of the germ-line genetic information they appropriate in conceiving an offspring. And this tax, like all taxes on people holding rights to other natural resources, goes into the global fund, on which everyone has an equal claim. What this tax does is to effect a net transfer from those who have genetically well-endowed children to those who don't. And those with poorly-endowed children are thereby supplied with commensurate extra resources to develop their children's abilities and, thus, to offset their genetically-predisposed disabilities.[9]

Let me conclude, then, not by further elaborating the details of this natural-resource-based account of just redistribution, but rather by briefly listing some of the pre-theoretical intuitions it succeeds in sustaining. First, in entitling persons to the fruits of their labour, it rules out exploitation. Second, in generating an unconditional initial grant as a basic right, it gives everyone some minimum material entitlement, some initial portion of action-space. Third, in extending this entitlement globally, it reflects the view that basic rights are universal: that is, that they are *human* rights. Fourth, in differentially taxing

9] Can parents be said to be subject to a correlative duty to apply these resources to that development? The problem here is to identify the holders of the corresponding right - given that minors, lacking self-ownership, lack the conditions for qualifying as rights-bearers. Perhaps one solution lies in the possibility that parents who fail so to apply these extra resources, and who thereby impose on their child a lesser degree of ability development that endures into his/her adulthood (self-ownership), would then be held responsible for that injury and accordingly be then liable to him/her for compensation.

children's genes, it simultaneously corrects for the unequal advantages these can deliver, but also avoids relieving adults of responsibility for their own procreative and nurturing choices. And finally, in refusing to mandate transfers from the enabled to the disabled, it precludes what Dworkin and others have called the 'slavery of the talented' and thereby allows unencumbered occupational choice: brilliant brain-surgeons can abandon their lucrative jobs to become mediocre poets, if they want to.

By locating the line between choice and circumstance in the right place - by isolating *all* of what counts as nature, and then distributing its value equally - libertarians can more easily do what they want, philosophically, to do: which is to pass, coherently, through the eye of the needle formed by many of our diverse and conflicting moral intuitions. Of course, such intuitions are not - and can never be - the final arbiters of what's right. We'd have to be very peculiar people indeed to pass through this needle's eye with *all* of our intuitions still intact. And anyway, the continuing market for jobs in moral and political philosophy strongly suggests that there's no immediate danger of this happening.[10]

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10] Many of the arguments advanced here have benefited greatly from Jerry Cohen's pressing criticisms.

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Acting Through Others: Kant and the Exercise View of Representation

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Abstract. Democratic theorists are usually dismissive about the idea that citizens act "through" their representatives and often hold persons to exercise true political agency only at intervals in elections. Yet, if we want to understand representative government as a proper form of democracy and not just a periodical selection of elites, continuous popular agency must be a feature of representation. This article explores the Kantian attempt to justify that people can act "through" representatives. I call this the "exercise view" of representation and defend its superiority to the "opportunity view," which I attribute to Locke. It is superior because it has a robust conception of rationality and collective action, allowing us to understand how representation can mediate public reason.

Key words: democracy, Kant, Locke, public reason, representation.

Liberal democrats diverge over how to conceive the relation between people and their representatives. Some disagreements have been over what equality requires for the political presence of women or members of minorities in representative assemblies (Mansbridge 1999). Other debates have been about the politics of representation, the extent to which representation can be used as a hegemonic operation imposing an identity on those represented (Laclau et. al. 2000). But there is also disagreement of a more philosophical nature, over the very nature of representation. Do democratic citizens act only at discrete moments through the opportunity to choose representatives in elections, or can they be said to exercise power continuously "through" representatives? If the former view is true, we may have to admit that representative democracy is a form of government where persons alienate their agency at every election. But if the latter view is true, then representative democracy is compatible with a significant form of political freedom. This is the view I will attempt to support in the following article.

The concept of representation has recently received a good deal of attention. According to a common view of representation, what matters is accountability in elections; a competing view emphasizes persuasion through reasoned discourse.[1] The first, and most influential view, is expressed by Manin, Przeworski, and Stokes, "The claim connecting democracy and representation is that under democracy governments are representative because they are elected" (Manin et. al. 1999, 29). On this view, there is no such thing as agency "through" representatives. Voters engage in a form of contract with representatives, allowing them to govern for the people whose only significant action is the discrete and regularly recurring moments of choice in elections. Between the moments of popular activity what goes on is not really continuous self-rule, but simple delegation on

1] For an overview, see Elster 1997.

the model of a division of labor where the government is entrusted to run the ship for the individuals. Consider a particularly hard-nosed contemporary defense of this view:

> Elected 'representatives' do not represent the citizenry in any literal sense – as if the citizenry were doing the ruling 'through them.' This is nonsense. They rule and we do not. But it is because those of us in modern democratic societies can easily deprive them of power – depose them, if you will – at certain regular intervals that they have (at least theoretically) the incentive to rule in a way responsive to our interests. (Hampton 1993, 391)

Jean Hampton evidently is so skeptical of the idea of mediation through representatives that she puts 'representatives' in inverted commas to alert the reader to this concession to metaphysical language. What goes on is not representation but a form of substitution. Democracy does not seem to be different in kind from unaccountable authoritarian government; it is merely authoritarian government plus electoral revolutions at constitutionally specified intervals. On this view, then, "the people" does not continually exercise sovereignty, representative government is characterized by the occasional opportunity for individuals to vote, and not by the constant exercise of popular sovereignty. This view often assumes that what matters is the freedom of individuals to vote in defense of their private interests; notions of collective freedom are implausible or false. The original formulation of this individualistic view centering on elections – dominant for much of the 20th century – is Schumpeter's view of democracy as elite competition, which he developed against the 18th century "classical doctrine of democracy" where representation was thought to be "voicing" the electorate's general will (Schumpeter 1947, 253, 269). Bernard Manin expresses a more nuanced but basically similar idea when he emphasizes that the quality of democratic representation hinges on the desire for representatives to be reelected, giving them an incentive to represent the interests of the voters (Manin 1997, 177-8).[2]

This view has been challenged by thinkers who are friendlier to the idea that what goes on in democratic representation is a form of continuous government by the whole people and "through" its legislators. Nadia Urbinati has recently made a strong case that we should understand representation as continuous, not dualistic; and sovereignty as including judgment, not only arbitrary will. In representation persons have "presence through voice," exercising political judgment in the public sphere (Urbinati 2006, 5). Other versions of this view, for example by Jürgen Habermas, have emphasized public reason: what is essential to political representation is that public reason can be mediated politically to influence or even determine legislation (Habermas 1996). Popular sovereignty consists only partly of the opportunity at election-time for actual political choice. Democratic government is intended to mediate public reason, and that can be done by other means than only by elections, which in any case are flashpoints for demagoguery and the exploitation of myopia, xenophobia, and selfishness. The people can plainly be deceived in its choices. The choice can be wrong, as opposed to merely affirming one preference among many

2] Anticipating Manin's theory of retrospective judgment, Giovanni Sartori attributes it to Schumpeter; see 1987, 152.

equally valid preferences, because self-government has to do not simply with private interests or preferences but with realizing public reason, and public reason is arrived at through reasoned communication in a free public sphere; hardly through the frenzy of electoral campaigns. The ideal of public reason allows the drawing of a conceptual separation between rational deliberation and propaganda and the conclusion that people seduced by demagogues or powerful lobbies are not, strictly speaking, free.

On this view, then, representation aims to mediate public judgment and reasoning as it arises among persons engaging in horizontal dialogue within the electorate and vertical dialogue between the electorate and its representatives. Sought is a minimal consensus, an agreement that elections and referenda never yield. What is required is a method both for approaching consensus and for making representatives abide by this reasoned discourse during their term in office. When this is achieved, adherents of this view think the people is present and exercising self-government continuously *through* the representatives. John Stuart Mill defended this view:

> The meaning of representative government is, that the whole people, or some numerous portion of them, exercise *through* deputies periodically elected by themselves, the ultimate controlling power, which, in every constitution, must reside somewhere. (1991, 269: emphasis added)

Citizens do not trust government to run the state as a form of division of labor to release them from participation; rather they participate in the public sphere among other things through continuous judgments communicated to decisive political institutions. As David Plotke writes:

> I gain political representation when my authorized representative tries to achieve my political aims, subject to dialogue about those aims and to the use of mutually acceptable procedures for gaining them. [I]n a political sense I am forcefully present throughout the representative process. This conception underlines the *agency* of both participants in the relationship . . . . (1997, 31; emphasis added)

Here, the representation-relationship does not exclude the agency of the principals who act *through* the representative. Plotke, rather, looks at the exercise of political freedom as an ongoing communicative process, challenging Hampton's stance, quoted above, that the people is sovereign only in a potential way, because it only exercises its right of choice every four (or whatever) years by "deposing" the representatives.

At stake in the debate between these two views is really what it means for political freedom to be retained when its exercise is delegated. On the first view of representation, a society is perfectly free even if persons only exercise their political freedom at discrete intervals. On the latter view this is not sufficient for political freedom; we should only describe a society as free and sovereignty as popular if representation properly mediates public reason. We can get a hold on the debate by relying on some of the conceptual developments from theories of individual freedom, if we just shift the analytical gaze from the individual to the community. Charles Taylor has developed a useful theoretical distinc-

tion between "opportunity concepts" and "exercise concepts" of freedom (Taylor 1985, 213). Opportunity concepts, as the name implies, claim that freedom inheres in having the possibility of choosing. In the context of the electoral conception of representation, freedom is in the possibility at intervals for individuals to hire and fire representatives. Exercise concepts, on the other hand, claim that freedom resides in the condition of constant agency of one's rational faculties. In the following, I will utilize Taylor's distinction and call the first theory of representation the "opportunity view" and the latter theory the "exercise view."

In this article I will defend the "exercise view" with the aid of Kant's political theory and in contrast to an "opportunity view," which I attribute to Locke. The promise of the Kantian version of the exercise view is that it can make it plausible for us that persons really exercise political agency continuously even when they live under representative government. We would not have to accept Hampton's gloomy view about representatives that "they rule and we do not." The first step will be to develop the extent to which Kant's rational contractarianism and emphasis on communication in the public sphere can allow us to conceptualize the "presence" of the people in representation. The second step, which goes to the core of the disagreement between the two views, is to defend the Kantian theory of collective action through public institutions. The disagreement over the nature of self-government is partly a consequence of lacking agreement on an even larger issue, the nature of collective agency in a political community. It is hard to conceptualize what it means for a large number of strangers in a modern state with representative government to act together. The opportunity view of representation tends to exclude this altogether, emphasizing individual action oriented to private interests, whereas the exercise view provides a sophisticated vision of collective action through political institutions oriented to public reason.[3]

The conceptual task, then, is to find a theory of democratic representation that retains what is of obvious significance in the opportunity view – that citizens have a potential kind of freedom supporting contested elections – while vindicating the exercise view that the power of the people is constantly exercised "through" its representatives. If the exercise view of representation is true, then the implication is that political freedom is very demanding, requiring an enlightened population and a high degree of vertical and horizontal communication, such as has been claimed by for example Habermas. This matters also for designing institutions, where decisions must be made whether emphasis is to be placed on electoral mechanisms or on educating citizens and providing the economic conditions for a strong public sphere. The present essay, however, will be limited to some explorations of this problem at a conceptual level through an examination and defense of Kant's theory of representation.

3] The opportunity view could in principle emphasize individual action oriented to public reason or the common good, but this is not the case with the theorists I discuss in this article.

I. POPULAR SOVEREIGNTY AND REPRESENTATION

It may appear excessively anachronistic to turn to thinkers like Kant and Locke in order to learn about democratic representation. After all, they did not conceive of themselves as developing democratic theories and the very term "democracy" for them signified *direct* democracy and not the kind of representative government the term usually denotes today.[4] Kant, in particular, is not widely known for democratic sentiments, which are often thought to conflict with his rationalism. Marxists fault him for not having a conception of "social praxis," neo-Aristotelians claim that he has no understanding of collective action in public, and liberals reject his republicanism as a surrogate form of government by consent, a foil covering a defense of enlightened absolutism.[5] As for the concept of representation, seminal works such as those by Hanna Pitkin and Robert Dahl are silent about these authors, the latter brushes off Locke as having "had little to say about representation."[6]

No doubt, Locke and Kant do not share all the concerns and nomenclature of modern theories of democratic representation. But the fact that Locke had little to say about "representation" does not mean he was unconcerned with the idea; to think otherwise is to confuse word and concept. When Locke actually uses the term he clearly thinks of representation as the work of rulers and legislatives ("representatives chosen by the people"), and about this he certainly has much to say (1967, §§ 151, 158). And the allegations of Kant's anti-democratic sentiments, typically based on interpretations of his ethics, not his politics, do not withstand thorough examination (Maus 1992). The fact remains that these thinkers are among the earliest and most original theorists of how sovereignty can be popular yet delegated and in neglecting them modern democratic theorists deny themselves a valuable resource.

Because the two authors share a commitment to equal liberty and government by consent it is interesting to explore why Kant departs from Locke in choosing the exercise view of representation.[7] A difference is evident in how they view the notion of contract as the source of legitimacy, where Locke's theory presupposes a contentious relation between society and government and Kant presupposes cooperation. This reflects different political contexts. The *Second Treatise on Government* (1690) and *A Letter Concerning*

4] Locke 1967, § 132. Kant ZEF 352, 379. Kant's works are abbreviated as follows: RL: *Metaphysische Anfangsgründe der Rechtslehre*; TP: *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*; KU: *Kritik der Urteilskraft*; ZEF: *Zum ewigen Frieden*; WA: *Beantwortung der Frage: Was ist Aufklärung?* The numbers refer to volume and page in the Prussian Academy edition. Translations are from Gregor 1996.

5] See Marcuse 1972, 81; Arendt 1982, 44, 60 and Berlin 1997, 224.

6] Dahl 1989, 28; Pitkin 1967. The exception is Urbinati 2006, which contains a discussion of Kant.

7] Locke writes that men are inherently "free, equal and independent," a trinity Kant repeats (Freiheit, Gleichheit, and Selbständigkeit). See Locke, 1967, § 95 and Kant TP 290; RL 238, 314. There is no evidence that Kant read Locke's political philosophy although he certainly read many authors influenced by Locke. About Lockeans in Kant's Germany, see Fischer, 1975, 431-446.

Toleration (1689) were conceived in times of profound conflict between society and government, where those who supported a liberal agenda faced the prospect of intolerant and arbitrary absolutism attempting to impose an unpopular religion on the people (Laslett 1967). Locke's thought is not just a philosophical exploration of good government but an argument in this debate, shaped by conflict.[8]

The contrast to Kant's context is remarkable. His *Doctrine of Right* (1797) and smaller political writings were conceived over several decades under a Prussian monarchy that may have been authoritarian but still was a progressive force. In comparison to other states on the continent Prussia was characterized by religious tolerance, a large amount of freedom of speech, and a fairly free market. During the century prior to Kant, the Hohenzollern had won a contest against the nobility and the old estate institutions and it replaced the petty powers of local magnates with well ordered bureaucracy and the rule of law (Berdahl 1988). As a consequence, the monarchy enjoyed great support by the German *Aufklärung* whereas those who challenged the monarchy were typically conservative forces supporting the old *Reich* (Valjavec 1951, 22, 39). Unlike in England, German liberalism was not born out of conflict with state authority; to the contrary, it grew out of a common struggle where the crown was an ally against the unjust and disorderly institutions of the decrepit old regime. The progressive government of Frederick the Great provided the hope of spreading the *Aufklärung* and rationalizing society, paving the way for truth and freedom.

It is not surprising, therefore, that while Locke and Kant share a foundation in the moral right to equal liberty they diverge on what it means for government to be subject to consent. Kant's principled accommodation between freedom and authority contrasts to Locke's emphasis on the autonomy of society, jealously guarded against the state. Traditionally, consent had mattered at two stages: in the creation of society and in the creation of political authority. Taking up the contract tradition, Locke requires actual consent by persons in the first stage whereas Kant conceives the original contract as "*an idea* of reason" (TP 297, RL 315). If we use Joseph Raz's terms, we can classify Locke's contract as involving "performative agreement," while Kant's theory is one of "cognitive agreement" (Raz 1986, 81). Performative agreements take place when expressed consent changes the moral situation so that consent is in itself a source of obligation. Thus when Locke's individuals join society, they expressly or tacitly assume an obligation to abide by majority agreements. For Kant, however, there is no right to remain in the state of nature because this is incompatible with the protection of equal liberty, and, furthermore, merely agreeing cannot change a moral situation. A person might agree to join a Mafia and take up the obligation to extort and kill, but such promises could not create genuine obligation. Hence, while Kant retains the traditional language, his original contract is a cognitive agreement, and, furthermore a hypothetical cognitive agreement, a standard for human rationality and morality that does not create a new moral situation. The creation

8] For a good discussion of Locke in his context, see Franklin 1978, 91ff.

of society, the first stage where consent matters, is an historical circumstance, which individuals have a duty to support for the sake of equal liberty, regardless of whether it results from individual choice.

It is at the second stage of consent that representation matters, because this is when an already constituted society chooses a government. Locke writes at the beginning of the *Second Treatise* that a purpose of the book is to find a way of "designing and knowing" who should be an authority (§ 1) and this turns out to be a matter of how to create legitimate institutions of representation. The details are vague, but the now integrated sovereign people certainly makes a number of decisions: electing a form of government (by one, the few, or many), designating who is to assume office, putting time-constraints on government, creating taxation-schemes and, finally, it may take back its consent in revolution.[9] In this second contract the people and the government are on each side and since there, in cases of conflict, can be no enforcing agency or judge, apart from God, the people has to enforce the contract themselves though revolution. Locke, however, has very little to say about political agency between the moments of establishing and rejecting a government. Popular sovereignty manifests itself occasionally when political society confers or denies trust in government; representation expresses a potentiality for the citizens to act; it is not conceived as their constant exercise.

As mentioned, it is often mistakenly thought that Kant has no theory about elections and accountable representatives because his original contract is hypothetical. But the hypothetical contract is not incompatible with supporting government accountable in elections, and Kant does just this in the second stage of consent. In some sparse comments on electoral procedures, Kant affirms that citizens should have the freedom to give or withhold their consent. Sometimes he even speaks of citizens having a right to directly "vote in legislation" although he proceeds to specify that it is a matter of choosing representatives (*Repräsentanten*) (TP 295-6, RL 317).[10] Elections are needed for the sake of security, because autocracy is "conducive to despotism" (RL 339). Kant's theory of a separate republican peace is testimony of the great importance for his republicanism that citizens control government. As "colegislators" citizens have the right to "give their free assent, through their representatives" and Kant conjectures that it will make them unlikely to support war because they have to carry the costs (ZEF 8: 350, RL 346).[11]

9] Locke holds that representation should be proportionate to property, so he cannot be said to support the egalitarian foundation of democracy. See 1967, § 158.

10] Like Locke, Kant betrays the egalitarian foundation of democracy by attaching a property requirement to the vote, excluding wage laborers and women as "passive citizens." This exclusion is justified in a republican, if unconvincing, manner: only those who are financially independent can have the impartiality it takes to serve the commonwealth (RL 6: 314).

11] Unlike Locke, Kant does not conceive of the relation between society and government as a contract, because there can be no third party to enforce it. This argument is familiar from Rousseau, who used it to assert the independence of the sovereign popular assembly against the government. See Rousseau

As a result, the people is said to act "through" elected officials:

> Any true republic is and can only be a system of representing the people [*ein repräsentatives System des Volks*], in order to protect its rights in its name, by all the citizens acting through [*durch*] their delegates" (RL 341).

The notion of acting "through" representatives is puzzling. The most intuitive way of making sense of it is the notion of "imperative mandate," where representatives are instructed by their communities what they should vote, so that they merely convey a decision taken elsewhere.[12] But that cannot be Kant's view, because he states that as long as legislation is within a range of what could possibly be agreed to it remains legitimate even if a people were mistakenly of the opinion that it was a wrong decision (TP 297). Thus, representatives are free, yet at the same time they ought perfectly to act in the place of the people. An alternative way to make sense of persons acting "through" free representatives is to think of delegates as particularly sensitive to popular emotions, sentiments, and needs. Edmund Burke conceived of it in this way and called it "virtual representation."

> Virtual representation is that in which there is a communion of interests and a sympathy in feelings and desires between those who act in the name of any description of people and the people in whose name they act. (Burke 1969, 169, 174)

But for Kant the source of law is in reason and discovering reason requires no particular sentiments; if anything, sentiments are likely to lead astray and cause myopia and selfishness among legislators and subjects alike, obstructing autonomous decision making. Nor does legislation find its source in material interests; while it protects and affects interests, law is formal and directed only at maintaining equal liberty. Instead of sentiments and interests, representatives connect with the people through the thought experiment of the original contract and through reasoning in the public sphere.

The people act "through" their representatives, then, not because the latter just convey decisions or sentiments, but because the medium of political communication is public reason. Kant's theory of public reason separates power and communication by identifying a mode of reasoning from a public, i.e. universal, point of view. Subjecting proposed policies to the test of universalization without contradiction (reasoning according to the universal principle of right), legislators and subjects alike can methodically abstract from prejudices and loyalties to partial associations, assessing policy for its universal implications. A representative who is asked by a lobby group in his constituency to pursue legislation intended to lower environmental standards for factory waste in rivers would have to consider the question from the perspective of both those who live upriver and those who live downriver. Kant uses the same procedural logic for determining rights to property:

1987, 3.16. For Kant, however, the sovereign assembly is representative, not popular, because the people cannot act collectively absent representative institutions and as a consequence no justification can be given for popular revolution.

12] Imperative mandate has generally been abandoned since the 18th century; see Manin 1997, 163-167.

the right to a particular plot of land is an imposition on the free movement of everyone else (who are obliged to keep off unless invited), hence property rights can only be compatible with freedom if they are decided from a universal point of view by an "omnilateral" will (RL 263).

Public reason, then, is not merely instrumental to the material interests of a constituency (as in the model of imperative mandate) nor is it instrumental to preferences and interests (as it was on Burke's model). Rather, reason is free, oriented to truth, or as Kant prefers to put it, one reasons like a scholar.[13] Since reasons are universal and not tied to private material interests or a particular personal history they are the same whether one is a subject or a ruler, and they can therefore be shared perfectly. Evidently reasons must be expressed in language, opening for the failures of communication, deliberate rhetorical obfuscations, and demagoguery that make up much of political life, but in principle reasons can be conveyed and shared among persons and their representatives such that one can claim that persons act "through" their delegates.

Kant's talk about reasoning as a "scholar" may lead one to think his representatives are a kind of experts who have no reason to listen to their lay audience. Relying on a literal interpretation of the idea of reasoning like a scholar, Ciaran Cronin concludes that it betrays an anti-democratic sentiment (2003, 64). What is plausible about the literal interpretation is that Kant does indeed want to avoid advocacy for sectarian interests.[14] But public speech is certainly not limited to experts and scholars; the point is that we should assume the objective perspective of someone interested in discovering the truth. Because legislation belongs to the moral domain it cannot be the application of theoretical reason about facts but must be practical reason about norms, which does not allow for scientific expertise.[15] Reasoning about norms presupposes the ability to judge what a community could deem acceptable, requiring an understanding of the will of all persons concerned. Proposed policies must be not just general but also justifiable to those subject to them and this requires, in Kant's view, communication between citizens and rulers. To be sure, Kant has high hopes for the ability of delegates to reason independently, but equally clear is that they are fallible and cannot do without or substitute for a reasoning public.

Kant expresses the commitment to justification from a public point of view in the publicity principle, which states that "All actions relating to the rights of others are wrong if their maxim is incompatible with publicity" (ZEF 381). Again, if those who live

13] The representative might propose to act not like a scholar oriented to truth but exclusively as an advocate for his community, but that policy would also have to withstand the test of universalization without contradiction.

14] This separates Kant from contemporary theories of representation that emphasize advocacy, for example that of Nadia Urbinati. Urbinati, however, underlines that "advocates are expected to be passionate and intelligent defenders. An advocate who is exclusively a partisan is not an advocate" (2000, 775).

15] Practical reasoning about norms is therefore indirect: it is not about what is good in itself, but what could be shown to be right for a public organizing itself as a community. This constructive aspect separates pure practical reason both from theoretical reason, which is oriented toward discovering facts, and from technically practical reason, which is oriented toward ends rather than rational acceptability. See Rawls1993.

upstream devise a principle about polluting rivers, which they could not express publicly without betraying blatant partiality, then that principle must be ruled out as unjust. That does not mean persons and groups cannot pursue sectarian interests, it only means they must develop their proposals such that they could be acceptable to the public at large.

Considering the significance of public reason in mediating between citizens and their representatives it is not surprising that Kant defends freedom of expression in numerous ways. Justice requires the *"freedom of the pen"* not just because there could be no contribution to justice in repressing free speech (RL 238) but because it is a natural right for the people to enlighten itself and become worthy of self-government (WA 40), and because it is requisite for a person to continuously control and influence government by expressing "what it is in the ruler's arrangements that seems to him to be a wrong against the commonwealth" (TP 304). In Kant's model, then, popular sovereignty is manifest not just in the opportunity for electing representatives but continuously through the virtual presence in a shared public reason, expressed in the public sphere.

While this explains why Kant chose the exercise view of representation it might not be obvious why Locke did not do the same. Locke certainly shares Kant's faith in reason, writing that every grown person (except lunatics, idiots, and madmen) is a "rational creature" capable of understanding the law of nature on which positive law rests (§§ 12, 60). Patrick Riley thinks Locke arrives at a "more or less Kantian notion of will as the capacity to bring oneself to act to the conception of a law that one understands and uses in shaping one's conduct" (1982, 81) and John Gray holds Locke and Kant to be representatives of a distinct reason-based liberal tradition, opposed to a non-rational tradition (2000).

But in fact Locke employs instrumental reason, not anything resembling Kant's public reason, in justifying the authority of the political domain and of laws. Justice is a feature of natural law providing rights, most importantly the right to property, which is not justified by reference to formal principles of reason but by how much a person is capable of cultivating the land. Government is merely a remedial tool to enforce such rights and does not contribute to determining what they are. Subjects and legislators in Locke's state therefore do not engage in anything resembling the public use of reason (from a "universal" point of view), rather, they start by staking out the various property rights individuals already have and then seek to establish policies that protect and coordinate these disparate interests. As a result, the reasoning representatives engage in is not from a general point of view, but subject to all sorts of private interests and allegiances making it impossible to claim that the people as a whole acts "through" the government.

It is therefore not surprising that Locke has no theory about the role of communication in representation. Debate is mentioned once in the *Second Treatise* (§ 222) where Locke identifies a breach of trust if a prince interferes with the "mature debate" necessary for deciding on the public good. Yet, this debate takes place only among the elected representatives, not between people and the government. Freedom of expression comes up again in *Letter Concerning Toleration* but the toleration for diversity of opinions Locke defends is not for the purpose of allowing citizens to reason in public but for the sake of freedom of conscience in private (Locke 1983, 35). While Locke nowhere in the *Second*

Treatise denies the significance of the formation of public opinion – and as a publicist he can hardly have been unconcerned with it – he provides no theory for how interests will be conveyed to and understood by the assembly. This is because reason for him has the subordinated role of merely conveying private interests, and because the chief method for keeping representatives in accordance with the public interest is the threat of resistance.

The most significant reason for Kant's divergence from Locke's liberal tradition and its single minded emphasis on government accountability is no doubt the German *Aufklärung* and its commitment to progress. Where Locke saw government as a necessary evil limited to coordinating society according to unchanging natural rights, Kant conceives of government as a progressive institution, a way for society to settle on principles of justice and consciously determine its future. While Kant's enthusiasm for the public sphere may resemble a revival of ancient liberty, his inspiration likely comes from the contemporary Prussian context where government was instrumental in defeating the old *Reich* with its inegalitarian systems of privilege and its loyalties to guilds, estates, petty principalities, and towns. Kant conceives of the public will as a new source of authority, judging with supreme right whether the institutions of the old regime – particularly the nobility and the church – may persist. The government, as the institution in charge of implementing public reason, takes on the tremendous job of completing a social reform of revolutionary dimensions. Because Kant is convinced that the commitment to equal liberty requires government by consent the transformation has recognizably to take place through the agency of the people and it is to this purpose Kant develops the exercise conception of representation.

II. COLLECTIVE AGENCY

The Kantian theory of representation as acting through others may appear unrealistic in presuming that an entire people can exercise collective agency. We know what it is for a person to act and what it is for a smaller group of people to unite around a shared agenda, but how can a large number of strangers in a state with representative government be said to act collectively? Acting collectively means among other things that every member of a group has reason to think of collective decisions as an expression of his or her will. But in large states it would seem that economic or cultural conditions generate too divergent interests for there to be any conceivable common good.

This objection is not problematic for the opportunity conception, which does not presuppose that persons under normal circumstance act collectively; their interests collide and politics is the domain of interest. Persons chiefly participate politically in the voting booth and that is not collective action. This is also the reason for the skepticism to the notion of the people acting through its representatives; government is a tool for interests and not an expression of shared reason and it is in the nature of interest that they are not shared by everyone. Nonetheless, Locke's view of revolutionary collective action presupposes a people as a unified subject spontaneously rising up against a ruler, after all "the proper Umpire [is] the Body of the *People*" (1967, §§ 241, 208, 242). Locke never explains

how a people can coordinate its actions absent institutions and the matter is not helped by his uncertainty on whether individuals or the body of the people is the final source of authority (in the preceding paragraph he boldly writes "*every Man* is *Judge* for himself"). He may have thought that when a tyrant arises private interests are distributively aligned so as to make concerted action possible, but in practice this of course hardly ever happens, if anything revolutions are the frequent contexts for faction. Absent the utopian idea of spontaneous collective action, the opportunity view only makes sense of individual liberty occasionally exercised in the voting booth and leaves us skeptical to representative government as a genuine form of democracy.

The Kantian answer has to do both with principles and institutions. With regard to principles, what allows a meaningful sense of collective action is that, as I said, the Kantian state is governed by a procedural not a material notion of justice. The principles of justice elaborated through public reason are procedural because oriented to the formal conditions for allowing persons to pursue their good in private. These formal freedom-securing conditions make up the system of right. The principles have nothing to do with the always divergent individual preferences but are necessary conditions for any organization of people aiming to secure equal liberty. The principles that representatives ought to enact, therefore, are those that conceivably could be agreed to by any person sharing the commitment to maintaining the basic structure of society. To be sure, it is metaphorical to say that the people then acts collectively. Even in a perfectly managed constitution a good number of people will always disagree with current policies. But while these persons may not feel that justified public decisions emanate from them, they must potentially be able to see them as such.

But there is a second way in which Kant makes sense of collective action, which has to do with representative institutions, because Kant claims that acts are formally designated as acts by the people in so far as they are taken by public legal authority.[16] To consider public decisions as acts by the people may appear rather close to Hobbes's constructivist view of representation, which stipulates that all acts of the sovereign are legally to be taken as so many acts of the people because there is no extra-political unity to the people, which is constructed in the act of representation and only acts through the ruler.[17] This is worrisome, because when all the sovereign actions are *ipso facto* ascribed to the people there can in principle neither be misrepresentation, accountability, or responsiveness. But while Kant retains Hobbes constructivism,[18] implying that the people can only act through the government, the difference is that Kant conceives of the political community, including the government, as an organically unified entity, whereas Hobbes conceives of society in mechanical terms where the sovereign is not a member but a social engineer.

16] Pogge (1988, 407-33) describes this phenomenon in terms of contemporary theories of justice.

17] Hobbes's sovereign carries the "person of the state" and without the unifying public "sword" there simply is just a confused multitude. Society and state are made identical through Hobbes's idiosyncratic notion of "absolute representation." (1991, 114). See Skinner 2002, 177-208, and Pitkin 1967, 14ff.

18] Kant writes "the people [*Volk*] owes its existence only to the sovereign's legislation" (RL 6:320, ZEF 8: 352, TP 8: 302).

Before looking at the implications for representation it is worth briefly outlining Kant's theory of the organic state. Understandably, the organic feature of Kant's republic has generally been overlooked. Otto von Gierke influentially argued that the idea of the state as an organic whole assumes a group personality with "independent" existence, which is more than merely the aggregate of the parts over which it has legal authority (1957, 50-51, 114). Modern natural law theory, of which Gierke takes Kant to be a representative, replaced this ancient and medieval doctrine with a new moral foundation in individualism and social contract, it conceived society as "artificial," a merely "mechanically" constituted whole (1957, 136). With Gierke in mind, we might easily think Kant is at once too individualistic and too authoritarian to qualify as an organic theorist of the state. The theory is too individualistic, because it assumes a social contract, taking the individual as the moral source of authority, yet it is simultaneously too authoritarian, because it relies on political authority and not spontaneous citizen association to hold society together.

But Gierke wrongly concluded that in Kant we "find the analogy of the organism entirely absent," (1957, 331-1) because in the *Critique of the Power of Judgment* Kant compares a state to an organized being not entirely different from Gierke's theory. With a barely veiled reference to the then ongoing French revolution, Kant speaks of "a recently undertaken fundamental transformation of a great people into a state" where "the word **organization** has frequently been quite appropriately used . . . of the entire body politic." (KU 5: 375, bold in the original).

The most significant difference between Kant's organism metaphor and the tradition is that the constitutive parts are individuals, not associations,[19] which Kant probably associated with the guilds, corporations, and estates of the unjust and disorderly old *Reich*. Kant does not presume that the whole is of greater value than the parts or that the parts are inherently unequal. The state as an organism, rather, presupposes equal liberty. Kant likely takes his cue from Rousseau, whose thinking is rife with the organism analogy, and who wrote of the state that "the citizens are the body and members."[20] Likewise for Kant, "each member should certainly be not merely a means, but at the same time also an end" (KU 5: 376). Subjects are ideally also citizens, so that those united in society by public authority also constitute the authority through elections and communication in the public sphere and as a result, the ruler, through which the community acts, is not considered an external manipulator engineering political unity but a member of the political community. The consequence of the organic and constructivist view of the political community as it relates to institutions is that representation can plausibly be described as the people acting "through" its delegates. Representation is not merely an instrument for bringing to bear the interests of society but a way for society to construct itself in the first place. There can be no way for society as a whole to act except "through" representatives, because there *is* no society in their absence. Representation for Kant therefore is not merely mirroring

19] In Hegel's *Philosophy of Right* associations make up the state (the family, the corporations, and the three parts of the government) and only find their reality through the larger whole. A hand cut off from the body still looks like a hand, "but it has no actuality." See Hegel 1991, 270A.

20] Rousseau, 1987, 114. See also 1987, 3.11.

facts but takes on the large role of continuously constituting the community. This procedure, as I described it in the previous section, includes the constant contestation in the public sphere of the principles of right, what Kant refers to as the general will.

A different objection to the exercise view of the people acting "through" representatives is that it relies on a notion of the general will whereas Schumpeter and many authors following him has forcefully argued that no such thing can exist. Value-disagreement is inherent in modern society and a single, coherent will of the community cannot be the starting point of politics, it is rather the creation of elites manipulating public opinion. The desire for a general will is anti-pluralistic, potentially oppressive, and so we should give up the "eighteenth century philosophy of democracy" and its notion of a people governing itself "through" its representatives (Schumpeter 1947, 263)

Schumpeter's critique may in fact be devastating for certain utilitarian theories of popular sovereignty, but Kant and procedural versions of the exercise view are not good targets. Kant's general will is a minimal condition of what every concerned party to some collective decision could or could not rationally agree to, it does not rely on a controversial conception of the common good but is simply designed to exclude policies that unduly restrict negative liberties. Far from anti-pluralistic, such a liberal defense of rights is the condition of possibility of social and political pluralism because it allows the pursuit of any interest compatible with mutual freedom. The general will is a rational construction, it does not require social consensus, and hence it cannot justify attempts at indoctrinating a population to adopt a shared view. In this regard, Locke is in a more difficult position because he assumes an entire people can agree and act collectively in revolutions. To Kant, the general will is approximated through the political process as a whole, including all the decisions and deliberations taking place both in the political and the public sphere together constituting the public use of reason, and this certainly respects plurality (O'Neill 2000).

Another understandable objection is that the rhetoric of the general will may easily be utilized ideologically for factions to amass power by claiming to speak for the entire people. The exercise view of representation where government is conceived as the extension of the people may lead to excessive trust in government, and as Schumpeter warned, governments claiming excessive popular legitimacy can easily use this power for "crushing opponents in the name of the people" (1947, 268). Conversely, the opportunity view certainly has the advantage of increased popular vigilance in controlling the boundaries of the government, which is often is portrayed as an opposed or hostile interest. With no pretension of actual popular "presence" in government, there is all the more reason to monitor it. Yet, there is no reason why the exercise view needs to be less vigilant in controlling government. The standard is no less exacting, and just because the ideal is a mediated public "presence" in political decision making does not mean that any decision by representatives automatically qualifies. After all, any theory of popular sovereignty is vulnerable to populist exploitation.

The implication of the exercise view is that we ought to imagine citizen agency as not restricted merely to occasional participation in elections. To be sure, voting is the only

and indispensable means by which citizens can decisively control government. But on the Kantian conception citizens also exercise agency on an everyday basis in the public sphere. No doubt, this is an idealistic picture and it is natural to question whether it makes sense to think of the people acting "through" representation when the political process is full of rhetoric, demagoguery, and bargaining; surely what we often see is not the exercise of public reason but the play of power, interest and exclusionary visions of the good. This is in fact a broader objection, which can be leveled at any theory defending rational communication as an influence on politics. The Kantian answer is not that sectarian interests will ever disappear, but that political agents can only credibly justify their demands in terms that are acceptable generally, in other words, in terms of the agency of the people. To be sure, if a political context is entirely corrupt it makes no sense to speak of the people acting "through" the representatives – but then again it is ultimately this ideal that allows us to say that politics is corrupt.

III. CONCLUSION

I have enlisted Kant in the attempt to make sense of and defend the notion of persons exercising agency "through" political representation. I have not dealt with the complexities of contemporary representative systems, which would require a separate study even if the conceptual apparatus would remain the same. In exploring and developing the Kantian theory of representation I found it answering to the twin challenges of making plausible that representatives can mediate public reason and of explaining how a society acts collectively in the political domain. Contrary to the dominant view in theories of representation, freedom in representative systems is not available only as an opportunity for occasional interventions, but can be made sense of as a people's continuous agency "through" representatives.

Representation on the Kantian view is not of objective interests or arbitrary decisions and does not rely on sentimental connections between persons and delegates. Rather, representation is legislation according to reasons that apply to persons because they are justifiable in terms of rational democratic procedures. These procedures include the continuing constitution of society not just through periodical elections but through contestation in the public sphere where persons seek to justify claims about what constitutes acts of the people "through" its representatives. The exercise view, which integrates the agency of persons and delegates, holds the key to understanding contemporary representative systems as fully democratic.[21]

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Cosmopolitan Right, Indigenous Peoples, and the Risks of Cultural Interaction

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Abstract. Kant limits cosmopolitan right to a universal right of hospitality, condemning European imperial practices towards indigenous peoples, while allowing a right to visit foreign countries for the purpose of offering to engage in commerce. I argue that attempts by contemporary theorists such as Jeremy Waldron to expand and update Kant's juridical category of cosmopolitan right would blunt or erase Kant's own anti-colonial doctrine. Waldron's use of Kant's category of cosmopolitan right to criticize contemporary identity politics relies on premises that upset Kant's balanced right to hospitality. An over-extensive right to visit can invoke "Kantian" principles that Kant himself could not have consistently held, without weakening his condemnation of European settlement. I construct an alternative spirit of cosmopolitan right more favorable to the contemporary claims of indigenous peoples. Kant's analysis suggests there are circumstances when indigenous peoples may choose whether to engage in extensive cultural interaction, and reasonably refuse the risks of subjecting their claims to debate in democratic politics in a unitary public. Cosmopolitan right accorded respect to peoples; any "domestic" adaptation of cosmopolitan right should respect indigenous peoples as peoples, absent a serious public explanation by a democratic state for why it has now become appropriate to treat indigenous peoples merely as individual citizens.[1]

Key words: Immanuel Kant, indigenous peoples, cosmopolitan right, Jeremy Waldron, multiculturalism, historical injustice.

Much commentary on Immanuel Kant's essay *Perpetual Peace* focuses on the First Definitive Article for Perpetual Peace ("The civil constitution in every state shall be republican.") and the Second Article ("The right of nations shall be based on a *federalism* of free states."). Comparatively less has been written on Kant's Third Definitive Article for Perpetual Peace: "Cosmopolitan right shall be limited to conditions of universal *hospitality*" (1996, 322, VIII:350 PP; 325, VIII:354 PP; 328, VIII:357 PP).[2] The few contemporary writers who do talk about cosmopolitan right (or cosmopolitan law[3]) tend to go beyond

1] An earlier version of this piece was presented at the 2005 meeting of the American Political Science Association. I thank the chair, Melissa Williams, and my fellow panelists Dale Turner and Jeremy Waldron. For their comments on various drafts, I owe thanks to Brian Barry, Michael Doyle, Jon Elster, Andrew Grossman, Lauren LeBlanc, Thomas Pogge, Ross Poole, Anna Stilz, Nadia Urbinati, Jeremy Waldron, Athena Waligore, and Joseph Waligore. The responsibility for what follows is mine.

2] Emphasis in original. Unless otherwise noted, English translations of Kant's political works are taken from the Cambridge edition edited by Mary Gregor, *Practical Philosophy* (1996). This article's citations to Kant's work will first reference the page number of this translation, then the volume number (as a roman numeral) and page number of the Academy edition of Kant's complete works (*Akademie-Ausgabe, Kant's Gesammelte Schriften*), followed by an abbreviation for the work, and (if appropriate) a section number or label. PP = *Towards Perpetual Peace*. TP = *On the Common Saying: That May be Correct in Theory, but It is of No Use in Practice*. MM = *The Metaphysics of Morals* (including the *Rechtslehre*).

3] Like Mary Gregor, I use the word "right" to translate the German *Recht* or recht. *Recht* has a broader meaning that the English term "right." *Recht* is the German equivalent of the Latin word *ius*, the

Kant's own minimal specification of cosmopolitan right.[4] Kant himself articulated a limited right of hospitality, condemning the practices of European imperialism and settlement, while also defending a limited right to visit foreign lands in order to approach others with offers to engage in commerce (1996, 328-29, VIII:357-358 PP; 489, VI:352-353 MM §62). I argue that contemporary attempts to update and expand Kant's category of cosmopolitan right threaten to blunt or erase Kant's anti-imperialism, and distort the meaning of how cosmopolitan right should be applied in the context of reasoning about the just terms of association in multicultural democracies.[5]

I focus specifically on the way in which Jeremy Waldron conceives of the category of cosmopolitan right and its negative implications for issues of identity politics in contemporary democratic politics and the rights of indigenous peoples (Waldron 2000b, 1999a, 1999b, 1992, 1996a, 1996b, 2000a, 2002, 2003, 2004, 2006a). Waldron diverges from the particulars of Kant's analysis, and concentrates on using Kant's juridical category of cosmopolitan right as a starting point for his own theorizing. I am sympathetic to Waldron's claim that Kant's model of cultural interaction is useful for addressing indigenous issues. However, Waldron's neglect of the particulars leads him to wrongly reconstruct the spirit of cosmopolitan right and reach the wrong conclusions on contemporary debates over indigenous issues. The particulars are important because they show how Kant's version of cosmopolitan right balanced facilitating interaction among peoples with condemning imperialism. Obtaining the consent of local peoples is an important part of Kant's cosmopolitan right. Waldron's revisions put him in danger of producing an unbalanced version of hospitality, which unduly favors communication and interaction over consent and anti-imperialism. My argument is not simply a textual point about Waldron's use of Kant. Waldron invokes one part of what he sees as the deep structure of Kant's thought, without drawing out the implications from another important part of Kant's thought. I worry that when Waldron takes a stance on indigenous issues in the context of 21st century democratic politics, Waldron invokes "Kantian" principles that Kant could not have consistently held without also weakening his condemnation of European settlement.

Section 1 sets up the general problematic of cosmopolitan right, outlining Waldron's argument and how I will attack it. In section 2, I argue for the textual claim that Waldron

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Romanian word *drept*, and the French word *droit*. See Gregor 1996.

4] Seyla Benhabib argues for expanding cosmopolitan right to include the right to membership. See Benhabib 2006; Benhabib 2004. Many argue that Kant's category of "cosmopolitan law" can be expanded beyond the limited right of hospitality to the institutionalization of human rights. See for example, Eleftheriadis 2003; Kleingeld 1998; compare Anderson-Gold 2001, chs. 2-3. See also the works, especially the piece by Jürgen Habermas, in Bohman and Lutz-Bachmann 1997. Though "cosmopolitan right" is often mentioned in that volume, it is often not clearly separated from the category of "international right."

5] For useful interpretations and historical discussions of Kant and cosmopolitan right, see Muthu 2003; Muthu 2000; Cavallar 2002; Simmons 2001, ch. 9; Flikschuh 2000, chs. 4-6. See also Kleingeld 1998; Müller 1999; Waldron 1996a. After writing the bulk of this essay, I came across the pieces by Niesen 2007; Williams 2007. I have reworked section III especially to include references to Niesen's piece.

cannot account for the respect Kant actually accords to the autonomy of indigenous peoples.

In section 3, I draw from Kant's writings on prudence and politics to make an argument about when it is acceptable for indigenous peoples to refuse extensive engagement with others. Cosmopolitan right requires the consent of Native peoples before any extensive interaction is to take place. Waldron favors a vision of domestic politics influenced by his version of cosmopolitan right, yet he neglects this element of consent. Waldron suggests that indigenous peoples are now side-by-side and cannot refuse engagement with their neighbors. Waldron says that the discipline of politics, and sharing the Earth and sharing a local territory, demands that we not present our convictions (and culture) in a non-negotiable manner (2000b). In response, I begin with the point that Native peoples often have a reasonable fear about how the state will treat them because of past violations of cosmopolitan right. I suggest that, in circumstances of past injustice, it may be allowable for indigenous peoples to take a prudent stance of engaging in less extensive interaction. Kant says generally that peace needs to be established and requires an assurance (1996, 322, VI:348-349 PP). A society might claim to offer assurance that it will provide secure protection of their rights and hear indigenous claims fairly. If this assurance stems from a claim by a society to have adopted principles for governing cultural interaction stemming from norms of cosmopolitan right, then the larger society must be clear in its commitment to cosmopolitan norms. The problem arises when an unjust history has undermined the conditions of trust. To assure the historically oppressed group of a renewed commitment to cosmopolitan norms, a society should begin by articulating an account of how past imperialism violated cosmopolitan norms, and an account of for how long reparations are owed after a violation of cosmopolitan norms. Until reparations are given, or a serious account for why they are not owed is given, indigenous peoples have reason to doubt the commitment of citizens of the larger state to cosmopolitan norms. Cosmopolitan right accorded respect to peoples; a domestic adaptation of cosmopolitan right should respect indigenous peoples as peoples, unless a serious explanation is given publicly for why it has now become appropriate to treat indigenous peoples merely as individual citizens in the context of a unified sovereign state.

In section 4, I will argue that if Waldron does not want to justify past injustices, he should avoid relying on presuppositions that entail an over-extensive right to visit. Waldron cannot use Kant to support his approach to domestic politics without relying on something like Francisco de Vitoria's over-extensive right to visit, or James Tully's intepretation of Kant as justifying imperialism. The right *to offer* commerce should not become a right *to* commerce. Waldron's attempt to update Kant's cosmopolitan right to deal with issues of culture and indigenous peoples neglects the balance that Kant established between attempts to engage in intercourse and the right to refuse interaction. With a more enlightened understanding of cosmopolitan right, we can approach issues of historical injustice in the proper spirit.

I. THE PROBLEMATIC OF KANT'S COSMOPOLITAN RIGHT

Cosmopolitan right is a juridical category introduced in Kant's discussion of public right at the end of the *Rechtslehre*, the first part of *The Metaphysics of Morals* (1996, 489, VI:352 MM §62; cf. 328, VIII:357 PP). *Recht*, or "right," refers, roughly put, to the a priori principles of jurisprudence or law. The other two categories of public right are domestic civil right (which concerns relations between individuals at the local level, including the principles for the constitution of a state) and international right (which concerns relations between states only) (Kant 1996, 455, VI:311 MM §43; 482, VI: 343 MM §53). Cosmopolitan right is concerned not simply with interactions between states. Cosmopolitan right deals mainly with encounters between peoples and individuals from distant lands, and how peoples share our finite world with other peoples (Waldron 2000b, 230). Cosmopolitan right includes the principles that should regulate interaction prior to, or abstracted from, any actual agreements made between Native peoples and specific outsiders, or those acting on their behalf.

Kant proposes only a minimal specification of the content of the principles in cosmopolitan right: "Cosmopolitan right shall be limited to conditions of universal *hospitality*" (1996, 328, VIII:357 PP, emphasis in original). Individuals, and even whole peoples, have a right to travel to foreign lands and seek further interactions with the local inhabitants. The visitors may offer to trade or to settle in the neighborhood. The locals cannot be hostile merely because the outsider made an offer, and the outsiders cannot be hostile to the locals merely because the locals refuse their offer. A visitor cannot be turned away if this would cause his destruction, but he can be repulsed if this does not destroy him (Kant 1996, 329, VIII:358 PP). At the same time, this limited right of hospitality does not entail a right to be treated as an honored guest, which would require a special pact. Kant condemns forcible settlements that encroach on Native land. Unlike John Locke, Kant does not condition land ownership on agricultural use. Kant argues that colonists must respect the first possession of indigenous peoples, even if their societies are not organized as state, that is, even if they do not live in a state of domestic civil right. Kant does say that a people may settle on land that is sufficiently far away from any other people's territory. Still, where land is already inhabited and used, the settlers must have the explicit, actual, and informed consent of the Natives—that is, a contract (Waldron 1999a; 2000b; 2004; Kant 1996, 417-18, VI:266 MM §15; 419-420, VI:268-269 MM §17; 490, VI:352 MM §62; 329, VIII:358 PP).

Jeremy Waldron accurately describes the specifics of what Kant himself states. However, Waldron says he wants to begin his discussion of cosmopolitan right by putting aside these particular judgments made by Kant. Waldron says that Kant used the term "cosmopolitan" not to describe a particular thesis about how the world should be organized; rather, he says the category of cosmopolitan right is a juridical category in which we may analyze certain issues. Talk of "cosmopolitan" right connotes a certain attitude, or spirit, in which to approach problems surrounding how different peoples are to interact with those

with whom they must share a globe (Waldron 2000b, 230). Waldron is not interested in Kant's specific theses in cosmopolitan right. He is first interested in finding out the presuppositions of the category itself, and then in developing his own theses in cosmopolitan right that hold to the Kantian spirit. For this reason, we might see it as important that Kant maintained the right to visit, despite the potential for abuse by Europeans who might overstay their welcome. This seems to support the notion that Kant held a friendly attitude towards cultural intercourse and contact, over and above any value that might be placed on the protection of cultural purity and integrity for its own sake (Waldron 1999a, 230).

Waldron makes a distinction between Kantian cosmopolitan right and cultural cosmopolitanism, but says that some links exist between the two, as the discussion of cosmopolitan right speaks to how we as citizens should conduct ourselves in politics at the state level. In particular, the spirit of cosmopolitan right should lead us to question identity politics, which Waldron sees as "a way of presenting oneself and one's cultural preferences *non-negotiably*" to those with whom we now share the world (2000b, 230-231, emphasis in original). Waldron takes from Kant's writings the idea of a "proximity principle." The proximity principle requires us to come to terms with all those whom we are unavoidably side-by-side. As Waldron's interprets it, this requirement extends to neighbors with whom we do not share values, and those who are our neighbors as a result of historic injustices (2000b, 239, 241). Since human beings are always moving across the surface of a finite globe, "there is no telling who we will end up living alongside of, no telling who our neighbors may turn out to be" (Waldron 2000b, 239). Additionally, Waldron says that the spirit of the proximity principle means that we have a civic duty to participate responsibly in politics; we should do this in a manner that does not diminish prospects for peace and that pays proper attention to the interests of others (2000a, 155).

I will argue below that Waldron has not properly reconstructed Kant's juridical category of cosmopolitan right. Because of this, he has not correctly identified the spirit of cosmopolitan right. Waldron makes claims in the form of "Kant would not have spoken of X in cosmopolitan right if Y were not also true." I argue that talking about the category of cosmopolitan right does not require accepting Waldron's view of the essential conditions or presuppositions of that category. Further, Waldron's specification of cosmopolitan right would exclude many of Kant's own particular judgments in cosmopolitan right. Waldron exaggerates the significance of the right to visit, while neglecting Kant's qualification that visitors obtain consent. While this alone may make us doubt Waldron's claims, my argument does not merely revolve around a textual analysis of what Kant said. It says first, that Kant shows a possibility that Waldron sidesteps, and second, that ignoring this possibility puts us in danger of undermining the balance Kant struck between his anti-imperialism and his positive attitude towards cultural interaction.[6]

6] Waldron is clear he does not intend his work on cosmopolitan right to be an exegesis of Kant (2004, 55 fn1). I myself stray from Kant as well, so a textual dispute certainly does not settle matters. Like Waldron, I use an analysis of the text to look at what Kant's deep principles really are, or at least how they might be seen. That my interpretation is a possible and plausible one is significant, given that Waldron's ar-

Waldron's mischaracterization of cosmopolitan right undermines his ability to draw lessons from it regarding the discipline of politics at the domestic state level. Waldron seems correct in claiming that Kant's proximity principle requires us to come to terms with those with whom we share a fate. However, we can come to terms with each other in more than one way. We should not slight these other possibilities.[7]

To the extent that we should follow the proximity principle in our thinking today, the principle does not lead us to the approach for which Waldron argues. Indeed, Kant's stances in cosmopolitan right suggest a different spirit of cosmopolitan right. The protections accorded to indigenous peoples can be seen as involving a respect for indigenous peoples *qua* peoples. Indigenous peoples generally want to be recognized as peoples, not simply as individual indigenous persons. They make claims based on their prior sovereignty and self-rule before contact with Europeans. That peoples share a fate does not always mandate that they share a unitary state, as individuals with undifferentiated citizenship. Cosmopolitan right offers a useful way to view relations between indigenous peoples and their neighbors.

The next section of this article argues that Waldron cannot account for the respect Kant actually accords to the autonomy of indigenous peoples. Waldron is able to invoke Kant in support of Waldron's favored conclusions about domestic politics by transforming Kant's spirit of cosmopolitan right. In later sections, I will argue that this transformation could weaken Kant's (and Waldron's) ability to use cosmopolitan right to condemn imposed interaction and settlement on the land of indigenous peoples. Waldron's attempt to update Kant's cosmopolitan right to deal with issues of culture and indigenous peoples neglects the balance that Kant established between attempts to engage in intercourse and the right to refuse interaction.

II. THE SPIRIT OF COSMOPOLITAN RIGHT AND THE RIGHT TO VISIT

Cosmopolitans have accused multiculturalists of wanting to protect cultures in their purity, isolating them from any risk of change. The argument can run as follows: Cultural intercourse and mixing has been a constant feature of our world (Waldron 2003). Guaranteeing

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gument has to do with what is ruled out by Kant's category of cosmopolitan right. My criticism of Waldron's use of Kant is that he cannot interpret Kant's deep principles in a way that both supports his favored view and also does not weaken Kant's condemnation of settlement in cosmopolitan right.

7] To be sure, Waldron recognizes that we may come to terms with others in more than one way. He explicitly says this with regard to historical entitlements (2004). Waldron also states that someone might formulate group rights as part of cosmopolitan right (2000b). For example, claims for a cultural exemption from a general law may be permissible, so long as such claims must be argued for, and subject to a certain discipline (Waldron 2007). Waldron is officially open to the possibility of such bottom-line claims about cultural rights succeeding, even if he thinks most claims are unlikely to be up to the challenge. My point is not so much about what bottom-line solution is adopted. Rather, my view is that Kant's proximity principle allows a much larger leeway about solutions involving shared sovereignty and about the legitimate way in which we reach the terms on which we interact.

cultural survival is hopeless, as cultural exchange always involves risk. We cannot rule out the possibility of a culture's change or even its destruction in its encounters with others (Habermas 1998). In the modern world, a culture that is protected from change becomes a museum piece. This argument can be brought to bear on domestic constitutional politics, to say that indigenous peoples have to risk misrecognition if they want their claims heard (Means 2002). One might say that a culture can only live by risking death in confrontation with other cultures.[8]

The cosmopolitan element to Jeremy Waldron's version of this argument is that democracies should seriously hear out cultural claims in a manner that is inspired by the spirit of Kant's cosmopolitan right (Waldron 2000b, 2003, 1999a). Waldron holds that we have to find a way to live in peace with our neighbors. In describing what he labels Kant's domestic "proximity principle," Waldron says we have a natural duty to come to terms with those with whom we are likely to come in conflict, whether or not we share a common culture or even a sense of justice with them (2004, 55 fn1). Since we have differing views about what is just and right, but we nonetheless feel we a need for a solution to shared problems, we must have an authoritative procedure that determines for a community what is our solution (Waldron 1999b). Waldron says Kant's general stance suggests a civic duty not to propose terms of interaction that undermine the possibilities for peace (2000a). According to Waldron, this means no one should engage in an identity politics where one presents one's cultural preference in a non-negotiable manner (2000b, 231).

Waldron's spirit of cosmopolitan right allows that minority cultures may have better solutions to how to structure family law and other problems about how we govern social life. Members of minority cultures should be able to make these arguments without their claims being dismissed out of hand. At the same time, members of minority cultures should not insist that their very identity makes it so certain claims of theirs are non-negotiable. Cultural traditions and practices should not be seen as merely decorative costumes put out for display. Rather, they should be seen and offered as serious standards for how life should be lived in one's community. It is only when cultural norms are put forth in this manner can we begin the hard work of determining what will be the norms for this territory, through bargaining, compromise, voting, and authority (Waldron 2000b, 242-43).

For Waldron, the spirit of cosmopolitan right says that peoples must come to terms with each other, given that they share a limited earth. Even if the intermixing of peoples originally occurred through injustice, the current generation did not choose to be born here, and we are now unavoidably side-by-side in Kant's sense (Waldron 2000b, 239). A people should not simply insist on their own sphere of jurisdiction as if intermixing never occurred, nor should they refuse to argue why they should be granted exemptions from general laws (cf. Waldron 2007). Waldron says that Kant's cosmopolitan right suggests we all must, at some point, share the Earth with others whom we did not choose to be near, and so we should be prepared to come to terms with whomever we find ourselves side-by-side (Waldron 2000b, 239). All should honestly strive to reach common solutions to shared problems, rather than retreating into

8] An allusion to the *Phenomenology of Spirit* (Hegel 1977, 113).

identity politics and refusing to justify one's claims to others. Engaging in democratic politics always carries the risk that one's claims will be denied (Waldron 2000b, 241-2).

Whatever the merits of the above argument, it should be not be forgotten that in historical encounters across borders, cultural interaction has often involved the "risk" of the violent suppression of entire cultures and the literal destruction of the individual members of these cultures. Cosmopolitans can point out that such destruction was in violation of cosmopolitan norms, an "abuse" of cosmopolitan right. For example, Kant's cosmopolitan right seems to clearly condemn past European imperialism. However, this begs the question: Why is it appropriate to say that indigenous peoples should now risk interaction with their historical oppressors? Waldron acknowledges that there are risks involved in living in a state, but he says that these are risks we are morally required to take on Kant's account of the state (Waldron 2006b, 183).[9]

My positive claim is that the very structure of cosmopolitan right points to conditions under which we may not be morally required to take these risks. When a group has unjustly denied another group secure enjoyment of rights in the past, it can be reasonable (or not unreasonable[10]) for the successors to the victims to be wary of extensive contact with the successors to the oppressors. In such circumstances, a degree of measured separatism may be justified. Past injustice has undermined the conditions for trust, and for a peaceable cultural exchange of ideas. While cultures cannot be completely static, indigenous peoples generally have more reason, compared to other groups, to not risk exposure through exchanging reasons in a domestic politics. They may demand a separate sphere of jurisdiction, and may do so not unreasonably, given that the past history of injustice involved a forcible deprivation of self-rule as independent polities. It is not enough to say that democratic politics would be ideal if based on a serious consideration of all reasons, including culturally-based reasons. If the promise of democratic politics in a particular community is based on adherence to the norms of cosmopolitan right, indigenous peoples have a reason to remain suspicious in certain circumstances. The instance I have in mind is when the bulk of citizens of a democratic state today are the successors to those who historically violated cosmopolitan norms and perpetrated great injustice on indigenous peoples. In such circumstances, democratic citizens may be required to provide a general account of when a prior self-governing people no longer has to be treated specifically as a people following a history of unjust interaction. Indigenous peoples are owed

9] Note that in the article I cite here, Waldron is not discussing cosmopolitan right specifically, but Kant's theory of the state at the level of domestic civil right.

10] This alludes to John Rawls' distinction between the reasonable and rational in *Political Liberalism*. I am using the term "reasonable" in the limited sense of a willingness to propose and abide by fair terms of cooperation. My use, I think, accords with Rawls' view that our willingness to actually establish a framework for social cooperation is subject to the proviso that we can rely on others to endorse and act on the terms of the framework. "Without an established public world, the reasonable may be suspended and we may be left largely with the rational, although the reasonable always binds *in foro interno*, to use Hobbes's phrase" (Rawls 2005, 54).

sincere and demonstrated assurances that citizens of a democratic state have seriously thought through how indigenous claims should be heard, before citizens can condemn their stance as an identity politics based on a refusal to give reasons or limit one's claims. Without such assurances, a relative disengagement by indigenous peoples does not seem unreasonable. In the context of talking about politics generally, and also in cosmopolitan right specifically, Kant invokes prudence; I extend this analysis to suggest that indigenous peoples may allowably take a prudent stance of limited engagement in response to a past history of injustice. Before citizens of a state can expect indigenous peoples to put their trust in a democracy using norms based on cosmopolitan right, citizens must seriously consider what they might still owe indigenous for peoples based on past violations of cosmopolitan right, such as forced settlement. This assurance, for the most part, has not yet been given.

In preparation for presenting my positive claim, I first argue for a negative claim. Jeremy Waldron argues that a juridical category is never entirely neutral and involves substantive presuppositions about its subject matter. Talking about cosmopolitan right as a juridical category presupposes an attitude or spirit about how to approach law and rights at a global level. So what are the "presuppositions or circumstances of cosmopolitan right?" (Waldron 2000b, 230) Waldron posits that to speak of cosmopolitan right is to assume that disputes in relations between peoples should not be solved merely by violence. The right to visit can be seen by us now as involving a friendly attitude toward the prospect of contact between cultures (Waldron 1999a) . Waldron writes:

> [One] would not talk about cosmopolitan right if one believed that, for the sake of cultural purity or cultural integrity, the peoples of the world should have as little as possible to do with one another. Cosmopolitan right, for Kant, is the department of legal right concerned with peoples' sharing the world with others, given the circumstances that this sharing is more or less inevitable, and likely to go drastically wrong, if not governed by juridical principles. (2000b, 230, underscore added)

Waldron is mistaken about elements of this spirit, particularly because Waldron conflates cultural purity and cultural integrity, and different types of interaction.

My negative claim in this section is that we cannot, through Kant's presuppositions of cosmopolitan right, rule out the forms of identity politics that aim to protect cultural integrity. This is true even if we can rule out the forms of identity politics that are akin to cultural purity. Waldron also conflates two kinds of interaction. Weak interaction involves an initial approach to offer further commerce. Strong interaction involves trade and other types of interaction. I will argue that only in a weak sense is sharing the world really inevitable in a moral sense. Cosmopolitan right assumes the possibility of some interaction, and sets principles for such contacts. It does not assume that justice requires extensive interaction between peoples.

If Kant thought that every culture should without exception remain pure, and be free from any outside influence whatsoever, he would not have talked about *any* right to visit. As Sankar Muthu notes, Kant never advocated stopping transnational ties. This is in contrast to Diderot, who proclaimed that Europeans should leave Tahiti alone (Muthu 2000, 33). And

neither did Kant think, as Fernando Vazquez did, that God created people to remain separate and that navigation itself was bad (Tuck 1999, 76). Vazquez would certainly never have talked of cosmopolitan right! We can indeed conceive of peoples who would resent having literally any contact with other people, including the contact it takes for the visitors to make their offer for further dealings. For Kant, this possibility does not negate a world citizen's right to travel the Earth, and to make this initial offer without being treated with hostility. Any right to visit rules out extreme cultural purity. Kant's right to visit does not protect cultures that insist on the right to always live in a completely self-contained bubble for the sake of cultural purity.

If cultures had to be pure in order to have identities, and literally any contact disturbed their purity, then cosmopolitan right would indeed be incompatible with a concern for cultural identity. Still, Kant's presentation of "the right to visit" is compatible with, and even demands, protections for cultural integrity. A culture constituting a society should have some control over the terms of its intercourse with others. Cultural integrity is a different matter than cultural purity. Having literally no contact need not be a requirement of cultural integrity.

While cultural change and mixing has been a constant, distinct cultural traditions exist. Within cultures, members often struggle to deal with change within those traditions. As Samuel Scheffler says, cosmopolitan ideas could "promote sympathy for a certain kind of traditionalist project … concerned not with the purity of a cultural tradition but with its integrity" (2001, 128-129). The question is not about cultural purity. Waldron fails to distinguish between proponents of cultural purity and proponents of cultural integrity in Scheffler's sense. Similarly, Will Kymlicka says: "[T]here is no inherent connection between the desire to maintain a distinct societal culture and the desire for cultural isolation" (1995, 103). Kymlicka points out that a desire to try to survive as a "culturally distinct society" is not necessarily a desire for "cultural purity."

Waldron says that, as a factual matter, cultures generally would not be able to maintain splendid isolation, given that cultural interaction is the normal state of affairs in a world full of curious, exploring human beings. Since this is what is normal, Waldron says that the contamination of a culture cannot "reasonably be thought to be at stake" in taking a principled stance against intercultural commerce (2006a, 91-92).[11] Furthermore, he seems to link this position to the "proponent of cultural integrity," failing to clearly distinguish between advocates for cultural purity and cultural integrity.[12] A distinct culture may learn from others. Cultural change can take place through the "impure" means of interacting with other cultures.[13]

11] Waldron writes that the "inevitability of contact makes it more or less impossible to regard purity, homogeneity, and splendid isolation as the normal condition of culture, and thus makes it impossible to regard the contamination of a culture by external contact as the sort of affront that in itself could reasonably be thought to be at stake in a stance of principled opposition to intercultural commerce" (2006a, 92).

12] Waldron says in this context that "even for the proponent of cultural integrity, isolation would be a lost cause" (2006a, 91).

13] Kymlicka here makes a point that amounts to distinguishing between cultural integrity and cultural purity: "The desire of national minorities to survive as a culturally distinct society is not necessar-

Waldron tries to show how the presuppositions of cosmopolitan right have implications for contemporary issues of identity politics, but Waldron's cosmopolitan right cannot rule out the multiculturalism of Kymlicka, or the sympathy towards the traditionalist project suggested by Scheffler. Perhaps Waldron is right that those who take a principled stand against cultural interaction cannot reasonably see cultural purity as being at stake, given human nature and the circumstances of the world. I am not sure about that, but suppose it is true. It still seems reasonable to take a principled stance that a culture should not have to be subject to unjust terms of cultural interaction. It still seems reasonable to view the character, voluntariness, and extent of cultural interaction as negotiable rather than as determined. While it may not be reasonable to think one can fight off any interaction, it may still be reasonable to think that one's culture should generally not be forcibly "swamped" by the outside world.[14]

The version of the spirit of cosmopolitan right that I offer suggests that there is a normative element behind Kant's insistence about cultures being protected from a nonconsensual violation of their integrity, even if not from a violation of their purity.[15] Though Kant's protections may not allow total cultural isolation, Kant accords a right to refuse any engagement with outsiders so long as refusing overtures does not cause the destruction of the outsiders. Respecting a whole people's choices regarding interaction is not the same as valuing freedom from contamination. Valuing protections from violations of integrity does not mean valuing cultural purity. As further evidence of this, Kant required that visitors respect Native peoples' choice of how to live. Additionally, Kant's requirement that visitors obtain the consent of Native peoples is triggered at the point when their collective ways of life are potentially affected. Kant says that peoples may decide to continue their traditional ways of using the land, as long as they stay within their own borders. Kant asks:

> Finally, can two neighboring peoples (or families) resist each other in adopting a certain use of land, for example, can a hunting people resist a pasturing people or a farming people, or the latter resist a people that wants to plant orchards, and so forth? Certainly, since as long as they keep within their boundaries the way they want to live on their land is up to their own discretion (*res merae facultatis*). (1996, 417, VI:266 MM §15, emphasis in original)

Kant sometimes gives indications that he believes that existing in a civilized state is superior to a condition of "savage" lawless freedom. Despite this, he seems to endorse let-

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ily a desire for cultural purity, but simply for the right to maintain one's membership in a distinct culture, and to continue developing that culture in the same (impure) way that the members of majority cultures are able to develop theirs . . . So the unavoidable, and indeed desirable, fact of cultural interchange does not undermine the claim that there are distinct societal cultures" (1995, 105).

14] Kymlicka also says: "It is one thing to learn form the larger world; it is another thing to be swamped by it, and self-government rights may be needed for smaller nations to control the direction and rate of change . . . We must, therefore, distinguish between the existence of a culture from its 'character' at any given moment. It is right and proper that the character of a culture change as a result of the choices of its members" (1995, 104).

15] For a further exploration of the possible reasons Kant accords this protection, see Waligore 2006. See also Niesen 2007.

ting "savages" choose their own fate based on their own judgments of what is the superior way of life.[16]

Kant condemns involuntary settlement by distant outsiders in the neighborhood of non-sedentary peoples. Settlers need not obtain consent if they are far enough away so as not to encroach on the land of the Native peoples. The requirement of consent, and the potential restriction on outsiders' freedom, is triggered at precisely the point where Native peoples' collective ways of life would be threatened:

> If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these people are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. (Kant 1996, 490, VI:353 MM §62)

Kant does not say that Native peoples should become farmers and use their land more efficiently. The Native people's current collective use of the land is the standard for encroachment, and outsiders need to obtain the Native's informed consent if they wish to settle.

Kant's protections for Native peoples were more generous than those accorded by Hobbes and Locke. In contrast to Kant, Thomas Hobbes spoke of how colonists could go to "countries not sufficiently inhabited" and "constrain" the Native peoples "to inhabit closer together, and not to range a great deal of ground, to snatch what they find; but to court each little plot with art and labour, to give them their sustenance in due season" (1998, 230, ch. 30). John Locke privileges farming, and denigrates the Native Americans for not improving the land (Locke 1980, 25, §41). Locke speaks of the "waste" lands in America, implying they are open to appropriation by the first person that actually labors on the land (Tully 1993). For Locke, unlike Kant, non-sedentary peoples' uses of the land do not count.

Going perhaps a bit further than what I said above, cosmopolitan right can, at least in certain circumstances, even authorize cultures to refuse virtually all interaction. Waldron does allow: "Kant does not rule out the possibility of a society sealing itself off against outside contact at least for a time. (He cites the case of China and Japan.)" (2006a, 91-92, underscore added). Waldron's qualification of "at least for a time" hints at the view that there is a possible point after which it could be wrong for societies to continue to refuse extensive engagement with outsiders.[17] However, Kant does more than "not rule out the possibility…" of future inter-

16] Sankar Muthu (2000) makes much more out of this than I am prepared to here. Muthu says that Kant's use of the term "humanity" refers to cultural agency and that Kant's famous non-paternalism can be applied straightaway to groups (Muthu 2000, 26). I agree that Kant's texts show that he supported collectivities having discretion, but the texts are not as clear about the basis on which Kant supported such discretion.

17] I disagree with any claim the duty of hospitality includes extensive duties of civic and global engagement. However, I agree with important parts of Waldron's analysis of Kant's theory of property. as

action, and Kant does not merely "cite" the examples of China and Japan. Kant affirmatively endorses the actual decisions made by these nations, including a decision by Japan to seal itself off in a virtually complete fashion.[18] Kant writes:

> China and Japan (*Nipon*), which had given such guests a try, have therefore wisely [placed restrictions on them], the former allowing them access but not entry, the latter even allowing access to only a single European people, the Dutch, but excluding them, like prisoners, from community with the natives. (1996, 329-330, VIII:359, translator's insertion in brackets)

The society still should be able to pursue a more isolated path, according to Kant's principles of cosmopolitan right. Ultimately, Kant allows native peoples to decide when to risk interaction and communication in a world that has shown itself to be dangerous because Europeans have not reciprocated hospitality.

Since Kant says China and Japan acted "wisely," it is pretty clear that, as a textual matter, Kant finds these actions acceptable and praiseworthy.[19] In response to this, one may object that Kant only praised the wisdom of the Japanese, not their morality.[20] This leads to the positive part of the argument that I mentioned at the beginning of the section. I see it as significant that Kant called the behavior of Japan and Chinese wise rather than merely prudent. This indicates that their avoidance of risky cultural interaction has a basis in the structure of Kant's doctrine of right. Risk is unavoidable in interacting with others; still, it is reasonable for cultures to make sure they have some safety net before extensive engagement in the cultural marketplace. One can argue against a *laissez-faire* approach to culture, and still be concerned with regulation of the fair terms of interaction, while also agreeing, with Habermas and others, that the cultures cannot be guaranteed survival as if they were endangered species (Habermas 1998, 220). When the conditions of trust are undermined, Kant says this makes peace impossible. The establishment of peace requires an assurance of the secure enjoyment of freedom (Kant 1996, 322, VI:348-349 MM §4). Once peace is established, then people can trade, interact, and dispute with each other in a context in which opposition and differences do not turn violent, and disagreements can be resolved through law. Still, what is to be done when this peace has not been assured, and indeed cultural interaction has historically led to domination and violence? Is there nothing that Kant's doc-

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outlined in the early part of Kant's *Rechtslehre* (Waldron 1996b). Property and territorial rights are problematic when one party's unilateral claim on something puts all others under a potentially burdensome duty to abstain from using that thing without her permission. So I do think that limited duties of hospitality should be met. Specifically, I believe that all titles of ownership to land and jurisdiction should come with two duties of hospitality: sufficiency and non-domination. I discuss this further in chapter 1 of my dissertation (2008).

18] Sankar Muthu has this interpretation of Kant's view of the actions of the Japanese: "Hence actions that prima facie violate the right to hospitality – in particular, the treatment of foreigners as virtual prisoners – become permissible in light of judgments of historical experience" (2000, 38).

19] In contrast, Adam Smith said that it was unwise for China to isolate itself, as this would hurt China economically, and undermine the conditions for its successful resistance to foreigners (Cavallar 2002, 322-23).

20] I thank Jeremy Waldron for pressing me on this issue.

trine of right can say in absence of assurance, or about what constitutes adequate assurance? Even if Kant does not accord cultures a general right to exist in near-absolute isolation, he still allows for a refusal to risk interaction in cases where the other interlocutor has denied security to the first by showing himself to be untrustworthy or unjust. I devote the next section to arguing for a positive claim regarding the right to communicate with others, and when cultures can refuse certain types of communication and interaction.

III. CULTURE, RISK, AND PRUDENCE IN NON-IDEAL THEORY

Though Kant says that China and Japan have "wisely" stopped extensive interaction with European visitors, one might object that these actions are not moral. These actions by the leaders of these countries might be seen as problematic because they to restrict the right of all individuals to try to communicate with all other individuals. Peter Niesen suggests that one might interpret these actions impinging on an outsider's ability to communicate with individual members of the Chinese society and Japanese society:

> Kant commends China and Japan for their reaction to the evils of colonialism. From this, we cannot infer that he believes their restrictions entirely compatible with hospitality *vis-à-vis* the bearers of subjective cosmopolitan rights . . . In 1757, China had closed all harbours but Canton to international trade . . . Japan had closed the country altogether for foreign travelers in 1635 . . . [China and Japan] clearly prevent[ed] many non-citizens from attempting communication with almost all of their citizens. (2007, 98)

In my view, it would be disastrous to specify the cosmopolitan right to hospitality to include each individual having an unlimited right to communicate with all other individuals simply because they are always already thought to be citizens of the world.[21]

For Kant, the right of hospitality is "the right of foreigner not to be treated with hostility because he has arrived on the land of another" (1996, 328-29, VIII:357-358 PP, underline mine). On one interpretation, what Kant says is compatible with the following view: If the locals have had the experience of inhospitable guests, they may treat them in a hostile manner, not because they arrive in their land, but because they have "given such guests a try" and have found their hospitality abused (Kant, 1996, 329-330, VIII:359 PP). Once the foreigner has undermined the conditions of universal hospitality, the host's obligation to be hospitable is weakened, perhaps to the point that it effectively does not exist. Kant indicates that the Japanese are merely cautiously and rationally looking out for their welfare. The leaders of Japan are not denying communication with individual Japanese persons based on a whim, but based on wisdom acquired through experience.[22] In contrast, Kant says that

21] Niesen suggests that Kant's praise of Japan and China might be explained as allowing for a narrow content-based restriction on commercial speech (2007, 99). Niesen's own explanation of Kant's limits on hospitality downplays the right of communication (100).

22] The attempts by the Japanese to pursue their happiness may be worthy of some sort of respect. Compare Waldron's suggestion that there may be "something in the Kantian pursuit of happiness which is somewhat more rigorous and somewhat more worthy of respect than (say) the mere indulgence of ap-

the European powers make "much ado of their piety and, while they drink wrongfulness like water, want to be known as the elect in orthodoxy" (1996, 330, VIII:359 PP). The commercial European states have demonstrated injustice by abusing the language of morality and committing their acts under the color of law.[23] Japan and China do not act unjustly; at least, they do not act unjustly to any great degree.[24]

Kant's praise of Japan and China for behaving wisely is not meant to refer to prudence in any pejorative sense, or a sense having no connection whatsoever with morals. It is significant that Kant called their behavior wise rather than merely "prudent." Political prudence without any basis in a moral end is not wisdom; all its subtilizing is "unwisdom" and veiled injustice (Kant 1996, 350, VIII:385 PP). That Kant said the Japanese and the Chinese acted wisely indicates that he thought their actions were compatible with having as its basis a moral end.[25]

In general, Kant does not condemn prudence, but insists on its proper place. Prudence should not be allowed to pervert the pure standards of right.[26] Kant says that it is permitted for a state to delay the implementation of a local republican constitution, "so long as it runs the risk of being at once devoured by other states; hence, as for that resolution, it must also be permitted to postpone putting it into effect until a more favorable time" (1996, 341, VIII:373 PP). In international right, it can be permissible to postpone putting into effect a federation or world state. In cosmopolitan right, it can be permissible to postpone putting into effect a cosmopolitan community.

At the level of cosmopolitan right, Kant declared: "Cosmopolitan right shall be limited to conditions of universal *hospitality*" (1996, 328, VIII:357 PP, emphasis in original). However, in absence of these conditions, there may not exist an actual right of hospitality that can be violated or infringed. At the very least, the right of hospitality is suspended. However,

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petites or the prudent satisfaction of inclinations." (2005, 314). Waldron is discussing Kant's ethics, not his view of right.

23] In the context of discussing the use of religion in justifying terrorism, Pogge says that people who act under the color of morality strike at the very heart of morality; such people are not merely bad but unjust (2008, 12).

24] Compare §42 of the *Rechtslehre*, where Kant speaks of how those who renege on surrender agreements "in general do wrong in the highest degree, because they take away any validity from the concept of right itself and hand everything over to savage violence, as if by law, and so subvert the right of men as such" (1996, 452 VI:308 MM §42).

25] The end to which Kant refers to in this context is the establishment of a federative union of states, which he says is the only rightful condition compatible with the freedom of states. Just before this, Kant said he would pass over cosmopolitan right in silence, because the suspect maxims are analogous to the suspect maxims he examined in international right. So I am not quite sure how to connect the discussion of the Chinese and Japanese (as well as indigenous peoples who may not constitute states) with Kant's discussion of "unwisdom" here. My point here is to indicate that calling the actions of the Chinese and Japanese "wise" is more significant than just calling them "prudent."

26] See Appendix I of *Perpetual Peace*. "I can indeed think of a *moral politician*, that is, one who takes the principles of political prudence in such a way that they can coexist with morals, but not of a *political moralist*, who frames a morals to a statesman's advantage." (Kant 1996, 340, VIII:372 PP, emphasis in original).

prudence does not justify invoking moral language for merely instrumental purposes. If politicians use moral language for instrumental purposes only, this will ultimately lead to competitive struggle, and undermine the ability of all people to follow morality or right, even if they sincerely want to be upright (Pogge and Busch 2006). The same result may occur, I believe, in cosmopolitan right. Kant says the European powers abuse moral language by claiming the high moral ground while committing great atrocities. Kant says that the Europeans behave inhospitably, and make "much ado of their piety and, while they drink wrongfulness like water, want to be known as the elect in orthodoxy" (1996, 330, VIII:359 PP).

Kant's approach to prudence, or allowing the suspension of certain principles of right, also appears in his general discussion of property in the section on private right in *The Metaphysics of Morals*. Kant says that individuals do not have an obligation to abstain from encroaching on others' domains, if another does not give him an assurance he will respect theirs.[27] The obligation dealing with respecting others' possessions requires universality and reciprocity. What happens where there is not a sufficient assurance others will reciprocally comply? Kant says that reciprocity is part of the rule, and without it there is no obligation. For Kant, in the state of nature, outside of a condition of civil right, there is no such assurance. Non-reciprocity by other parties may justify, or perhaps excuse, conduct that would otherwise be immoral. In a sense, Kant allows "prudence" when reciprocal moral standards are undermined by the immoral acts of others.[28] One of Kant's main arguments for establishing a state is that only the state can provide a sufficient guarantee that rights will be respected in a local territory. Parties cannot claim they are not obliged to respect others' rights once the state provides the assurance that their rights will be respected. Even in the state of nature, provisional right or other forms of non-ideal right can still apply.[29] Under provisional right, a party who wants to enter into a civil condition "resists with right" encroachments by parties who do not (Kant 1996, 410, VI:256 MM §9). At the same time, one does not have any obligation (or one has less reason) to sacrifice one's happiness in order to take direct action on a standard of morality that requires universal reciprocity, when that standard has been publicly violated by others and is thereby undermined (Kant 1996, 409, VI:255-56 MM §8).

This is similar to what Thomas Pogge refers to as the "sucker exemption," where one's reason to follow moral norms can be weakened in circumstances where others are not following them (2008, 7). According to Pogge, a previous wrong can weaken one's reasons for acting morally, especially in a competitive situation where one's competitors are not abiding by the rules (7). Pogge suggests that the "sucker's exemption" is most plausible within certain

27] "I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine. This assurance does not require a special act to establish a right, but is already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule" (Kant 1996, 409, VI:255-256 MM §8).

28] Kant seems to go further in the so-called "Hobbesian" passages in §42 of the *Rechtslehre*.

29] Indeed, cosmopolitan right has been seen as a non-ideal form of public right, in absence of a global state.

limits: "[T]his idea can indeed be plausible, but only when the victims of an agent's constraint violations are themselves previous violators of the constraint… You are not morally permitted to violate your agreements with one person because some other person has violated his agreements with you" (2008, 7-8).

Suppose Pogge's suggested limit on the "sucker's exemption" is the correct limit, and one's reason for acting morally may be weakened only when one's violation of moral constraints would only wrong parties from whom one had previously been wronged oneself.[30] Suppose it is also correct to say that individual human beings have a right to communicate to each and every individual Native person (cf. Niesen 2007, 99). If both of these suppositions are correct, then only the particular individuals who have previously abused hospitality may be turned away without a hearing. A right of hospitality that includes such an unlimited right of communication would allow different individuals representing the same country (or company) to claim the right of hospitality, even if previous representatives had abused that right.

In contrast, Kant's writings suggest that he held the more common sense view that Native peoples may permissibly make judgments following their collective experience of oppression by a group of foreigners. Right does not absolutely prohibit them from suspending hearing offers of commerce by individuals from that country. Patterns of abuse may create an exemption from any strictures of hospitality, or make the right of hospitality inapplicable. When representatives of a corporation or nation have left a long trail of abuses, then it is reasonable to suspect that this outside body has designs to subjugate or deprive the Native people.[31] A Native people may then, not unreasonably, see a salient group-based distinction and treat representatives of this corporation or nation differently. Also, group treatment has a basis in cosmopolitan right, to the extent that nations and peoples are "citizens of the world" which accord respect (or not) to individuals and trading companies as extensions of distant peoples or in their capacity as representatives of commercial states.[32]

Past-based injustice can unravel the basis of morality in domestic politics as well. If a powerful group targets another group, then the conditions for trust and secure enjoyment of freedom may cease to hold. These conditions may continue to be absent, even after the powerful group stops actively abusing the other group. Past history may affect the appropriate way to assess what conduct amounts to appropriate assurance. With past

30] Pogge writes: "But past wrongs may *weaken* such moral reasons, most clearly in cases where P can, through conduct that harms only those who have wrongfully harmed P in the past, recoup some of P's loss from previous wrongdoing" (2004, 124, italics in original).

31] Compare John Locke's statement on great revolutions: "But if a long train of abuses, prevarications and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going; it is not to be wondered, that they should then rouze themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected" (1980, 113, §225).

32] While Peter Niesen would probably not endorse my claim above, he does provide a useful catalogue of different possible types of citizens of the world (2007, 101; cf. Höffe 2004).

injustice, it may not be enough for the powerful group to change its disposition in a non-public manner; the more powerful group may need to provide some public demonstration of a change in its basic disposition to the other group. When situations of historical injustice make a group salient, it is not unreasonable for these peoples to fear dominance. Indigenous peoples may "reasonably reject" solutions to potential conflicts between groups that involve a coercive state apparatus effectively dominated by their historical oppressors.[33] Past injustice may place peoples into a context where they are dependent on others because of changed facts caused by the historical injustice. Does Kant's proximity principle really demand that, in all cases, people have a moral obligation to be part of a state, with those with whom they are unavoidably side-by-side? Does the principle demand this even if majority group's past unjust conduct that made it so the two peoples are now "unavoidably" side-by-side? According to such an interpretation of the proximity principle, the historically oppressed group would then become morally obliged to obey the commands of those who wrongly put them in that dependent condition.

In my view, it is morally problematic for a newly dependent people to be morally obliged to share a state with those who made them dependent. It is not always reasonable to expect peoples to share a unitary state with groups that have historically oppressed them. Instead, the new institutional context might involve shared sovereignty (Tully 2000).

Waldron says that if there is a need for a community to have a single solution to a problem, then this is a reason to have a determinate procedure that results in a univocal pronouncement on what view holds for this community. We can expect there is disagreement among members of the community about which particular solution is best (Waldron 1999b). I would add that just as there can be disagreement about which solution is best, there is and can be disagreement about whether the people in the area constitute a single community. In the realm of right, we may disagree on when we have transferred from a cosmopolitan context to a fully domestic context. That is, there may be disagreement on whether indigenous peoples should be seen as a people, as a sort of separate community, or as simply individual citizens of a unitary state. We may agree (or should agree) that we have an obligation to come to terms with each other in some form, and yet disagree on how to identify when the doctrine of right says we should determine that solution in the context of a fully unitary state. From the perspective of cosmopolitan right, or the entire doctrine of right, there is a real possibility that we have not yet transitioned to a fully domestic context. Right and morality should find it important that groups have reasonable guarantees of their security, so that morality and right are not undermined. Otherwise, it may become reasonable (or not unreasonable) for parties to act in a prudential manner, at least for the time being. I am *not* claiming we affirmatively owe it to all groups and peoples to give them a guarantee of absolute security. I am only suggesting that we have a general

33] I allude here to Scanlon 1998. See also Barry 1995, esp. 67-72. I also have in mind Barry's claim about the reasonable acceptability of majoritarian procedures for deciding matters.

obligation to others not to *deny* them reasonable security, at least when we also insist they have certain moral duties.

It might be objected that this analysis seems to apply to all individuals and all groups, whether of not they were historically wronged. In support of this objection, Kant clearly says a party can wrong others simply by being near them in a lawless condition, even before the party commits any active violation.[34] On the other hand, Kant says that all human beings have an original right to be considered beyond reproach since she has "done no wrong to anyone" before she performs any act affecting rights (1996, 393-94, VI:237-238). My resolution to this is the following. In order for one party to be wronged by a second party, through being denied an assurance of peace by that party, the first needs to want to have this assurance. A party cannot consistently invoke the idea of "right" and "wrong" if they do not want a condition of right to come about. Only after one party has called upon a second party for an assurance of peace, and it is not forthcoming, can the former view himself as wronged: "the former, who has called upon the latter for [an assurance of peace] can treat him as an enemy" (Kant 1996, 322, VIII:349 PP). If the first party desires to stay in a condition where disputes are settled by violence, a neighboring second party does not wrong the first party by also wanting to remain in this condition. They in general do wrong by wanting to stay in this condition, but they do not wrong each other, since it is as if they mutually consent (Kant 1996, 452, VI:307-308 MM §42). Further, one has to somehow communicate that one wants this assurance and/or the other has to communicate that they have no intention of giving this assurance.

Generally speaking, it seems plausible that one can call on one's neighbors for this assurance without harming them. Non-sedentary Native peoples seem to be an exception. Kant's innate right to freedom says that a human does no wrong to others if her ac-

34] See also the so-called "Hobbesian" passages in §42 of the *Rechtslehre*: "No one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint toward him. No one, therefore, need wait until he has learned by bitter experience of the other's contrary disposition; for what should bind him to wait till he has suffered a loss before he <u>becomes prudent</u>, when he can quite well perceive within himself the inclination of men generally to lord it over others as their master (not to respect their superiority of the rights of others when they feel superior to them in strength and cunning)? And it is not necessary to wait for actual hostility; one is authorized to use coercion against someone who already, by his nature, threatens him with coercion" (Kant 1996, 452, VI:307 MM §42, underline added). It should be remembered that these passages occur in the context of a discussion of the postulate of public right. This postulate says that you ought to leave the state of nature with all those whom you are unavoidably side by side. Kant says that this postulate proceeds from "private right in the state of nature" (Kant 1996, 451, VI:307 MM §42). I read Kant as saying that the postulate of public right (what Waldron labels the proximity principle) is true on the condition that people have already have rightful possession (at least provisionally) in the state of nature (Kant 1996, 404-406, VI:246 MM §2 in Ak., §6 in Gregor). Kant says people do wrong in the highest degree by wanting to "remain in a condition that is not rightful, that is, in which no one is assured of <u>what is his</u> against violence" (1996, 452, VI:307 MM §42, underline added). If there were no individual possessions, no "mine and thine," then Kant's condemnation of the non-civil condition loses force. This seems to help explain why Kant does not insist that non-sedentary peoples, who do not recognize individual property rights in land at least, are not obliged to leave the state of nature.

tion in itself does not diminish what is theirs, so long as they do not consent (1996, 294, VI:238 MM). Non-sedentary peoples form a society that, according to Kant, is not in a civil condition. Moreover, they are apparently not required to enter into a civil condition. We can see them as being ruled by customary law. So long as there are no property disputes, there is no obligation to leave the state of nature and form a civil condition. However, if one visiting "communicator" from the outside is permitted to claim property rights on his own initiative, he can thereby forward a dynamic leading to the creation of a civil state (Niesen 2007, 95). Once someone claims property rights, it seems the outsider could claim we need a state to resolve disputes over property. According to the proximity principle, it seems that he may force others to leave the state of nature.

To the extent Kant addresses this danger, his response is limited to keeping some distances between the groups so that they are neighbors. People that are not proximate cannot invoke the domestic proximity principle, requiring that neighbors leave the state of nature and form a state. I think that this is part of the reason that Kant says in his discussion of cosmopolitan right that any settlement not taking place by contract must be far away from Native lands (1996, 490, VI:353 MM §62). Kant also speaks of how land lying between two groups may be unused, except in the sense that is used by both as neutral ground to keep them apart (1996, 415, VI:265 MM §15). Consent is generally required for distant peoples to become neighbors. We can read Kant as holding that, in effect, it is wrong for outsiders to coercively disrupt the internal dynamics of Native societies. The dynamic of state building should not begin before Native peoples start to claim individual property rights among themselves (Niesen 2007, 95).

In this way, Kant's cosmopolitan right can be seen as involving principles against undue contextual transformation. If settlers were permitted to trade and settle without the permission of the Native society, then the settlers could begin the process whereby all are required to leave the state of nature. Moreover, the settler who establishes a trading post would have the power to force the Native peoples into a state (Niesen 2007). Through transforming a context, the transgressor would make it unavoidable that we live side-by-side in Kant's terms. The transgressor would then have the power to coerce the Natives and set up an imperial state. Through the transgressor's action, the transgressor creates new circumstances of justice whereby the transgressor acquires coercive powers to subordinate the others, and the others acquire moral duties to establish and uphold a coercive state apparatus that the transgressor may rule.

The problem with Kant's view is that his code of right protects Native societies only so long as they are isolated. As soon as any impure mixing occurs, then Native peoples lose their previous ability to maintain their distance. Kant's possible barriers against mixing are strong, but brittle. Once actual mixing occurs, Kant seems to offer little protection. Kant does not give due attention to how a successful transgression of cosmopolitan right would result in "unavoidable interaction" on a local level. For Kant, this would lead to a command to leave the state of nature, which the transgressors may enforce. The Native

peoples would then have a moral *duty*, which they may be coerced to fulfill, to become subordinate to the burgeoning settler state.

Unlike Kant, Waldron does attempt to give an answer to what should happen after the principles of cosmopolitan right have been violated. Waldron says that even if the settlements arose through injustice committed by the original settlers, we cannot say their descendents chose to be there, at least after a few generations. They generally have no other home to which to return. We then simply apply Kant's domestic proximity principle (Waldron 2004). And for Waldron, this suggests the Hobbesian (and Kantian) view that a community should have a determinate procedure to reach an authoritative solution (1999b).

Waldron does say that the lessons of cosmopolitan right should show us that there is something inauthentic about identity politics, where culture is something consciously flaunted rather than something we just do. Those who engage in identity politics present non-negotiable demands, saying that to not respect our culture is to not respect us. For Waldron, we should instead see that culture is a set of proposed solutions to common human problems; we have to find a way to regulate our actions through right despite our disagreement (2000b, 241-243; 2002, 219; 1996b, 99-100; 2000a, 168-171). It almost seems as if Waldron uses the category of cosmopolitan right to largely destroy the interesting aspects of cosmopolitan right he identifies. Cosmopolitan right is not doing any special work on intermediate categories such as relations between peoples. The category seems to be invoked simply to justify its irrelevance.

Waldron criticizes identity politics for being inauthentic and reductive. Waldron emphasizes that a culture be seen as giving a set of solutions to common problems (2000b; 2000a). I would add that a societal culture provides an arena in which to work out these problems.

What Waldron labels a "non-negotiable" presentation of identity may involve an assertion that claims should not be worked out in the context of the unitary state model. A stance involving claims based on prior sovereignty may be a legitimate stance for many indigenous peoples. This need not be an impossible demand for isolation or cultural purity or a refusal to share the world on any terms. This could be a demand by a group for its own sphere of jurisdiction so that it can engage in sharing the world on new terms. Dialogue can take place across distinct, but overlapping, public spheres. Negotiation can take place on a nation-to-nation model (Tully 2000).

A more interesting "domestic" adaptation of cosmopolitan right would identify as its subject matter intermediate categories like relations between peoples. I suspect that Waldron has an unfortunate tendency to use the phrase "cosmopolitan right" when he is referring to a broader category like public right or Kant's entire doctrine of right. For example, Waldron says: "[Kant's] own belief in some sort of grand federation of states is thus a thesis *in* cosmopolitan right (as his republicanism is a thesis in constitutional jurisprudence), rather than being, so to speak, the essence of the cosmopolitan" (2000b, 229, emphasis in original). *Pace* Waldron, Kant discusses his thesis of a grand federation

of states as part of *international* right whenever writing about cosmopolitan right.[35] The pacific federation of states is not for Kant a thesis *in* cosmopolitan right, unless Waldron is using the term to identify a different category than the one that Kant meant by it.[36] Waldron's miscategorization obscures the fact that "cosmopolitan right" is itself part of a larger framework of right. Kant suggests that cosmopolitan right is an ideal unwritten moral code supplementing domestic civil right and international right (1996, 330, VIII:360 PP). These must hang together, or the framework will collapse (Kant 1996, 455, VI:311 MM §43).

In revising and updating of Kant for use in contemporary theorizing, we should alter the coercive domestic proximity principle before extending its application to the domain of cosmopolitan right. Kant does not seem to be concerned with how his theory of right might make contextual transformation through wrongs too easy. Transgressors could commit a wrong in one context, quickly turning unjust takings (in the old one context) into just keepings (in the new context). The fact that settlement will unleash a dynamic of detrimental contextual change is a reason for reformulating either the code of cosmopolitan right or domestic civil right. Extending the coercive domestic proximity principle would, in effect, ratify and justify colonialism. Kant's cosmopolitan right should instead be seen as setting guidelines for when it is permissible to engage and disengage in certain types of interaction. Negotiating the terms of interaction from relatively separate places is not in itself against the spirit of cosmopolitan right. Such measured separatism may be allowed and protected, at least for many indigenous peoples.

In sum, the demands of indigenous peoples in contemporary politics, including their demands for the return of land and territorial jurisdiction, cannot be easily dismissed as involving an unreasonable or non-negotiable stance. A non-negotiable stance would be one that refused to share the Earth. Sharing the Earth and a local territory can take many shapes and forms. Which forms of sharing are permissible, and which forms of sharing are required, does not depend only on the present extent of interaction. It also depends on the history of interaction between the different peoples living nearby each other. The spirit of cosmopolitan right, properly reconstructed, permits, and even requires, protections for cultural integrity and recognition of land claims stemming from historic injustice.

The above section shows how an author, Kant, writes on cosmopolitanism in a way that favors indigenous peoples. However, it is not enough to look at Kant's text. I agree with

35] Waldron is problematically citing Kant's essay, *On the Common Saying: 'This May Be Correct in Theory, but It is of No Use in Practice'*. In that essay, Kant refers to "international right" and "the cosmopolitan level [*kosmopolitischer Rücksicht*]," but does not clearly distinguish between these two; Kant does not mention "cosmopolitan right [*Weltbürgerrecht*]" (1996, 309, VIII:313 TP). The categories of international right and cosmopolitan right are clearly separated only in two of Kant's later publications, *Towards Perpetual Peace* and *The Metaphysics of Morals*.

36] Cf. Kant's *Critique of the Power of Judgment*, where Kant speaks of "a *cosmopolitan* whole [*Weltbürgerliches Ganze*], i.e., a system of all states that are at risk of detrimentally affecting each other" (2000, 300, V:433 CJ §83, emphasis in original, brackets mine).

Waldron that we should look at the deep structures of Kantian thought. I have tried to do this in the previous section by discussing Kant and prudence. I continue in the next section, where I argue that we ought not write what Kant says about the consent of the Native peoples out of the equation. If we do, we risk committing ourselves to justifying past acts of forced settlement. The principles of cosmopolitan theories are tied to what we think is just. The rest of this article will be devoted to arguing that we must preserve a role for consent, if we want to remember European imperialism as unjust.[37]

IV. AN OVER-EXTENSIVE RIGHT TO VISIT AND COMMUNICATE

Kant says that individuals who are side-by-side in a local territory are obliged to leave the state of nature. If they refuse, their neighbors may force them to join a political state. However, Kant's proximity principle only allows coercion for individuals interacting in a local territory. Kant does not clearly allow coercion for this purpose at the level of international right, nor presumably at the level of cosmopolitan right. Kant desires the establishment of a cosmopolitan constitution. It would, however, be a mistake to speak about Kant's cosmopolitan aims in cosmopolitan right, without mentioning how right restricts the pursuit of those aims.

To see why it would be a mistake, I will look at the brief treatment of Kant by contemporary theorist James Tully in *Strange Multiplicity*. James Tully says that "Kant's justification of constitutional imperialism" is similar to John Locke's natural right to punish violators of the law of nature. Tully says of Kant's right of hospitality: "It gives Europeans the right to engage in commerce with Aboriginal peoples and European nations the right to defend their traders if the Aboriginal Peoples are so inhospitable to deny the right" (1995, 81). This could be a description of Francisco de Vitoria's doctrine of hospitality, and other writers' justifications for war in the New World. Tully is wrong to attribute it to Kant. Kant's right to *attempt* commerce is mistaken by Tully as a right *to* commerce. To show that Kant justifies imperialism, Tully gives one extensive quote from Kant:

> 'In this way distant parts of the worlds can establish with one another peaceful relations that will eventually become matters of public law, and the human race can gradually be brought closer and closer to a cosmopolitan constitution.' (1995, 81, underline mine).[38]

Tully does not mention the immediately preceding sentence in *Perpetual Peace*:

37] A further problem is that while Kant's text clearly places importance on consent, his motivation is obscure. In fact, it is in tension with his more developed theory of property in the *Rechtslehre*. Indeed, I agree that Kant's analysis leaves open a major question: From where do a Native people (or any people) get the right to claim a large portion of the Earth as their own and thus the right to exclude outsiders? It is highly implausible that peoples can always legitimately claim to occupy a territory, regardless of any costs that it has for others. I have discussed this problem in greater detail elsewhere (2008, chs. 1, 4). Here, I can only briefly say that I think that we can avoid unintuitive consequences if we formulate a theory of property in the correct way.

38] Unlike usual, I am not quoting from Gregor's edition of Kant's works. I repeat here Tully's quote from Humphrey's translation of *Perpetual Peace* (Kant 1983, 118, VI:358 PP).

> The inhospitableness of the inhabitants of sea coasts (for example, the Barbary Coast) in robbing ships in adjacent seas or enslaving stranded seafarers, or that of the inhabitants of deserts (the Arabian Bedouins) in regarding approach [*Annäherung*] to nomadic tribes as a right to plunder them, is therefore contrary to natural right; but this right to hospitality — that is, the authorization of a foreign newcomer – does not extend beyond the conditions which make it possible to *seek* commerce with the old inhabitants. In this way . . . (Kant 1996, 329, VIII:358 PP, italics in original, underline mine)[39]

The "in this way" refers to the increase of transnational ties through approaches allowed by the right to hospitality. Transnational ties should not come about through a forceful establishment of trade. A cosmopolitan constitution, which specifies rules governing possible peaceful transnational interaction, should come about by way of attempts to have further, extensive intercourse, where some attempts may rightfully be rebuffed.[40] Cosmopolitan right is not satisfied simply when transnational ties exist. The right to visit does not authorize the creation of denser ties through violations of cosmopolitan right.

In contrast, Vitoria's doctrine does seem to outline an extensive right of visit, and makes the denial of hospitality a just cause for war. Vitoria says that Europeans "have the right to travel and dwell in those countries, so long as they do no harm to the barbarians and cannot be prevented by them from doing so" (1991, 278, emphasis omitted). The law of nations, according to Vitoria, tells us that there is a duty to treat visitors hospitably and it is inhumane to treat visitors badly without cause. A violation of the lawful rights of Europeans can give the Europeans a right to wage war. Native rulers may not lawfully forbid Europeans from trading with their subjects and from "harmlessly" using natural resources. Vitoria says that if the natives insist on not listening to reason: "It is lawful [for the Europeans] to meet force with force . . . [I]f war is necessary to obtain their rights (*ius suum*), they may lawfully go to war" (1991, 282).

Kant's right to visit is much less extensive than Vitoria's right to visit. Achieving a rightful cosmopolitan condition does not justify all means towards a cosmopolitan end. Kant says that even the prospect of the Earth remaining in a lawless condition would not justify violations of cosmopolitan right. Kant asks whether or not forced colonization should be authorized when settlers decide to go into a neighborhood where the local peoples hold out no prospect of civil union:

39] I am now quoting the Gregor translation. Tully does not quote this passage, but the Humphrey edition used by Tully renders *Annäherung* as "proximity" rather than "approach." Talking simply of "proximity" might obscure that Kant means to speak of the Arabic Bedouins *coming* near the nomadic tribes, rather than already *being* in near proximity for a long time. Just before this, Kant says: "*ships* and *camels* (ships of the desert) make it possible to approach one another . . ." (1996, 329, VIII:358 PP, emphasis in original). Kant is saying that both riders of sea-ships and desert-ships wrongly interpret the right to *come* near people to seek commerce as a right to do violence to them and take what is theirs. Already *being* close neighbors is different than *coming into the neighborhood* of another.

40] This cosmopolitan condition is not necessarily a world-state. Kant is a bit unclear about the possible institutionalization of cosmopolitan right. The cosmopolitan condition, or cosmopolitan constitution, is a rightful condition where there are public laws regulating possible interactions among persons and peoples across the globe. In the contemporary context, we can conceive of "global governance" as consisting of a network of transnational institutions.

> [Should we] not be authorized to found colonies by force if need be, in order to establish civil union with them and bring these human beings (savages) into a rightful condition (as with the American Indians, the Hottentots and the inhabitants of New Holland) . . . since nature itself (which abhors a vacuum) seems to demand it, and great expanses of land in other parts of the world, which are now splendidly populated, would have other remained uninhabited by civilized people or indeed, would have remained forever uninhabited, so that the end of creation would been frustrated? But it is easy to see through this veil of injustice (Jesuitism), which would sanction any means to good ends. Such a way of acquiring land is therefore to be repudiated. (1996, 417-18, VI:266 MM §15)

Cosmopolitan right perhaps shows us that we can hope to have a cosmopolitan constitution regulating possible interactions among persons and peoples across the globe, but cosmopolitan right does so without justifying odious means to that end (Kant 1996, 490, VI:353 MM §62).

Waldron clearly knows and references the portions of the text I have mentioned. I think that the structure of Waldron's mistaken interpretation has affinities with Tully's misinterpretation, but Waldron's is more complex. I believe that Waldron cannot reach his favored conclusions about the presuppositions of cosmopolitan right without also accepting something like the doctrine of hospitality according to Tully or Vitoria.[41] The latter doctrines are too extensive, because they justify unjust actions. While Kant balances encouraging interaction and the right to refuse extensive interaction, Vitoria has an unbalanced notion of hospitality.[42] Vitoria's conception of hospitality puts too much of an emphasis on communication and interaction, at the expense of anti-imperialism and consent. Waldron emphasizes how much Kant favors communication, but Vitoria is the better example of this spirit of communication. Vitoria shows the dangers of such a spirit, if taken too far. If Waldron holds onto his favored presuppositions of cosmopolitan right, he is pushed into accepting something like Vitoria's doctrine, with an extensive right to visit, and all the imperialism it would have justified.

Kant says that the "stain of injustice" cannot be washed away from past European imperialism and other violations of right (1996, 490, VI:353 MM §62). Waldron agrees with this, but argues that we can separate a condemnation of the original event from the question of whether we should try to rectify the event now (1992). My contention is that while we can sometimes separate remembrance and rectification, this response becomes unavailable to Waldron if his analysis directly or indirectly makes it so violations of right would have been justified at the time they were committed.

Waldron's vision of how domestic politics should be conducted relies not so much on the consensual spirit of cosmopolitan right, but on the coercive version of Kant's "prox-

41] Alternatively, Waldron might need to rely on an outdated teleological doctrine of progress. On this, and further criticisms of Waldron, see Waligore 2005.

42] Some nuances in Vitoria's position may make him a somewhat more sympathetic figure than I have portrayed him here. Vitoria's right to visit is not as extreme as some other authors, but his right to visit is still over-extensive; analyzing his work may serve as a warning to those who would invoke an even more extensive right to communication.

imity principle."[43] The proximity principle, stated generally and potentially applying at all levels of public right, says that those who are unavoidably side-by-side with others ought to leave the state of nature and regulate their interactions according to law (Kant 1996, 451-52, VI:306-307 MM §41-42) The "domestic" version of the proximity principle says that when we unavoidably share a local territory, we have an enforceable obligation to leave the state of nature and establish a civil state (Kant 1996, 456, VI:312 §44). While Kant says that we are authorized to coerce dissenting neighbors who do not wish join a domestic state, the situation is different when we speak of being side-by-side in the sense of merely unavoidably sharing the Earth. Kant does not say we are permitted to use coercion to force others to establish a condition of right at the cosmopolitan level; he takes the opposite view (1996, 490, VI:353 §62).

Despite this difference between the domestic and cosmopolitan level, Waldron argues that cosmopolitan right has important implications for domestic politics. My worry is that Waldron's spirit of cosmopolitan right cannot be strong enough to support his conclusions about indigenous issues and identity politics at the domestic level, unless the coercive elements of the domestic proximity principle are incorporated back into cosmopolitan right. To avoid justifying past imperialism, we should not adopt a strongly coercive "global" proximity principle justifying the use of force against those who refuse extensive global interaction. Kantians should not interpret cosmopolitan right so as to effectively remove Kant's strong requirement regarding how visitors must obtain the actual consent of indigenous peoples.[44]

The lesson we should draw from cosmopolitan right is to try to emulate the model of balance and negotiation embodied in Kant's right of hospitality. Indigenous peoples should be treated as peoples. They are not states, but neither should they be treated merely as undifferentiated individual citizens. Though cultural purity is not possible or desirable, shared sovereignty is a viable option (Tully 2000). A so-called "privileged" or "special" status for indigenous peoples does not reflect a non-negotiable presentation of identity. It is the stance taken when a Native people refuses an offer of extensive commerce by turning away a European visitor. In contrast, Vitoria's over-extensive right of hospitality meant that *visitors* often presented themselves in a non-negotiable fashion: theirs was an offer that could not be refused.

Cosmopolitan right forbade extensive transnational interaction between peoples in absence of consensual treaties. This spirit of cosmopolitan right can be applied to relations between indigenous peoples and the surrounding settler state. Such a "domestic" adaptation of cosmopolitan right should involve seeing indigenous peoples as peoples, not simply as individuals who share undifferentiated citizenship in a unitary state, which

43] "Proximity principle" is Waldron's term. See Waldron 2004, 57.

44] In itself, this does not foreclose the possibility of reading Kant as being committed to condoning imperialism, whatever his official view. What it should foreclose is that possibility combined with a use of such an interpretation to support one's own work in contemporary normative theory.

has moved beyond its unjust beginnings. The spirit of cosmopolitan right should involve a renewal of a just treaty relationship, not a ratification of the legacy of imperialism. If indigenous peoples are expected to trust the larger polity because the polity supposedly upholds the spirit of cosmopolitan right, indigenous peoples should be assured that the spirit being upheld is not one that would have justified past colonialism.

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Is Compulsory Voting Justified?

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Abstract. Should voting be compulsory? Many people believe that it should, and that countries, like Britain, which have never had compulsion, ought to adopt it. As is common with such things, the arguments are a mixture of principle and political calculation, reflecting the idea that compulsory voting is morally right *and* that it is likely to prove politically beneficial. This article casts a sceptical eye on both types of argument. It shows that compulsory voting is generally unjustified although there are good reasons to worry about declining voter turnout in established democracies, and to worry about inequalities of turnout as well.

Key words: democracy, voting, equality, liberty, duties, rights.

Should voting be compulsory? A surprising number of people seem to believe that it should, and that countries like Britain, which have never had compulsion, ought to adopt it (Lijphart 1997; Kearney and Rogers 2006; Wertheimer 1975; Lacroix 2007; Czesnkik 2007).[1] As is common with such things, the arguments are a mixture of principle and political calculation, reflecting the idea that compulsory voting is morally right *and* that it is likely to prove politically beneficial. This article casts a sceptical eye on both types of argument. It seeks to show that the idea of a moral duty to vote is far less clear than proponents of compulsion believe, as is the case for turning a moral obligation into a legal one. It also suggests that the evidence of beneficial consequences from compulsion is weak. Hence, I show, while there are good reasons to worry about declining voter turnout in established democracies, and to worry about inequalities of turnout as well, the case for compulsory voting is not proven.

As we will see, the principled arguments for compulsion tend to turn on the claim that compulsion is justified as a way to combat the free-riding of non-voters on voters. Such free-riding, it is claimed, is an unjustified exploitation of the provision of a collective good – a democratic party system – and, unless curbed, is likely to undermine it. The pragmatic arguments are that compulsion is necessary to combat inequality in voting, which disadvantages the political left, because the propensity to vote is, overwhelmingly, characteristic of the more established and better educated members of society.

The term "compulsory voting" can be a bit misleading, at least in democracies, where the secret ballot obtains. Because of secrecy, it is impossible to verify whether or not anyone has cast a legally valid ballot. Consequently, compulsory voting generally means

1] The key paper which sparked contemporary interest in the topic is Lijphart, 1997. A recent British argument for CV is Keaney and Rogers 2006. Geoff Hoon, former Defence Minister in the Labour Government, espoused compulsory voting in 2005, and the *Guardian* newspaper for Monday, July 4, 2005, claimed that Hoon had the support of Peter Hain, and the former education minister Stephen Twigg. Examples of philosophical arguments for compulsion are Wertheimer 1975 and Lacroix 2007. See Czesnik 2007 for recent interest in compulsory voting in Eastern Europe, and the reasons behind it.

compulsory turnout or, as some call it, compulsory participation.[2] However, because the purpose of compulsion is to get people to *vote*, rather than just to *turn out* or to *participate* in some generic way, talk of compulsory voting strikes me as less misleading than these other terms, and is the term that I will be using here.

The case for compulsory voting can be reconstructed in six steps which highlight its connections to democratic theory and practice. Not all countries with compulsory voting are democratic, nor are all arguments in its favour.[3] However, the ones that I am concerned with seek to show that compulsory voting is consistent with democratic norms, institutions and values and may, indeed, be required by them. Not every proponent of compulsory voting will make each of the steps in the argument below, nor make them in the order in which I present them. However, this reconstruction is meant to illuminate the moral and political concerns which animate democratic arguments for compulsory voting, and to illuminate their logical connections. These arguments have, predominantly, been advanced by those who support social democratic policies, broadly understood. So, I have followed Arend Lijphart in supposing that concerns for political equality, as well as political legitimacy, are important to the case for compulsion although, historically, proponents of compulsory voting in Europe seem to have come from the right, rather than the left (Pilet 2007).[4]

I. THE CASE FOR COMPULSORY VOTING

Step One: Low Turnout is Unequal Turnout

Participation in elections is declining in most advanced industrial countries.[5] *Lower* turnout, moreover, is *more unequal* turnout and these two facts, taken together, underpin the case for compulsion.[6] Lower turnout seems to threaten the legitimacy of a country's

2] Arend Lijphart refers to compulsory turnout in Lijphart 1997. Sarah Birch refers to compulsory participation in Birch 2007.

3] Examples of democracies with compulsory voting include Australia, Belgium, Luxembourg, Cyprus and Greece; examples of nondemocratic instances of compulsory voting are Egypt and Singapore. Australia introduced compulsion in 1924, and surveys suggest that about three quarters of the electorate are satisfied with the practice (Hill 2007, 4). Compulsory voting was introduced in Belgium with the introduction of universal male suffrage. Not only did women then lack the vote, but the male franchise was unequal as additional votes were available based on one's education and status.

4] The Netherlands adopted compulsory voting in 1917, along with universal suffrage for men and PR (women got the vote in 1919). The PR system in use at the time apparently required 100% turnout for the results to be truly proportional. I am curious why this was the system of PR that was adopted, and what connection the adoption of PR had to worries about the consequences of universal suffrage (Gratschew 2004, 29).

5] Two excellent recent books on voter turnout are Wattenberg 2002 and Blais 2000. Gerry Stocker (2006) emphasises that the problem of declining turnout, while widespread, is particularly acute for established democracies.

6] Lijphart says that "low voter turnout means unequal and socioeconomically biased turnout" (1997, 2). He seems to have been one of the first people to link the two systematically and repeatedly.

government and electoral system, because it significantly increases the likelihood that governments will reflect a minority, rather than a majority, of registered voters, and of the voting-population, itself. As Ferdinand Mount said, commenting on the report of the Power Inquiry, in Britain, "when little more than 20% of the electorate has voted for the winning party, as in the United Kingdom general election of May 2005, legitimacy begins to drain away". He adds, "If only just over half of us bother to vote at all in national elections and scarcely a third in local elections, the bureaucracy begins to think of elections as a tiresome and increasingly insignificant interruption in its continuous exercise of power. What develops is…'executive democracy' and… more rudely described… 'elective dictatorship' " (Mount 2006).

It is not news that turnout has been declining in most democracies since the Second World War. However, the association of low turnout with unequal turnout may be less well known and its significance less clearly appreciated. For example, in the last two General Elections in Britain the participation gap between manual and non-manual workers more than doubled: from around 5% in 1997 to around 11% in 2005. Likewise, between the 1960s and 2005 the difference in turnout between the top and bottom quartile of earners grew from 7% to around 13%. The results are not dissimilar in other countries, and are particularly pronounced in the United States, where turnout at presidential elections for the college educated can be over 25% higher than that of the population as a whole, while those who lack a high-school diploma are 16% less likely to vote than the general population (Rose 2000, 316-7).

Step Two: Unequal Turnout Reflects and Reinforces Social Disadvantage

The fact that lower turnout means increasingly unequal turnout is troubling, because those least likely to turn out are overwhelmingly drawn from the least privileged social groups in a polity. Thus, the IPPR report notes that though "socio-economic status - whether measured by income, class or education – is not as significant a factor as age in determining whether a person will vote or not, it has nevertheless become an increasingly significant factor – at least in the UK… although there has been some decline in turnout among all income categories since 1964, the decline is most rapid for those with the lowest income". (Kearney and Rogers 2006, 12)

So, it looks as though those people who do least well in our societies are least likely to vote; and in what seems to be a vicious circle, those least likely to vote are least likely to attract sympathetic attention from politicians eager to get elected or reelected. So inequalities in turnout are troubling, because they suggest a vicious circle in which the most marginal members of society are further marginalized.[7] Not only that: in so far as these non-voters are more likely to vote for social democratic polities than other people, and

7] Lijphart notes that "the decline in turnout has been accompanied by a 'participatory revolution' in Western Europe with regard to more intensive forms of political participation in which class bias is very strong" (1997, 6).

particularly likely to benefit from them, inequalities in turnout seem to deprive the left of a significant political constituency and make it easier for the right to get reelected. Hence, as Lijphart makes plain, social democrats should be particularly concerned about declining voter turnout because it makes it more difficult to elect social democratic governments and, therefore, to pass social democratic legislation or public policies.[8]

Now, as it happens, in Britain, as in most other countries, it is *age,* rather than wealth or income, which is the best predictor of who votes (Blais 2000).[9] Interestingly, in Britain, race is not a significant variable in explaining turnout, nor is wealth *per se*. In so far as they matter to turnout, in other words, it is because they are correlated to age and to the second most important factor to explain turnout, namely, education[10] Indeed, Keaney and Rogers say of age that "it is the single most significant of socio-demographic factors – more significant even than socioeconomic status" (2006, 11).

The fact that it is age and education, rather than race, income and wealth that directly determine voting, makes it harder to know how troubling disparities in turnout really are. In principle, young people can be expected to have older people who care about them, and who are likely to vote bearing their interests in mind. In practice this may not be the case. In so far as young people are born to young parents – which is particularly likely if they are relatively uneducated and socio-economically deprived – young non-voters may, in fact, have young non-voting parents, family members and friends. In those circumstances, they may well lack anyone amongst those who vote who shares their interests and concerns.

Step Three: Compulsion is the Best Cure

If the first steps in the argument for compulsory voting are, typically, an expression of concern about declining and increasingly unequal turnout, the next step notes that there are a variety of plausible remedies for these problems. However, none seems as immediate, or as effective as compulsion in rectifying *both* low and unequal turnouts. Thus, while it is common to suggest that registration and voting should be made easier, that voting should take place at weekends, and that more active campaigning of all voters should be promoted, none of these is guaranteed to have any significant effect on turnouts, or on

8] Lijphart,cites evidence that "the left share of the total vote increases by almost one-third of a percentage point for every percentage point increase in turnout" (1997, 5). However, he refers to a study of the UK, where "high turnout has meant a consistent disadvantage for the conservatives, a modest gain for the Liberals, and no appreciable advantage for Labour – but, of course, a relative advantage for Labour as a result of the Conservatives' disadvantage" (1997, 5 n. 8). This study is from 1986, and so the results may have been affected by the relative scarcity of Labour victories in the period and might look rather different if one extended the results up to 2005.

9] Blais reports that Franklin's 1996 of 22 countries shows that age comes out as the most important socio-economic variable Blais' own analysis of the Comparative Study of Electoral Systems (CSES) survey of 9 countries confirmed that age and education are the two critical variables (2000, 51-2).

10] Apparently MORI estimates from 2001 suggest that only 39% of 18 – 25 year olds voted, compared to 70% of the over 65s. (Keaney and Rogers 2006 ,11 and 49-54).

inequality. Such effects, in any case, are likely to be medium to long term.[11] By contrast, compulsory voting has immediate and dramatic effects on turnout, and the results are most dramatic the lower the rate of turnout to begin with. [12] For example, in the 24 elections since 1946, Australia has average turnout of 94.5%; and in the 19 elections since 1947, Belgium averaged 92.7% turnout. So, compulsion in and of itself can turn around low turnout and, even though it cannot wholly remove inequalities of turnout, it can dramatically lessen these, too.

Step Four: Possible Additional Benefits to Compulsion

The next step in the case for compulsory voting is to note that compulsion may have other good effects, beyond immediate and significant increases in turnout (Liijphart 1997, 10 – 11). It may cut down the cost of campaigns, encourage politicians to engage with those who are least interested in politics, and it may minimize negative campaigning, as well. The idea behind these potentially attractive features of compulsion is that if everyone has to vote, politicians can largely take turnout for granted, but have an especial interest in ensuring that those who turn out do not vote for the other side. In short, compulsion means that the battle is not, any more, to make sure that your supporters actually get to the polls, or to deter those of your opponents from doing so, (apparently the chief effect of negative campaigns), but to ensure that of those who turn out, as many vote for you as possible (Ansolabehere and Iyengar 1995; Lijphart 1997, 10). Lijphart makes it plain that these benefits are speculative. Unfortunately, the IPPR report treats them as fact, although failing to cite any evidence on their behalf (Kearney and Rogers 2007, 7).

Step Five: No Liberties Violated Because of Turnout/Voting Distinction

The final stages in the argument for compulsion aim to show that there are no significant down-sides to compulsory voting. The first move in this process is to claim that compulsory voting does not violate any significant liberties, because it does not actually force people to vote, as opposed to requiring them to turnout (Lijphart 1997, 11).[13] Most

11] Lijphart,quotes 15% as the maximum benefit that registration reform would have in the US, and notes that it is irrelevant to most Western democracies, who have fairly high rates of registration to begin with. Proportional Representation may stimulate turnout by 9-12%, but, he also notes that "multipartism, which is strongly associated with PR, depresses turnout – thus undoing some of PRs beneficial influence – and… bicameralism lowers turnout as well". Weekend voting increases turnout by 5 – 6 percentage points in first order elections, and in second order European Parliament elections, weekend voting raised turnout by more than 9 percentage points (1997, 7-8).

12]Apparently compulsion can raise turnout from 7 – 16 percent, even when the penalties for voting are low (Lijphart 1997, 8)

13] Lijphart is interesting in that he seems to believe that there is a right not to vote, by contrast with Wertheimer, and claims that there is a good case to have the option of voting for "none of the above", that that the right to refuse to accept a ballot "is an even more effective method to assure that the right not to vote is not infringed" (Lijphart 1997, 11 n. 23).

proponents of compulsory voting believe that voters should have the option to vote for "none of the above", although none of them ever discuss what should happen if that option turns out to have the largest share of the vote in an election, or sufficient to turn it into the major "opposition" party.[14] The IPPR, indeed, notes in a footnote that it would forbid people from campaigning for a "none of the above" option, although explicitly supporting the provision of such an option on the ballot.[15] So, while it is clear that considerably more thought has to go into the deciding what a "none of the above" option entails, and whether it is, in fact, desirable, the core idea is clear: compulsory turnout must be distinguished from compulsory voting, out of concern for civil and political liberties. Compulsory turnout seems to violate no liberties, and so it seems that there can be democratic forms of compulsory voting, and that these can be readily distinguished from authoritarian or totalitarian variants.

Step Six: Non-voters are Free-Riders and Free-Riding is Morally Wrong

The final, and crucial, step in the case for compulsion is the claim that non-voters are free-riding on voters. They are, it is claimed, selfishly benefiting from the public good of a democratic electoral system without doing their part to maintain it. This claim can be found in every argument for compulsory voting, although it is rarely spelled out in any detail.[16]

The key idea here is that a democratic electoral system is a public good, in that all citizens get to benefit from it, even if they do nothing to contribute to it. Because it is a public good, it is possible to free-ride, or to enjoy the benefits of that good, without contributing oneself and, indeed, most people will have an interest in doing precisely that. Non-voters, therefore, can be seen as free-riders, selfishly and immorally exploiting voters. The moral force of this point is two-fold. First, it reinforces the idea that no morally significant liberties are threatened by compulsory turnout and, secondly, it carries the battle into the enemy camp. It is selfish and exploitative to benefit from the efforts of other people without making any effort to contribute. So, far from compulsion being unjustified, or even morally neutral, it seems positively desirable, as a curb on selfish and exploitative behaviour. As Lijphart puts it, "It must be remembered that nonvoting is a form of free riding – and that free riding of any kind may be rational but is also selfish and immoral. The normative

14] I've been told that in Russia, where people can vote for "none of the above", and are still under various forms of pressure to vote, this is a not-infrequent occurrence at provincial level. A new election is then called. In considering whether or not we should adopt this option, it is necessary to recognise that the result necessarily extends the life of the government who called the election. Consequently, there seems to be a form of "bias towards the status-quo" in adopting this solution to problems of low turnout.

15] Kearney and Rogers say "It will of course be important to prevent the formation of an "Against All" or "None of the Above" party', though how this is to be done, consistent with freedom of political association and expression is not discussed" (Kearney and Rogers 2006, 32, n. 15).

16] Alan Wertheimer is a notable exception (1975, 280-2, and the summary of his argument at 290).

objection to compulsory voting has an immediate intuitive appeal that is not persuasive when considered more carefully" (Lijphart 1997, 11).

Summary of the Case for Compulsory Voting

The case for compulsory voting, then, is this: that it is the best means we have to combat the twin evils of low turnout and unequal turnout, and to do so with no significant costs. Compulsion has no significant costs, because the compulsion is to turnout, not to vote; and so no liberties of thought, expression or participation are threatened; nor are people treated in any way that is morally unjustified. Moreover, because nonvoters are, essentially, free-riding on the efforts of others, and because a democratic electoral system is an extremely valuable collective good, we are justified in preventing such free-riding, by compulsion if necessary. The justification for compulsory voting, then, is meant to be democratic and to be clearly distinguishable from authoritarian or totalitarian alternatives.

The democratic concerns animating the case for compulsory voting make it attractive even to those, like me, who intuitively find the idea of compulsory voting distasteful. Moreover, as proponents of compulsion rightly point out, compulsory voting is a feature of several democratic countries, and has extraordinary and enduring levels of support in Australia – a country with a reputation for individualism, rather than the reverse. In fact, the democratic case for compulsion can be seen as an effort to make explicit and to systematize the experiences of several democracies.

Nonetheless, I will argue, the democratic case for compulsion has not been made, and is far harder to make than its proponents believe. I will lay out my concerns in five steps, arguing that the supposed benefits of compulsion are more speculative and uncertain than proponents believe, and that compulsion threatens people's freedom and equality in ways they have overlooked.

II. THE CASE AGAINST COMPULSION

Step One: The Evidence

The connection between compulsory voting and social democratic politics is more speculative and uncertain than Lijphart suggests. Those paradigmatic instances of social democracy – Sweden, Norway (Ringen 2004) and Finland – do not have compulsory voting and, indeed, appear to suffer from the same worries about declining voter turnout and indifference to the major political parties which trouble countries with more free-market economies, such as the United States and Britain.[17] Moreover, while the Netherlands used to have compulsory voting, one of the reasons given for rejecting it was, precisely, the be-

17] According to Gratschew, the mere mention of compulsory voting by the Minister for Democracy, in 1999, as a way to increase turnout in Sweden, occasioned heated rejections of it by the media, political scientists and politicians (2004, 30).

lief that the practice is undemocratic (Gratschew 2004, 29). Empirically, therefore, there seems to be little affinity between social democratic politics and compulsory voting. Nor is there any theoretical reason why the link should be tight. Voters do not always vote on their self-interest- for good and ill- so from the fact that social democrats assume that it would be in the interest of the socially disadvantaged to vote "left" it does not follow that that is how the socially disadvantaged will vote, when they vote. So, with due deference to Lijphart's expertise, I do not share his optimism about the likely voting patterns of current nonvoters. Instead I fear that if voters cannot spontaneously see the case for voting for a social democratic party or its nearest equivalent, the compulsion to turnout is unlikely to make it plainer.

Indeed, the evidence suggests that compulsory voting does nothing other than raise turnout – and there are, in fact, some questions about how far it is better than other means of doing this, too (Margetts 2006, 6). Recent work suggests that compulsory voting has no noticeable effect on political knowledge or interest, (Engelen and Hooghe, 2007) nor, more surprisingly, any evident effect on electoral outcomes (Selb and Lachat, 2007).[18] Unfortunately, it also does not seem to force parties to compete for the votes of the poor, the weak or the marginalized, as Lijphart hoped, or even reduce the costs of electoral campaigns. Hence, Ballinger concludes, "Compulsory turnout does not guarantee inclusiveness; nor does it guarantee political equality" (2006, 13).[19]

Step Two: the Normative Aspects of Low and Unequal Turnout

My second concern with the case for compulsion is that it seems to imply that all forms of low and unequal turnout are ethically troubling, though this is not obviously so. There is no reason to suppose that people should be equally interested in politics at all times, or that all people should find voting equally satisfactory.[20] Above all, it is morally and

18] Ballinger notes that while "The Australian Election Commission works tirelessly to ensure that the Australian electors are as informed as possible about their system of voting", knowledge about the workings of their political system is low (Ballinger, 13). Selb and Lachat show that compulsory voting forces people to vote even if they are uninterested in politics, and have no consistent political beliefs or preferences. Hence, there is no predictable partisan result from the inclusion of such voters in elections. For a discussion of the Polish case, Czesnik 2007.

19] Mackerras and McAllister 1999, 219. Young people enroll far less often than older people: for 18 - 24 year olds the estimate is 78% to 93% for the eligible population as a whole. If voting is then estimated based on this figure, turnout in the 1990s would prove to be around 83.7% rather than 96.2% that follows from taking enrollment as the baseline. Needless to say, this is a very significant difference, and suggests a fairly high degree of noncompliance, as well as of inequalities in voting. See Mackerras and McAllister 1999, 219 n. 6. Ballinger also notes that while Australia made voting compulsory in 1924, Aborigines were only entitled to vote in 1962 and were not compelled to participate until 1983. Even now, their participation rates can be as low as 77.71% even in areas where they are a politically significant minority, and 5% of that 77% are invalid (Ballinger 2006, 16-18).

20] Gerry Stoker suggests that there is something inherently disappointing and frustrating about democratic politics, precisely because it is difficult and requires one to accommodate the interests of those with whom one disagrees. Indeed, he thinks that unreasonable expectations of personal satisfaction may

politically important to distinguish amongst different types of non-voters. There may be reasons to be troubled by those who do not vote because they are not particularly excited by any candidates, or because they are disenchanted by their favoured political party – as the failure to vote may point to deep-seated weaknesses in the competitive party system, and in the organization and ideology of the main political parties. But these problems, real as they are, seem far less urgent than those of the people who do not vote because voting and political participation of any form seem as alien and remote as university education; stable, well-paid work; decent housing, safe streets, and respect from other members of society. The difficulty in such cases is to see how compulsory voting will address, rather than exacerbate, the alienation of these non-voters, who are typically the objects, not the subjects, of political debate and policy, and who typically constitute the "problems" that politicians are competing to solve.[21]

This worry seems particularly acute because the evidence does not support Lijphart's hope that compulsory voting will force parties to compete for all sections of the electorate, rather than targeting only a critical subsection. Compulsory voting largely takes the guesswork out of electoral turnout, and this makes it easier to target swing seats or constituencies, and easier to identify the key voter groups within marginal seats, themselves - even under systems of proportional representation (Ballinger 2006, 16-17). So, even if we abstract from voter dissatisfaction with the electoral choices that they face, and the platforms with which they are presented – both plausible reasons for political alienation and low turnout – compulsory voting seems unlikely to address the profound feelings of political powerlessness and inefficacy that seem to trouble the UK, and other established democracies. The worry, as Ballinger says, is that compulsory voting will exacerbate these feelings of alienation and powerlessness, even as the compulsion to vote removes "the very indicator which has helped kick-start the current debate about political engagement".[22]

Step Three: Penalties for Non-voting and their Enforcement

Proponents of compulsory voting tend to say that the penalties for non-voting are, typically, no higher than a relatively low fine. According to Ballinger, "High penalties are often thought not to be appropriate: such penalties disproportionately affect the poor, and can lead to heavy costs on an electoral commission" (Ballinger 2006, 11). But even where that is true, it is important to realise that people can, and do, go to prison for failing to pay fines, and that this is the case, as well, for those who fail to pay fines for non-voting.

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partly be to blame for political disenchantment in established democracies (2006, 184-194).

21] As Irwin and Holsteyn say, "It is clear . . . that many respondents opposed compulsory voting [in the Netherlands in the 1960s] because they were alienated from the political system in general", although compulsory voting seems to have had broad, though weak, support right up until its abolition (2005).

22] Ballinger is talking about the UK, but there is no reason to suppose that this worry would not apply elsewhere (2006, 22).

For example, in 1999 Melissa Manson was sentenced to one day in prison for failing to pay the fines incurred by her failure to vote in the 1993 and 1996 Federal elections. Manson, apparently, believed that there were no candidates worth voting for, and therefore objected both to voting, and to paying the resulting fine, on principle (Hill 2007, 6 – 7 and 17). Before holding that compulsory voting is justified, therefore, we need to be prepared to make criminals of people who do not pay their fines for not voting – and need to be confident that doing so is consistent with the democratic values and objectives that animate this case for compulsion.[23]

The penalties for not voting in many democracies are fairly slight and the striking thing about countries such as Australia and Belgium is that people still vote although in Belgium fines are rarely enforced, and in Australia, excuses for not voting seem to be readily accepted.[24] But that does not mean that all penalties are low. In Italy, non-voters originally had their cards of good conduct marked and people feared that they would lose their chances of civil employment if they did not vote at the many different elections and referenda that were required. Likewise, in Belgium, the penalties on paper are quite severe, although rarely enforced. In principle, failure to vote four or more times within a 15 year period will lead to exclusion from the electoral register for 10 years and, if one is a civil servant, it will also mean disqualification from the chance of promotion (Gratschew 2004, 27-29). Even now, apparently, people in Italy can be denied places at state childcare facilities, under what is misleadingly called "the innocuous sanction".[25] For those whose employment depends on state-funded childcare of various sorts, the mere threat of losing a place would be far more alarming than the prospect of even a hefty fine. What seems like a trivial penalty to some people, then, is a very grave threat to others; and there is nothing about compulsory voting that means the penalties for non-voting must be trivial.

Step Four: The Right Not to Vote is Not a Trivial One

Despite the claims of proponents of compulsory voting, I am not persuaded that the right not to vote is a trivial one, whether we consider "voting" to mean "turnout" or

23] Perhaps concerns of this sort explain the recommendation of the 1997 Joint Standing Committee on Electoral Matters, in Australia, that compulsory voting be repealed for federal elections and referenda. It claimed that "if Australia is to consider itself a mature democracy, compulsory voting should now be abolished" (quoted in Hill 2007, 4-5).

24] Hill says that in Australia most excuses for not voting are readily accepted, and no documentation is required (2007, 12). However, the Australian Electoral Commission successfully fought a freedom of information case in order to prevent the full list of exemptions from being disclosed, so there is not way for citizens to check that exemptions are being fairly granted nor, indeed, that the criteria for exemptions are adequate. Anecdotal evidence for Belgium suggests that people may be unaware that enforcement is rare.

25] Birch notes that until December 1993, Italian law required that the names of non-voters be posted at local municipal offices (2007, 10 n. 13), and "before the removal of sanctions for non-voting in the mid 1990s, the fact of not having voted was noted on official documents, and there are reports that this may have made it difficult to obtain services such as childcare" (2007, 12 n. 17).

something more demanding.[26] The right to abstain, or to refrain from political self-identification and participation is an important one, symbolically and practically. It captures two ideas that are central to democracy. The first is that government is there for the benefit of the governed, not the other way round. The second is that the duties and rights of citizens are importantly different from those of their representatives, because the latter have powers and responsibilities that the former do not.

Citizens do not owe their government electoral support or legitimacy. This is one reason to doubt that citizens have a duty to vote even though, as Rawls claims, people have a natural duty to support just, or nearly just, institutions (1971).[27] In some circumstances this natural duty might place citizens under a moral obligation to vote and, even, to vote one way rather than another. For example, if there was a real danger that a racist candidate would be elected in a constituency where one has the vote, one might have a natural duty to vote in favour of the best of the alternatives, however unappealing. Such a natural duty would, I imagine, exist *in addition* to whatever duties of solidarity and support one has- as a citizen, or as a member of a socially advantaged group - to those who are threatened by such an electoral prospect. Still, it will not be easy to ground a general duty to vote on this natural duty, because in general it is unclear why support for just institutions should take the form of "electoral participation", rather than anything else. Reasonable people can disagree about the value of political participation relative to other forms of social participation and support, and even those who value political participation may disagree about the value of voting, compared to other forms of political activity. So it is doubtful that the natural duty to support just institutions can justify legal duties to vote, even though it may sometimes give us morally compelling reasons to vote in some elections.

Democratic conceptions of freedom and equality also cast doubt on the idea that citizens have a general duty to vote that should be legally enforced. Differences in power and responsibility between citizens and legislators properly affect the rights and duties of each. Party discipline may justly require legislators to vote, and to vote one way rather than another.[28] Democratic conceptions of responsibility, accountability and equality may also require legislators to vote openly, rather than secretly, although legislators, like citizens,

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26] Lisa Hill simply says "The claim that compulsion violates the liberal-democratic principles of choice and freedom is without doubt a valid one. But there are other important liberal-democratic principles at sake here, among them: legitimacy, representativeness, political equality, inclusiveness and minimization of elite power, all of which are served by compulsory voting" (2007, 5) But it remains to be seen how these democratic values are served by forcing people to queue to tick their names off an electoral register or, indeed, to pick up a ballot.

27] Rawls says that "…From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions…" (1971, para. 51, 334). I look at the implications of Rawls' views for Justine Lacroix's "liberal" justification of compulsory voting in Lever, 2008.

28] Birch reports that in France public officials are required to vote in elections to fill the Senate, although, for ordinary citizens electoral participation is voluntary. The difference is justified on the grounds that Senators are elected by public servants, (mostly elected legislators), rather than by individuals. "Electing Senators is therefore for these officials a public duty which cannot be shirked" (2007, 4).

can suffer from bribery and intimidation.[29] By contrast, it is hard to justify a general duty to vote simply because one is a citizen and has a right to vote. No such duty is implied by the case for universal suffrage, which simply supposes that people are equally entitled to vote and to stand as candidates for public office. So the idea that the right not to vote is a trivial right or liberty seems to trivialize the differences in power and responsibility of democratic citizens and legislators and to overlook the legitimate reasons why people might wish to abstain.

The ethics of voting have received little attention from philosophers and political scientists, yet it is plain that they are no more self-evident than other ethical matters. People can doubt the extent and reliability of their knowledge and judgement, or be unsure of the proper grounds on which to make their decision. They may feel that it would arbitrary and invidious to favour one of the candidates when several or all of them are acceptable and they may, of course, worry about the way that their vote will be interpreted and used by politicians and the media. So, even people who have no conscientious objections to voting might have compelling reasons to prefer abstention to voting in at least some elections, and to do so even if they have the option of voting for "none of the above".

Moreover, the case for forcing turnout, but not voting, is obscure. After all, it is low and unequal *voting*, not *turnout*, that is the cause of moral and political concern. While it is likely that many people who have been forced to turn out will then go on to cast legally valid votes, we are here talking psychological probabilities, rather than any conceptual or normative connection between enforced turnout and democratic voting.[30] That is, the reason why people are likely to vote, if they are forced to turn out, is that most people do not like to waste their time. So, if they are forced to queue at polling stations, in order to tick their name off a list, they may well go on to vote, although otherwise they would not have bothered. But from the fact that people do not like to waste their time, and therefore tend to vote, it does not follow that we are justified in forcing them to queue in order to tick their names off an electoral register.

Queuing simply to tick your name off an electoral register seems pretty pointless and annoying. Nor are its pointless and annoying features in any way alleviated because

29] For a legal case that has influenced my thinking on the importance of distinguishing the rights and duties of leaders and ordinary members, see *NAACP v. Alabama*, 357. U.S. 449 (1958). The crux of the Supreme Court decision is that ordinary members of the National Association for the Advancement of Colored People, and other organizations, do not have duties of accountability that require them to sacrifice their anonymity. By contrast, leaders of organizations do. The implication is that organizations with no formal leadership will either have to appoint some members who can be held accountable for the behaviour of members, or that all members will have to share in accountability and any loss of privacy that this involves. I look at the implications of equality and responsibility for the case against mandatory public voting in Lever, 2007.

30] Actually, there is an empirical question about how far the stated "gains" produced by compulsion refer to *turnout* rather than voting, and how far they depend on legal requirements to *vote* rather than to turnout. Ambiguity here makes it important to sort out what, exactly, different figures refer to and what legal background they presuppose.

they have been turned into a legal duty. Such a duty, indeed, seems pretty insulting and demeaning, and ill suited to promoting the idea that voting is an important civic duty. Sharply distinguishing the duty to turnout from the duty to vote might meet some moral objections to compulsory voting the duty to vote. However, the duty to vote, so understood, is no moral duty at all.

Step Five: non-Voting, Free Riding and the Danger of False Analogies

As we have seen, the case for compulsory voting turns, importantly, on the thought that non-voters are free-riders, selfishly exploiting the public-spirited efforts of voters. There is, therefore, no moral objection to forcing them to do their share to maintain a democratic system by making voting a legal duty, as well as a right. There are two main problems with this argument. The first is an internal one, of consistency with other aspects of the case for compulsion; the second is the difficulty of showing that legal compulsion is justified even if some voters are free-riders.

The idea that non-voters are selfish exploiters of voters is hard to square with the picture of political inequality that underpins other aspects of the case for compulsory voting. At the start of the case, as we have seen, non-voters are conceptualized as socially deprived in various ways, and as appropriate objects of social democratic concern. Nonvoters, on this picture, find it difficult to protect their own interests- they are, after all, less educated, less experienced and less well-organised than other people - and so are liable to exploitation by the more powerful, knowledgeable and politically astute. The case for compulsion, indeed, verges on the paternalist, at least as regards this social group, because non-voting is here presented as a threat to their interests, albeit a partially self-induced threat. By contrast, the free-riding justification of compulsion assumes that non-voters are behaving in a self-interested fashion, and seeking to enjoy the benefits of a democratic electoral system without doing their fair share to maintain it. They seem, therefore, to be exploiting the good will, public spirit and sense of duty of voters, and to be behaving in ways that are selfish and immoral.

These two pictures of non-voters seem to be inconsistent although proponents of compulsion, such as Lijphart, seem not to have noticed the tension between them. Conversely, while we might want to describe those who voted for Le Pen in France, or the British National Party in the U.K., as selfless contributors to a democratic public good, this will require considerable argument and cannot be treated as an a priori truth. Nor should we forget that individuals who vote "tend to have an inflated sense of the potential influence of their vote – just as people tend to vastly overestimate their chances of winning lotteries" (Rose 2000, 317).[31] Hence, there are difficulties with the moral characterization of both voters and non-voters, assumed by free-rider arguments for compulsion.

31] See, also, Blais 2000, 69, and the suggestion that the tendency to overestimate the significance of one's vote is particularly likely in close elections.

The second difficulty with the free-riding argument turns on the difficulty of describing the public good which compulsion is supposed to protect. The case for compulsory voting is frequently characterized by analogies between compulsion in the case of voting and compulsion in the case of military service, the education of children, or in the cases of taxation and jury duty.[32] Democratic societies often require people to contribute to some public good and, in the case of compulsory voting, the level of sacrifice or effort required is comparatively small.

The argument turns on the assumption that compulsory voting is necessary to protect a public good. But how that good should be characterized is uncertain, given that the extent of turnout one decides upon may have predictable implications for who wins or loses an election, as Lijphart assumes. It might be said that the public good in question is "legitimacy" or a "democratic electoral system" or "a representative political system". But to make such claims looks like over-kill, and is clearly inconsistent with the idea that there are democratic and legitimate political systems which lack compulsory voting. As these, indeed, seem to be the majority of "actually existing" democracies, there is clearly something wrong with the idea that democratic legitimacy or representation turns on achieving turnouts in the 90th percentile, or even in the 80s. The first difficulty with these analogies, therefore, is the idea that compulsory voting is necessary or justified in order to protect a public good *even if* some voters are free-riders.

But the difficulty with these analogies is more fundamental. Legal requirements to serve on juries, to serve in the army, to pay taxes and to educate our children may help to protect a public good from the temptations posed by free-riding. But it is doubtful that such ideas play a significant role in explaining why such legal duties are justified when they are, as they seem to obscure the very considerable differences in the content, weight and justification of these different duties, as well as to obscure the differences between justified and unjustified forms of each.

For example, the duty to pay taxes applies whether or not one is a citizen, and seems to be characterized by ideas of "ability to pay", proportionality, and even redistributive justice that are absent from the case for compulsory voting. It is also worth noting that compulsory voting implies that everyone has a legal duty to vote although people will be excused their failure to fulfill that duty if they have conscientious objections to voting. By contrast, the duty to pay income tax below a specified threshold is no legal duty at all – although the poor, notoriously, have to pay consumption taxes, so that concerns for distributive justice may sometimes justify raising money from taxes on income rather than consumption.

Likewise, the duty to serve on a jury, in systems with jury trials, appeals to moral and political notions of equality, fairness and justice that go well beyond the idea that the state can solve collective action problems via coercion. The duty to serve on a jury importantly

32] My impression is that most people are just copying Lijphart (1997, 11) here (Hill 2007, 5; Kearney and Rogers, 2006, 30). However, unlike Hill, Kearney and Rogers do not cite Lijphart as their inspiration.

reflects the obligation to provide defendants with a jury of their peers – that is, a jury that is made up of people like them, suitably defined. Compulsion is necessary because voluntary participation is likely to lead to juries skewed in all sorts of undesirable ways. So, the main reason why compulsion is justified in the case of jury duty is because we have duties of justice to defendants which constrain what will count as a free and fair trial.

Without belabouring the point, therefore, it looks as though the case for compulsory voting cannot be made to seem innocuous or democratic by comparing it to other duties which we generally accept. The difficulty is that these latter duties have an evident and agreed point to them, whereas whether or not it is desirable to raise and equalize voting, or to use legal compulsion to do so, has still to be established. Moreover, duties to pay taxes, to educate one's children, to serve in the defence of one's country or to serve on juries, are all very different duties, with significantly different justifications. What makes them morally and politically significant and distinct is, inevitably, lost in any attempt to treat them as examples of justified coercion in response to collective action problems. Perhaps we can illuminate these duties by treating them as solutions to the problem of providing and maintaining public goods, given rational self-interest. But my hunch is that such a perspective is likely to obscure, rather than to illuminate, the morally significant features of these different duties and may, indeed, lead to radically undemocratic versions of them all.[33]

III. CONCLUSION

In this paper I have argued that the case for compulsory voting is unproven. It is unproven because the claim that compulsion will have beneficial results rests on speculation about the way that nonvoters will vote if they are forced to vote, and there is considerable, and justified, controversy on this matter. Nor is it clear that compulsory voting is well-suited to combating those forms of low and unequal turnout that are, genuinely, troubling. On the contrary, it may make them worse by distracting politicians and voters from the task of combating persistent, damaging, and pervasive forms of unfreedom and inequality in our societies.

Moreover, I have argued, the idea that compulsory voting violates no significant rights or liberties is mistaken and is at odds with democratic ideas about the proper distribution of power and responsibility in a society. It is also at odds with concern for the politically inexperienced and alienated, which itself motivates the case for compulsion. Rights to abstain, to withhold assent, to refrain from making a statement, or from participating, may not be very glamorous, but can be nonetheless important for that. They are necessary

33] The theory of rational choice and the theory of moral choice are not the same, just because the requirement of reasoned justification generally attaches to the latter. Depending on background circumstances, it can be rational to exploit or to be exploited; it can be rational to deceive, coerce and blackmail, or to put up with being deceived, coerced and blackmailed. So unless one is careful to build in suitably moral assumptions, there is nothing about an individually or collectively rational decision that requires it to be consistent with democratic norms.

to protect people from paternalist and authoritarian government, and from efforts to enlist them in the service of ideals that they do not share. Rights of non-participation, no less than rights of anonymous participation, enable the weak, timid and unpopular to protest in ways that feel safe and that are consistent with their sense of duty, as well as self-interest.

True, such forms of protest are can be misinterpreted, and by themselves are unlikely to be wholly successful. But that is true of most forms of protest, and would be true of compulsory voting, itself.[34] After all, it is unclear what meaning we should give to those who queue to tick their names off an electoral register, but then go home without voting. Nor is it evident what we should say about those who voted for "none of the above", other than that they preferred this option to the others that were available. Most protest, and all voting, depends for its success on the behaviour of other people, many of whom we will not know, many of whom will have interests and beliefs quite at odds with our own, and over whose behaviour we have no influence. People must, therefore, have rights to limit their participation in politics and, at the limit, to abstain, not simply because such rights can be crucial to prevent coercion by neighbours, family, employers or the state, but because they are necessary for people to decide what they are entitled to do, what they have a duty to do, and how best to act on their respective duties and rights.

That is not to say that compulsory voting can never be democratic, merely that these are likely to be exceptions, rather than the norm. Legal duties to vote may be necessary to protect the right to vote where the state is weak, and inequalities of power leave peasants at the mercy of landowners, or workers vulnerable to employers. It is also possible that in very large countries, or those riven by ethnic divisions, compulsory voting is necessary to gain support for a system of proportional representation that is fair to all social groups. But these are rather different justifications for compulsion than the ones that we have looked at here, and though they have affinities with arguments that have been made for compulsion in the past, it is unclear what forms of compulsion or of proportionality they would actually justify. For now, the point is simply that the difficulties with the democratic case for compulsion do not mean that compulsory voting cannot serve an important remedial purpose. However, that is rather different from advocating its adoption by long established, stable and seemingly functional democracies.

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34] Kearney and Roger seem to think that the ability to vote for "none of the above" "would in fact be a far more effective means of withdrawing democratic legitimacy than abstention, as it could not be misread as apathy" (2006, 32).Obviously, this requires people to vote, rather than just to turn up. Apart from that, of course, it is easy to imagine the obvious rejoinder to this, which is that people are being lazy when they voted and it is not going to be at all clear that people ticking this option are not protesting compulsion to vote, rather than the options available.

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Exploring the Theme of Reflective Stability: John Rawls' Hegelian Reading of David Hume

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Abstract. Selections from John Rawls' writings on historical figures were published in the 2000 *Lectures on the History of Moral Philosophy*. My paper discusses Rawls' treatment of Hegel and David Hume. It focuses on the following themes: the average individual's understanding of his social institutions, the psychological mechanism of "reflection" as a source of change in that individual's understanding, and the role of individual reflection in guiding social reproduction and change. I argue that these questions are central concerns of Hegel's idealist philosophy; that Hegel's position is nuanced; and Rawls recognizes both the centrality and the subtlety of Hegel's discussions. Next, I show how Rawls attends to these themes in Hume's moral philosophy as well. Since these themes are less obvious features of Hume's thought, I argue that Rawls performs a Hegelian reading of Hume. I close with a discussion of these writings' relevance to scholarship on Rawls' own work.

Key words: Hegel, Hume, institutions, rationality, Rawls, reflection.

During his life, John Rawls was well known as the most prominent liberal political theorist writing at the time. Because of his work as a teacher, he also had an informal reputation as a reader of historical sources, despite not much publication on these topics. Selections from John Rawls' writings on historical figures were published in the 2000 *Lectures on the History of Moral Philosophy*. This work includes sections on Hume, Leibniz, Kant, and Hegel.[1]

Rawls' originality as a reader makes the *Lectures* a rich resource for scholars of the four historical figures that he treats. The text also sheds light on Rawls himself as a thinker. In the *Lectures*, Rawls tracks the same topics across the works of multiple theorists. The repetition of topics makes Rawls' intellectual preoccupations very obvious. Identifying Rawls' theoretical concerns in the *Lectures* can in turn inform the study of his own political theory.

This paper will use the *Lectures* to reveal Rawls' interest in a set of interlocking themes: the average individual's understanding of his social institutions, the psychological mechanism of "reflection" as a source of change in that individual's understanding, and the role of individual reflection in explaining social reproduction and change. These themes are also central concerns of Hegel's political theory. The first part of my paper describes Rawls' accurate presentation, in the *Lectures*, of this material in Hegel's philosophy. Next, I turn to the Hume section of the *Lectures*. I propose that Rawls performs a "Hegelian reading of Hume," since he seeks to reconstruct Hume's less obvious position on these themes. Finally, at the end of my paper, I discuss how Rawls' readings of these

1] I presented an earlier version of this paper at the 2008 annual meeting of the American Political Science Association. I thank my discussant, Michael Frazer, for his comments.

two historical sources can shed light on his own political theory. I argue that Rawls' work on reflection and social stability takes elements from both Hume and Hegel, and that he seeks to claim Hume as a predecessor within the Anglo-American tradition.

I. RAWLS' READING OF HEGEL

This section of my paper explicates Rawls' reading of Hegel in the last 42 pages of the *Lectures*. The first text that Rawls treats in these pages is Hegel's major mature work of political philosophy, the *Grundlinien der Philosophie des Rechts*, or *Elements of the Philosophy of Right* ([1821] 1991). Rawls also occasionally turns to a second text for his exposition, the *Introduction to The Philosophy of History* ([1820s] 1988). This short work combines a summary of the main content of the *Philosophy of Right* with a summary of Hegel's philosophy of history.

Although Rawls' reading of these texts is at times controversial, more often it is fairly conventional. Still, Hegel's writing is difficult and his philosophical doctrines require careful elaboration. This section will first summarize Hegel's own view of the average individual's capacity for rationality, both practical and theoretical. I do so by referring to Rawls' text, thus showing that he correctly presents these aspects of Hegel's thought. I consider certain features of Hegel's view of individual human agency. Then the section turns to Hegel's notion of reconciliation. Applied to the social world, reconciliation is an affirmative philosophical attitude of an individual toward his social institutions. I show that Rawls recognizes and underscores the importance of reconciliation to Hegel. Next, I claim that, while Hegel's typical agent lacks full practical rationality, the reconciled individual meets a demanding standard of theoretical rationality. I end the section with a consideration of the connections between practical and theoretical rationality. For Hegel, I ask, when can changes in individual theoretical rationality guide individual action and thereby shape the social world as a whole? I argue that Hegel's answer here is not simple, and that Rawls correctly acknowledges its complexity.

I divide the topic of agency into two parts, the agency of individuals before the modern era, and the agency of the members of the modern social world. To explore the first question, it is necessary to turn to Hegel's philosophy of history, and Rawls' consideration of it. This topic is not the focus of the *Philosophy of Right*. Still, it is treated at the end of this text (Hegel 1991, §§341-360). Moreover, the topic is central to the *Introduction to The Philosophy of History*, and Rawls occasionally cites this work. According to Hegel, human history is essentially progressive. Its goal is often described as the self-actualization of *Geist*, or Spirit. Now, exploring the meaning of this phrase—the role of Spirit in Hegel's philosophy—is beyond the scope of this paper. For my purposes, it is sufficient to establish that the self-actualization of Spirit requires the eventual emergence of the modern social world. The *Philosophy of Right* contains detailed descriptions of three major institutions: the family (Hegel 1991, §§158-181), civil society (§§182-256), and the political state (§§257-360). Hegel regards these institutions of "Ethical Life," or *Sittlichkeit* as a descrip-

tion of the rational content immanent in the modern world at the time of his writing.[2] That is, the modern social world is essentially composed of the institutions of *Sittlichkeit*. These are defined by their ability to realize multiple forms of freedom within one stable, self-reproducing social whole.

Since Hegel views history as progressive, earlier events can be understood in terms of their contribution to later ones. Certain key actors can also be understood in terms of their contribution to history's progressive movement. However, Hegel does not think that world-historical actors understand themselves the way we, as observers of history, later come to see them. Rawls makes this point more than one his lectures, citing Hegel's famous phrase, "the cunning of reason" (Hegel 1988, 35):

> Hegel often characterizes the greatness of great historical figures in terms of their contribution to the progressive development of the institutional structure of human social life. The actions of historical agents over time unintentionally realize great social transformations that philosophy, looking back after the fact, understands in terms of the cunning of reason. Great figures seek their own narrow ends, yet unknown to them they serve the realization of *Geist*. (Rawls 2000, 369)

The "cunning" of reason references Hegel's view of reason as a superhuman agent, which directs the course of world history through the actions of human individuals. A bit earlier Rawls summarizes Hegel's example of Martin Luther. With Luther, the Protestant Reformation began, which in turn led to the "division of Christendom" (Rawls 2000, 347). Eventually, this situation led to the establishment of freedom of religion as a solution to religious strife, a freedom that was later affirmed, not as a modus vivendi only, but as good for its own sake (Rawls 2000, 347-8). Therefore, although Luther certainly did not intentionally promote freedom of religion, his life work indirectly served to establish it. Rawls writes:

> Ironically, Martin Luther, one of the most intolerant of men, turns out to be an agent of modern liberty. This is an aspect of history that Hegel emphasized—that great men who had enormous effects on major events of history usually never understood the real significance of what they had done. It is as if they are used by a providential plan unfolding through time and embedded in the flow of events. (2000, 348)

These comments show that not all world-historical individuals understand the character of their actions.

Now, I consider a second kind of agent, the agent existing in the modern social world—the social world defined by the institutions of *Sittlichkeit*—whose actions are necessary to reproduce those institutions. One of Hegel's assumptions is that many members of modern *Sittlichkeit* will obey the laws and norms of their society without fully grasping their philosophical significance. Rawls writes: "Hegel wants us to find our moral compass in the institutions and customs of our social world itself, as these institutions and customs

2] Following usage among contemporary writers on Hegel such as Frederick Neuhouser and Alan Patten, I retain the term *Sittlichkeit* in the original German.

have been made part of us as we grow up into them and develop habits of thought and action accordingly" (2000, 333). In the *Philosophy of Right*, *Sittlichkeit* is described as providing us with a "second nature" (Hegel 1991, §151).

Thus, Hegel has philosophy of history that posits that world-historical individuals change the structure of social institutions without intending to do so. He also thinks that the individual actions that reproduce the structure of the modern social world are often done from custom or habit. Neither type of agent meets the most stringent standard of practical rationality that could be formulated. Because the true significance of their actions is not accessible to them, Hegel's world-historical agents lack full practical rationality. The same is true for the average member of *Sittlichkeit*, who endorses his institutions but does not understand exactly how they work to provide for his freedoms.

Now I turn to Hegel's notion of reconciliation. Rawls opens his lectures on Hegel by writing, "I begin by noting Hegel's view of philosophy as reconciliation" (2000, 31). Rawls continues: "Hegel thinks that the most appropriate scheme of institutions for the expression of freedom already exists. It stands before our eyes" (331). Recall that Hegel believes that modern social world is essentially composed of the three major institutions of *Sittlichkeit*. Moreover, Hegel thinks that the essence of the human individuals is to be free, and the institutions of *Sittlichkeit* enable human freedom. Therefore, Hegel thinks that the modern social world is worthy of endorsement by rational individuals.

However, within the modern social world are individuals who both seek a justification of modern institutions and who do not yet understand that the scheme of institutions realize freedom. Sometimes Hegel refers such individuals as alienated (Inwood 1992, 35-8). Rawls explains Hegel's solution to this problem: "The task of philosophy, especially political philosophy, is to comprehend this scheme in thought. And once we do this, Hegel thinks, we will become reconciled to our social world" (2000, 331). Hegel's political philosophy can demonstrate to these individuals the rationality of their social world, by describing to them the institutions of *Sittlichkeit*. Rawls notes: "Philosophy in this role is not merely an academic exercise. It tells us something about ourselves; it shows us our freedom of the will—that we have it through institutions, not in other ways" (331). Reconciliation—in German, *Versöhnung*—is the attitude achieved by individuals to their social world once they are philosophically enlightened. As Rawls emphasizes, as Hegel uses the German word, "reconciliation" does not imply resigned acceptance (331), but rather full affirmation.

I now consider two further aspects of reconciliation. First of all, for Hegel, achieving reconciliation requires grasping the whole social world in its essence—not fixating on any one particular part of it in isolation from the remainder. The importance of the whole is basic to Hegel's thought in general. Hegel thinks that reality (*Wirklichkeit*) forms a system, a hierarchically organized entity whose pieces are defined in terms of their place in the overall organization (Inwood 1992, 266). Thus, the entirety of reality must be grasped in order to have a full understanding of any piece of it. While the whole is the proper object

of philosophical thought, concentration on one part of reality to the exclusion of the rest is a major source of philosophical error. Now, towards the end of the *Lectures*, Rawls writes:

> What raises human life above the workaday *bürgerliche* world is the recognition of the universal interest of all citizens in participating in and maintaining the whole system of political and social institutions of the modern state that make their freedom possible. Citizens knowingly and willingly acknowledge this universal (collective) interest as their own, and they give it the highest priority. They are ready to act for it as their ultimate end. This is the goal of the project of reconciliation. (2000, 355)

This passage shows that Rawls recognizes that the entirety of the modern social world, inasmuch as it realizes the institutions of *Sittlichkeit*, is the object of reconciliation.

Also important to underscore is the connection between reconciliation and reflection. As stated above, Hegel thinks that reality forms a system, and must be comprehended in its totality to be comprehended truly. The philosophically enlightened subject's knowledge of reality must be systematically organized to mirror the reality it represents (Inwood 1992, 266). However, Hegel thinks that the subject has to acquire this knowledge, and here is where the notion of reflection comes in. Roughly speaking, reflection is a mental operation performed by a subject to render his or her beliefs more systematic.

An initial act of reflection, Hegel thinks, is insufficient to produce a fully systematic account of reality. Hegel refers to the "abstract" nature of concepts that treat the parts of reality in isolation from their context in the whole (Inwood 1992, 30-31). Reflective moves first lead into philosophical error by producing abstractions. Sometimes Hegel speaks of the limited nature of the "philosophy of reflection" (*Reflexionsphilosophie*) (Inwood 1992, 249), which has a tendency to view the world dualistically because it does not understand how the parts it separates are related to each other through the whole.

In the Preface to the *Philosophy of Right*, Hegel says that modernity encourages reflection, and that this trend is a positive development: "It is a great obstinacy, the kind of obstinacy which does honour to human beings, that they are unwilling to acknowledge in their attitudes anything which has not been justified by thought—and this obstinacy is the characteristic property of the modern age, as well as being the distinctive principle of Protestantism" (1991, para. 14). However, the increased tendency toward reflection has produced alienated individuals, who cannot see that their social world promotes their freedom because they are limited by the "fetter of some abstraction or other" (Hegel 1991, para. 13). Now, according to Hegel, the solution to reflection-induced alienation is not a return to a pre-reflective state, but further reflection. Later reflective moves correct the errors of the previous ones and produce an accurate body of systematic knowledge, leading to reconciliation through philosophy for the individual. Hegel summarizes: " It has become a famous saying that 'a half-philosophy leads away from God' . . . 'whereas true philosophy leads to God'; the same applies to philosophy and the state" (1991, para. 14). This claim does not mean that the earlier stages of reflection are unnecessary; they are part of reflective thinking's coming to a proper understanding of reality. In Hegel's phi-

losophy in general and the Preface to the *Philosophy of Right* in particular, reflection is first the cause of alienation and then the cure for it.

In the *Lectures*, Rawls recognizes the basic point that, for Hegel, reflection ultimately facilitates reconciliation. He writes: "[W]hen in our reflections we understand our social world as expressing our freedom and enabling us to achieve it as we live our daily life, we become reconciled to it" (Rawls 2000, 332). Elsewhere he says that Hegel thinks individuals should "belong to a rational (reasonable) social world that [they] on reflection can accept and be reconciled to as meeting their fundamental needs" (Rawls 2000, 333). In other passages, Rawls recognizes that reflection can produce alienation in individuals as well as reconciliation (2000, 345-6).

Now I maintain that the reconciled individual meets a demanding standard of theoretical rationality. I take it that the goal of the theoretically rational subject is to acquire knowledge: justified true belief. The reconciled individual bases his affirmation of his social world on knowledge of its workings. That is, he has a complete, true understanding of it based on political philosophy. Therefore he is theoretically rational.

I now consider the possible connections between theoretical and practical rationality in Hegel's political philosophy, and between practical rationality and the shape of the social world. First of all, I note that reconciliation cannot guide structural change since it always will come after structural change. So far we have seen that Hegel thinks many world-historical actors, such as Luther, did not know the historical meaning of their actions. In the Preface to the *Philosophy of Right*, Hegel makes an even stronger claim. He writes: "A further word on the subject of issuing instructions on how the world ought to be: philosophy, at any rate, always comes too late to perform this function. As the thought of the world, it appears only at a time when actuality has gone through its formative process and attained its completed state" (Hegel 1991, para. 15). Here Hegel says that the proper philosophical understanding of principles awaits the existence of a society that realizes them. Therefore, principles underlying social institutions never successfully guide individuals in making fundamental social change.

However—and this is the second possibility—Hegel does think that theoretical reflection can upset a given social structure by affecting the agency of its members. In fact, he thinks that this occurred in the world of ancient Greece (1991, §185A). Rawls summarizes: "This unreflective form of life inevitably becomes unstable and falls into decay upon the appearance of reflective thought" (2000, 345). Once the individuals no longer theoretically affirm their social structure, they will not act to reproduce it, and it will pass away.

Finally, I consider a third possibility. If the social structure is fully rational, the knowledge won through philosophy can then guide an individual's compliance with it. The modern social world is an example of a fully rational social world, and thus embodies the third possibility. In fact, it is important that gains in theoretical insight can subsequently guide rational action, because one purpose of reconciliation is to ensure the individual citizen's practical freedom. In order to be fully free within his social world, Hegel thinks that an individual must minimally endorse the laws he obeys. Now, as Rawls notes, the individual

does not have to have a full philosophical understanding of these laws and norms: "Hegel wants to show that people can and do act freely when conducting themselves on the basis of habit and custom" (2000, 333). However, once the individual is alienated, he no longer affirms the laws and norms at all, and is therefore no longer fully free. Reconciliation through philosophy shows the individual why the institutions are rational so that he can then reaffirm them. The theoretical account restores the individual's complete practical freedom by reinstituting freedom's essential subjective dimension. Hegel makes this connection between reconciliation and freedom quite clear in the Preface. He writes:

> To recognize reason as the rose in the cross of the present and thereby to delight in the present—this rational insight is the reconciliation with actuality which philosophy grants to those who have received the inner call to comprehend, to preserve their subjective freedom in the realm of the substantial. (Hegel 1991, para. 13).

At other points in the *Philosophy of Right*, Hegel shows that he thinks of subjective freedom as practical (1991, §258A). Thus, Hegel's position that many members of the social world lack full practical rationality does not mean that some are not fully practically rational. Furthermore, those few achieve their practical rationality through theoretical reflection.

Moreover, according to Hegel's metaphysics, not only individuals but also larger social entities can possess freedom as a property. However, the freedom of a social entity and the freedom of the individuals that compose it are related for Hegel. A proper philosophical understanding of the social world by its philosophically minded members is necessary for its freedom as well as their own (Hegel 1991, §145). Rawls underscores this point. He writes: "[The] understanding [of individuals] makes a form of life real. The explanation is that a form of life is not fully made real or actual (*wirklich*) until it is made self-conscious" (Rawls 2000, 332). A bit later, Rawls says, " [W]hile rational social institutions are the necessary background for freedom and for individuals' real autonomy, the reflection, judgment, and rational (reasonable) conduct of individuals are necessary to bring about the substantiality and freedom of their social world" (2000, 334). Note that "rational (reasonable) conduct" is included on this list. Now, elaborating the metaphysical assumptions supporting these claims is beyond the scope of the paper. What is important is that the practical freedom of individuals is necessary to ensure the freedom of the whole social world—and that the possibility practical freedom is ensured by the possibility of reconciliation.

Rawls refers to a social structure that can survive the reflection of its individual members as "a stable form of reflective social life" (2000, 346). Here Rawls points to the causal chain that Hegel thinks runs from individual reflection through individual action to the shape of the social world that the individual inhabits. Furthermore, these phrases in the Hegel section of the *Lectures* that join "reflection" and "stability" are worth noting for a second reason. We will see that such a construction also appears in Rawls' writing on Hume. I now turn to that section of the *Lectures*.

II. RAWLS' HEGELIAN READING OF HUME

Rawls' discussion of Hume is quite a bit longer than his reading of Hegel. In the first 102 pages of the *Lectures,* Rawls explicates Hume's moral philosophy, as it appears in two of his major philosophical works. These works are his *Treatise of Human Nature* ([1739-40] 1978), especially Book III, "Of Morals"; and his later *Enquiry Concerning the Principles of Morals* ([1751] 1998). Rawls devotes most of his space to the *Treatise,* and since I am following his interpretation, I will do likewise.

Hume, Rawls says, provides a psychological explanation of instrumentally rational behavior. However, he argues, Hume has no notion of "practical reason" (Rawls 2000, 37). Practical reasoning, Rawls says, is "deliberation regulated by (ostensibly) correct or valid judgments and moved by principle-dependent desires associated with rational principles," (2000, 50). In the case of a principle-dependent desire, Rawls says, "the aim of the desire, or the deliberative, intellectual activity in which we desire to engage, cannot be described without using the principles, rational or reasonable as the case may be, that enter into that activity" (2000, 47). To say Hume has no notion of practical reason is not the same as saying his view of human deliberation "is simple and not complex" (Rawls 2000, 50); indeed "it is very complex" (50). Rawls shows that Hume thinks human beings possess psychological mechanisms that allow them to choose the correct means to their ends, and to revise and organize their ends (2000, 38-43).

Next, Rawls shows that Hume also argues that moral judgments are not based on reason either. The account of moral judgment is also "psychological" (Rawls 2000, 96) inasmuch as it is based on the hypothesis that our moral distinctions are due to a moral "sense" (Hume 1978, 470). In the *Treatise,* Hume develops his argument for the existence of moral sense in Part I, sections I and II of Book III (1978, 455-471); and Rawls in turn covers this material in Lecture IV of the Hume section of the *Lectures* (2000, 78-83).

I now summarize Hume's presentation of the moral sense. This presentation includes the criteria by which it judges and the psychological mechanisms by which it operates. The object of the moral sense is the motivations of agents. Certain natural motivations, such as benevolence and affection toward one's children, are judged virtuous. Moreover, Hume notes that the motivation to act justly is also judged virtuous. By examining the objects of the moral sense in the context of social life, we see that the sense approves of motivations that guide action useful to oneself and to others. These criteria are made especially in Sections one through four of the *Enquiry* (Hume 1998). Now, the moral sense does not operate by consciously applying its criteria to its objects; that is why it is called a "sense." However, knowing what we do about human psychology, we can construct an explanation of how the sense works. In the *Treatise* this account appears in Book III, Section III, chapter I, and draws on the human propensity for sympathy and the capacity to take up a general point of view. Rawls explicates this material in Lecture V of the Hume section.

Thus, Rawls claims Hume offers separate, psychological accounts of moral motivation and of moral judgment. Rawls writes: "The virtues and vices are known to us in virtue of the peculiar moral sentiments we experience . . . What moves us to act in accordance

with our moral sentiments is a separate question altogether . . . The basis of these motives requires its own separate account" (2000, 99). In general, Rawls says that "The *Treatise* is an account . . . of morality psychologized" (2000, 85). However, later in his writings Hume, Rawls says:

> A contemporary reader is likely to say: Hume's account is purely psychological; it describes the role of morals in society and how it arises from the basic propensities of our nature. This is psychology, we say, and not moral philosophy. Hume simply fails to address the fundamental philosophical question, the question of the correct normative content of right and justice. To say this, I believe, is seriously to misunderstand Hume. (2000, 98)

This comment is a bit puzzling, given what has gone before. I now consider why Rawls makes that claim, despite his previous claims and general treatment of Hume. The answer is found in the passages in which he implicitly or explicitly refers to Hume's view as a "fideism of nature."

Fideism simpliciter "holds that reason is unnecessary and inappropriate for the exercise and justification of religious belief" (Amesbury 2008). By "fideism of nature," Rawls means that Hume thinks we can rely on our native psychological propensities to guide our judgment of the world and action within it (Rawls 2000, 23). However, Hume does think that it is philosophical reflection that establishes this fact.[3] Now, Rawls invokes the notion that Hume's philosophy is a "fideism of nature" in at least two contexts. One context is explaining our approval of the institutions of justice. Our moral sense approves the institutions of justice. Correct philosophy can explain why we are responding in this way; what criteria we use when we find these institutions worthy of approbation. The second use of the phrase "fideism of nature" occurs when Rawls considers Hume's writing on our attitude toward the moral sense itself. According to Rawls, Hume thinks we will affirm the moral sense when we reflect on it.

I turn first to Hume's writing on the institutions of justice. In order to explain Rawls' interpretation here, it is necessary first to explain what Hume takes as these institutions. Hume thinks that the institutions of justice are composed of rules, or "conventions" (Hume 1978, 494) regulating the origin and transfer of property. He thinks that these rules can exist even in the absence of a central governing authority (Hume 1978, 539); and he thinks that everyone is made better off by their existence. To use contemporary terminology, they are a Pareto-improvement over a rule-less situation. The rules are first instituted from enlightened self-interest on the part of all parties. However, they are later morally approved of by the moral sense because the rules are to everyone's advantage (Rawls 2000, 499). Rawls covers these basic points in Lecture III, "Justice as an Artificial Virtue."

3] Given that Rawls says that, for Hume, theoretical justification of the social world occurs through philosophy, it may be that Rawls uses "fideism" in an unusual way. For more information on varieties of fideism, see the entry on fideism in the *Stanford Encyclopedia of Philosophy*.

Rawls begins by saying that "Hume's account of justice . . . is central to his fideism of nature: he wants to show that morality and our practice of it are the expression of our nature, given our place in the world and our dependence on society" (2000, 51). Hume, Rawls notes, develops the notion of the circumstances of justice, showing that the rules of justice exist because of moderate scarcity and limited altruism (58-9). Given this background, our lives are all improved by rules for property and its transfer. In fact, Rawls says, our rules are the best we can do. Rawls writes:

> If we take Hume literally here (and why not?), he is suggesting that the convention, or scheme of conventions, he is describing is the best scheme: "there is no better way to consult both these interests," our and others'. He doesn't mean that it is the best scheme we can imagine, much less the best scheme allowing that human beings and our situation in nature might have been different. He means it is practically the best scheme, accepting ourselves and our situation in nature as it is, without weeping and lament. (Rawls 2000, 60)

Rawls also emphasizes that "what Hume considers to be just is the whole plan or scheme" (2000, 64). Rawls notes that Hume thinks that "just acts, taken alone, are not infrequently detrimental to society" (2000, 60). However, Hume says (and Rawls quotes): "'Tis impossible to separate the good from the ill. Property must be stable, and must be fix'd by general rules. Tho' in one instance the public be a sufferer, this momentary ill is amply compensated by the steady prosecution of the rule" (Hume 1978, 497). Glossing this and related passages, Rawls writes:

> the laws of property cannot determine possession and transfer according to who is best qualified at this or that moment to use this or that piece of property, as the particular utilities of the case might decide it. This is a recipe for endless disorder and quarrels, and calls forth the partialities of the natural affections, which the rules of justice are designed to restrain. (2000, 65)

In brief, the argument is this. In order to promote utility, we need a system of rules. But no workable system of rules is fine-grained enough promote utility in every instance. Therefore, if we want to understand and evaluate conventions of justice, it is a mistake to focus too closely on any particular instantiation of any rule. We must see how the system works over time as a whole.

The next consideration of the fideism of nature appears at the end of the Hume section of the *Lectures*, when Rawls turns to the very last chapter of the *Treatise*. Rawls argues that this chapter shows Hume reflecting on the moral sense itself. Once we see that the moral sense springs from our human capacity for sympathy, which we regard as a positive aspect of our nature, we are glad to endorse its responses to the world. Rawls writes:

> Hume is saying that his science of human nature . . . shows that our moral sense is reflectively stable: that is, that when we understand the basis of our moral sense—how it is connected with sympathy and the propensities of our nature, and the rest—we confirm it as derived from a noble and generous source. This self-understanding roots our moral sense more solidly and discloses to us the happiness and dignity of virtue (T: 620). (2000, 100)

He adds, "this is all part of what I have called his fideism of nature" (100). Rawls sums up Hume's general attitude: "He is utterly without lament or sense of loss, with no trace of romantic anguish or self-pity. He doesn't complain against the world, a world that is for him without the God of religion, and the better for it" (100).

I now summarize the material that appears under the heading of the "fideism of nature," and draw some connections to Hegel and his concept of reconciliation. Rawls does not himself make these comparisons, but the organization of both readings and the repetition of certain phrases suggest them. Rawls shows that Hume thinks that our moral judgments, though originally based on a moral sense, can be reflected on philosophically. However, it is possible to fall into philosophical error here: the moral sense is in some ways more reliable than philosophical reflection. Here, we can make a first comparison between Hume and Hegel. Hegel also thinks that pre-reflective judgments can be more reliable than initial attempts at philosophizing, due to the tendency to make certain errors. Moreover, both philosophers emphasize one particular error: Hume, like Hegel, clearly thinks that focus on the parts at the expense of the whole is one major source of philosophical error when thinking about social institutions. Finally, both thinkers do not stop at refuting their philosophical opponents, but often diagnose them as well, showing what cognitive psychological tendencies are leading them astray.

But, provided we reason clearly, we can arrive at the right account. In correctly showing how our moral sense works, Hume also finds what criteria our moral sense is responding to. Taken properly—that is, as a whole—the institutions of justice prove not to be alien to human interests, but in fact to exist only to serve them. This finding corresponds to Hegel's contention that our modern institutions serve our interest in our freedom. It is true that Hume focuses on utility while Hegel points to freedom; but both make the assertion that existing institutions are for human beings, not the other way around. Both Hegel and Hume affirm their own social institutions.

Finally, once we know the principles and their source, Hume thinks that we can decide whether or not to endorse our moral sense's responses. For Hume, regardless of whether or not we endorse our moral sense, we will still have certain moral experiences. However, it happily turns out that we do endorse the responses that the moral sense generates; it is reflectively stable. Rawls' use of this phrase in this part of his interpretation points, I think, to the fact that he has Hegel in mind while reading Hume.[4]

Now, in his treatment of Hegel, Rawls uses the term "reflective stability" to refer to a given social world. His arguments using this concept rely on the notion that changes in our theoretical apprehension of the social world can affect that world's continuation

4] Other possibilities are that Rawls has Hume in mind when reading Hegel, or that he is simply bringing a particular concept to bear on multiple authors. However, I would argue that the notion of reflective stability—if not the actual phrase—is prominent in Hegel's work in way that it is not in Hume's. Moreover, since Rawls clearly read Hegel, it is likely that Hegel influenced Rawls' emphasis on reflective stability. Michael Frazer points out that a complete discussion of Hume and Hegel would have to discuss Hegel's reception of Hume.

over time. These changes in the understanding of the members of the social world also affect the social world's final realization as fully free. These claims in turn assume that reflectively acquired beliefs can guide action. But in his writing on Hume and reflective stability, Rawls only says that our moral sense is what is made stronger. Is there a further connection between practical agency and theoretical reflection in Hume's thought, according to Rawls? Could theoretical reflection on social institutions be a source of institutional change, according to Hume's philosophy?

The answer is that Rawls is unclear on this topic. Rawls does occasionally imply that reflection will affect action in the philosophical, Humean, subject. In his first mention of the "fideism of nature," Rawls says "this underlying outlook guides his [Hume's] life and regulates his outlook on society and the world" (2000, 24, my italics). Rawls also says that "the idea of the practically best scheme [of conventions of justice] plays a role in explaining why Hume thinks that we should act justly even though just acts, taken alone, are not infrequently detrimental to society" (2000, 60). In both these sentences, it sounds like enlightened beliefs about the world are guiding action. However, the "fideism of nature" might also mean that there is no need to guide our actions through enlightened beliefs because our natural responses are trustworthy anyway.

Whether reflective judgments can be translated into action depends on the details of the moral psychology Hume offers. If Hume had an account of practical reason, and a notion of principle-dependent desires, one could make a direct connection between reflective moral judgments and moral motivation. However, recall that Rawls thinks Hume lacks a notion of practical reason. Thus Rawls thinks that, for Hume, judgments will not be automatically translated into action (2000, 97). The absence of principle-dependent desires is an obstacle, but not an insurmountable one. Because of the scope of the material Rawls considers, his discussion of all the mechanisms Hume posits is limited. A full answer would require returning to Hume's text. However, it is certainly true that these explanations will be less parsimonious that an explanation that posits the human capacity to translate principles directly into action.

So far, this paper has examined the readings of Hume and Hegel offered by John Rawls' *Lectures on the History of Moral Philosophy*. To summarize, Rawls correctly shows that Hegel offers a complex account of the capacity of the individual to shape his social world consciously. Hegel thinks that the individual can only do so by first reflecting on the social world he inhabits and grasping its character. Here he must overcome the tendency to make cognitive errors. Individuals who have completed this process can then affect the character of the social world consciously. In the case of the present social world, Hegel thinks that individuals will endorse it upon reflection and consciously reproduce it. Doing so will contribute to its freedom as a whole. These features of Hegel's idealistic philosophy that Rawls discusses are central to it.

Next, I argued that Rawls examines similar themes in Hume's philosophy. In Hume's case, the individual's ability to understand the social world depends on interpreting pre-given experience while overcoming cognitive errors. Furthermore, Hume thinks

that individuals will affirm the social world of the present. Once examined closely, this part of Hume's political theory is akin to Hegel's. I have argued that Rawls seeks Hegelian themes in Hume's philosophy and reconstructs less explicit aspects of it. Then, I show that, in Hume's case, Rawls' identifies second problem. Once theoretically enlightened, the individual may still lack the psychological capacity to let his knowledge guide his behavior.

III. CONCLUSION: TRACING THE INFLUENCE OF HUME AND HEGEL ON RAWLS' THOUGHT

This final section of my paper considers what we can learn by juxtaposing Rawls' own political theory and his readings of Hume and Hegel. The central results of Rawls' political theory are the two principles of justice that he thinks social institutions should satisfy. In this section, instead of examining the principles themselves, I will consider how Rawls relates the concepts of reflection and stability to the principles. First, Rawls says that he derives the principles by reflecting on the social institutions of existing liberal democracies. Now, Rawls does not claim that existing liberal democratic institutions are just. Instead, the institutions furnish the initial material that sets the reflective process in motion. Rawls describes a method of doing political philosophy that aims at a "reflective equilibrium" (1971, 20) of beliefs about justice. Beginning with beliefs about justice that our existing institutions encourage in us, we repeatedly adjust our general and particular beliefs until we have a coherent system of beliefs all of which we endorse (20). The principles of justice are among these beliefs, and the fruit of carrying out the method.

In Rawls' theory, the high-level method of reflective equilibrium coexists with other methods for generating and testing principles of justice. Rawls includes as a check on the correctness of such principles that they be "stable." The definition of the stability of principles relies on the definition of a "sense of justice" (Rawls 1971, 569) as "an effective desire to apply and to act from the principles of justice" (Rawls 1971, 568). Principles of justice are stable when "those taking part in [just] arrangements acquire the corresponding sense of justice and desire to do their part in maintaining them" (Rawls 1971, 454). Rawls' test for the stability of principles of justice is essentially a thought experiment. We conjecture what the sociological features of a just society will be over the long run and ask whether individuals who live in that society will endorse the principles of justice. Rawls argues that, in fact, over the long run a society that embodies the two principles will be affirmed by its citizens. Sometimes Rawls speaks of such a society governed by stable principles as itself stable (1971, 457).

I will not describe in detail Rawls' treatment of stability. In fact, with the publication in the 1990s of *Political Liberalism*, this account changes in significant ways. Documenting the vicissitudes of Rawlsian stability is beyond the scope of this paper. I confine myself to noting the relevance of the theme of reflection to the test for stability, an aspect of Rawls' discussion that remains constant over time. In *A Theory of Justice*, Part III Rawls explains how individuals that grow up in a just society acquire a sense of justice. However, he assumes that adults will not accept their sense of justice unreflectively, but will want to

examine the principles. Like individuals within the real world, they reflect on their beliefs until these reach an equilibrium state. Rawls assumes that, in a society governed by the two principles, the individual will ultimately decide to "preserve his sense of justice" (1971, 576). For Rawls, a society and its governing principles are stable only if the principles survive the reflection of individuals within the society.

Next, I will argue that Rawls' writings on reflective stability bear the traces of both Hume and Hegel. Now, given Rawls' overt comments about his influences, it is certainly plausible that he melds the thoughts of these two writers. First, the tradition of German idealism is a major avowed influence on Rawls' thought. Rawls always makes it clear that his work is indebted to Kant, and in the *Lectures*, he says that *A Theory of Justice* "learns much from" both Kant and Hegel (2000, 330).[5] Second, Rawls also thinks of his political theory as compatible with a naturalistic worldview. In the 1980 essay, "Kantian Constructivism and Moral Theory," Rawls praises John Dewey for "adapt[ing] much that is valuable in Hegel's idealism to a form of naturalism congenial to our culture" (1999, 304). Like Dewey, whom he clearly admires, Rawls wishes to import features of German idealism that he finds attractive, while shedding other aspects of its heavy metaphysical apparatus. At points in his theory, he explicitly combines aspects of Kant and of Hume.[6] So, it is not surprising that Rawls' writings on reflection and social stability take elements from Hume and the second major German idealist, Hegel.

Like Hume and Hegel, Rawls seeks the principles of justice within his own political tradition. However, unlike Hegel and Hume, he does not think the present social world is already acceptable to reflective scrutiny. To compare Rawls to Hume and Hegel, I move to the second aspect of Rawls' work that emphasizes reflection, the thought experiment that establishes the stability of the principles of justice. First, Rawls' account shares with Hume's the name of the object of reflection. Hume thinks we reflect on and affirm our moral sense and Rawls says that we reflect on and affirm our sense of justice. In both cases, the analogy made to sense perception suggests that a naturalistic explanation can be given for these psychological experiences.

On the other hand, Rawls, like Hegel, connects reflection and the value of freedom. Recall that Hegel thinks that individuals who reflect on their institutions succeed in overcoming their alienation and preserving their freedom. Rawls also thinks that the citizens of a just society can realize a particular kind of freedom that he terms full autonomy. In "Kantian Constructivism and Moral Theory," Rawls says: "For it is by affirming the first principles [of justice] … and by publicly recognizing the way in which they would be agreed to, as well as by acting from these principles as their sense of justice dictates, that citizens' full autonomy is achieved" (1999, 315). Without unpacking this definition in its entirety, I note that it requires the actor to act from his sense of justice. Thus, by preserving his sense of justice through reflection, the individual actor in a Rawlsian society also preserves his

5] For example, see Rawls 1971, §40, "The Kantian Interpretation of Justice as Fairness."

6] For instance, see Rawls 1971, §22, "The Circumstances of Justice," as well as §40 of the same work.

full autonomy. Stable principles of justice are those that can be honored autonomously after reflective equilibrium has been reached.

Thus, this section has briefly shown that Rawls' account of stability overlaps with elements of Hume and Hegel. It is certainly possible that, in crafting this account, he draws directly on his readings of Hume and of Hegel. If that is true, it also explains why, in the *Lectures*, Rawls reconstructs Hume's philosophy to bring out its common concerns with Hegel's thought. Rawls sees Hume as a writer within the Anglo-American tradition who combines a naturalistic outlook with an interest in reflection and in social stability. I conjecture that Rawls attends to these aspects of Hume's writings because he seeks to import them into his own theory and to claim Hume as an intellectual predecessor.

At points in his work, Rawls selectively mines the works of German idealism, combining insights from that school with elements from the Anglo-American tradition. This paper has argued Rawls uses that strategy in incorporating the themes of reflection and social stability into his political theory. It has summarized Rawls' treatment of Hegel, his original reading of Hume, and showed how contributions from both authors appear in Rawls' own work. The paper documents a specific example of a more general truth that the *Lectures on the History of Moral Philosophy* makes clear. That is, throughout his career, John Rawls' substantive concerns co-existed with an acute consciousness of his own situation in relationship to the tradition of political theory.

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Human Security and Liberal Peace

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Abstract. This paper addresses a recent wave of criticisms of liberal peacebuilding operations. We decompose the critics' argument into two steps, one which offers a diagnosis of what goes wrong when things go wrong in peacebuilding operations, and a second, which argues on the basis of the first step that there is some deep principled flaw in the very idea of liberal peacebuilding. We show that the criticism launched in the argument's first step is valid and important, but that the second step by no means follows. Drawing a connection between liberal peacebuilding and humanitarian intervention, we argue that the problems that the critics point to are in fact best addressed within the framework of liberal internationalism itself. Further, we argue that the development of the notion of human security marks a dawning awareness within liberal internationalism of the kinds of problems that the critics point to, however difficult it may still be to embody these ideas in practice.

Key words: peacebuilding, liberal peace, liberal internationalism, post-conflict reconstruction, democratization, intervention, human security.

I. LIBERAL INTERNATIONALISM AND HUMAN SECURITY

The end of the Cold War precipitated a great faith in a new role for moral concern in international affairs. The initial focus of this development was on the concept of humanitarian intervention: the idea that states (or international coalitions of states) could act militarily within the boundaries of another sovereign state in order to defend citizens of that state from grave and sustained human rights abuses from their own government (or from their fellow citizens in cases where their government was unwilling or unable to provide that protection). Later, this idea also came to be supplemented with the notion that the intervening power (or some other representative of the international community) could also rightly assist in the post-intervention reconstruction in that country, in particular, to help implement democratic institutions. The aim of the first form of action would be to stop some grave and ongoing injustice; the aim of the second would be to build fair and sustainable political institutions that would go some way towards preventing such injustices from occurring again. One way of capturing the impetus behind both moves is in terms of the concept of *human security*: the demise of the Cold War, with its threat of nuclear cataclysm, permitted a shift away from an exclusively state-centered notion of security, toward a notion of human security, under which the fate of individual human beings becomes a legitimate concern of the international community.[1]

1] Key documents include UNDP 1994 and ICISS 2001.

In this paper, we will be referring generically to these developments as embodying the moral-political outlook of *liberal internationalism*.[2] While post-Cold War liberal internationalism was taken by many – state-leaders and intellectuals – to inaugurate an entirely new era in international political thinking, critics were quick to point out that neither development was entirely without precedent. First, and most obviously, a line could be drawn connecting it to the Wilsonianism that dominated the post-World War I settlements. But, also, and even less flatteringly, critics would draw a connection back to the era of colonialism. When Western states today are proclaiming their right to intervene in conflicts within sovereign nations and to dictate the terms of the post-conflict settlement, they are again asserting the hegemony of the Western moral-political outlook, and asserting their competence to pass moral judgment on the cultural and political ways of other people.[3]

Recently, the intense critical debates surrounding the idea of humanitarian intervention seems to have abated somewhat, as the focus has shifted toward the second development; Western "hegemonic" involvement in post-conflict peacebuilding efforts, guided by ideals that are typically captured under the heading of the liberal peace, with a focus on democratic institutions, human rights, and economic liberalization.[4] It is these recent criticisms which will provide our focus here. These criticisms acquire a special sense of urgency from the fact that many, if not most, of the liberal peacebuilding operations undertaken in the last decade have been failures. Determining the exact reasons for such failure in any particular case is, of course, a complex matter. But the critics point quite plausibly to a set of factors that jointly would go a long way towards explaining the failures: the democratic reforms that are sought are implemented in a way that is perceived by its subjects as an imposition from outside of a victor's justice; it marks a top-down, blueprint approach to peacebuilding, displaying inadequate sensitivity to the actual needs, interests, and self-images of the people on the ground. To this extent, the liberal peacebuilding approach is incapable of securing a lasting peace and can instead be seen as geared more

2] Another coinage, which more strongly emphasizes its historical roots going back to the Stoics and more recently to the work of Immanuel Kant, is *cosmopolitanism*. We choose not to use this term here, in part because it raises assumptions about the debates between cosmopolitanism and communitarianism, about which we shall have more to say later.

3] One recent broad-front attack on "neo-imperialism" (or "postmodern imperialism") is Easterly 2006, notable in particular for its inclusion of development aid in the plethora of ill-conceived Western policies.

4] Our use of the term "liberal internationalism" here is intentionally generic, not distinguishing between "democratic peace" ideals and more encompassing "liberal peace" ideals (i.e., those that involve strong requirements on economic liberalization, in addition to democratization). While the recent emphasis on economic institutions marks an important advance in the study of war and peace (cf. the research summarized in Collier 2007), it is far from clear that rapid free-marketization is the best way to achieve the economic conditions conducive to a stable and peaceful society. However, since this topic reaches well beyond the mandate of the present paper, nothing in what follows will depend on any particular view concerning the role of economic liberalization in peacebuilding efforts.

towards satisfying our own, Western moral sentiments than doing anything good for the target society.

Our analysis will proceed by distinguishing two strands to this recent type of critique: (i) a primary argument offering a diagnosis of what goes wrong when things go wrong in liberal peacebuilding, and (ii) a secondary argument that attempts to distil from the primary argument a negative assessment concerning the very idea of liberal peacebuilding. As we shall argue below, much of what is claimed under the primary argument is quite plausible. However, the secondary argument is not well-founded and in no way follows from the primary argument. In a nutshell, the critics offer perceptive and persuasive diagnoses of the errors of many current efforts at liberal peacebuilding. But these diagnoses point in no decisive way to the bankruptcy of the very idea of liberal peacebuilding. Instead, we will argue that these problems reflect rather the failure of the current *practice* of liberal peacebuilding – primarily its manner of implementation – to adequately reflect the *principles* of the liberal peace. In fact, much of what lends credibility and urgency to the critics' argument is precisely that they implicitly affirm central tenets of the liberal tradition of thought by pointing out how our current practice falls short of these ideals. There will always remain, of course, difficult theoretical and practical questions concerning which role – if any – foreigners can legitimately play in shaping the political institutions of a country, especially when military or economic pressures are involved. But when the argument is presented in terms of a stark opposition between "them" and "us" – "their" political ideals and traditions hegemonically supplanted by "ours" – the critics are, as we shall argue, neglecting the backdrop of recent severe conflict in the country in question. The critics' mode of argument breezily refers to a "they," whose ideals and interests the foreign technocrats fail to properly take into account. In many cases, this may be true. But it neglects the fact that in many societies recently emerging from conflict, there is no simple "they" to refer to. *Whose* interests and ideals are we talking about? Hutus or Tutsis? Bosnian Serbs or Bosnian Muslims? The critics neglect the fact that in such societies, a large part of the self-image that we are now counseled to take into consideration is sustained by the conflict with the other group. They neglect that in societies emerging from civil conflict, the aim is precisely to erect a political structure that will moderate in a fair and transparent manner between the diverging ideals and interests of these communities. Nothing in the critics' primary argument should dissuade us from thinking that liberal democratic institutions are the ones best suited to achieve this aim, no matter how hard it is to achieve in practice.

II. LIBERAL INTERNATIONALISM: HEGEMONY AND NEO-COLONIALISM

In this section we will review some representative samples of the new critique of liberal internationalism, focusing on the critique of post-war reconstruction and democratization efforts. While different critics vary greatly in terms of how radical their critiques are, they typically converge on certain central themes, for instance that post-war democ-

ratization represents a form of victor's justice, a blueprint approach to peace, an imposition from outside of a political and institutional structure that can only work if cultured from within, a hegemonic assertion of the superiority of Western culture and values over local customs and sensibilities. In support of these claims, critics typically refer to the dismal record of post-war peacebuilding operations in recent years. Indeed, to a large extent, critics see themselves as merely drawing the diagnostic lesson from what should be demonstrably clear from the recent historical record itself.

The most important difference between the radical and the more moderate critiques lies in their respective views of how these discouraging results of recent post-conflict peacebuilding efforts stand to the intentions of the Western powers that undertake them. Thus, proponents of a moderate critique will allow that the intentions might be good, and that the end result is simply the consequence of idealist naivety, ignorance of local conditions, and a general lack of understanding of the processes by which political allegiances are formed and sustained. Thus, for instance, Sumantra Bose argues that the "rose-tinted view of benign liberal internationalism dispensing democracy and human rights is deeply naïve, extraordinarily uncritical, and in some versions at least, blindly arrogant" (2005, 323). As damning as this form of criticism is, it still allows that the hegemonic results are, as it were, merely the unintentional byproduct of otherwise well-intentioned (if "deeply naïve") actions.

The contrast with the more radical critique is striking. For on the radical critique, the primary driving force is indeed the establishment or furtherance of hegemony. The proclaimed humanitarian motive is just the empty rhetoric devised to cover up these imperialistic stratagems. Thus, Tim Jacoby argues that "the hegemon uses post-war reconstruction processes as an opportunity to preserve and extend an international order friendly to its principles, its security and its prosperity" (2007, 521). Even this might be tolerable, however, if indeed democratization were a reliable by-product of such reconstruction processes. But this is not the case. For these new post-war reconstruction efforts aim only at a "faux democratization" (Jacoby 2007, 526).

In what follows, we will largely pass over this more radical critique. This is not because it does not deserve an answer, but rather because this radical critique utterly fails to even raise the question that we are exploring here, namely whether post-conflict liberal peacebuilding would be a legitimate effort *if* the alleged humanitarian concerns are indeed the driving force. That is, we want to investigate the claim that there is something intrinsically problematic with such efforts even when they are motivated and executed in the right kind of way.

Thus, we will focus on assessing a more moderate form of critique, one that succeeds in making contact with and challenging the (alleged) ideals and principles of liberal internationalism and the liberal peace. We will let Oliver P. Richmond speak for this more moderate approach. Thus, while Richmond's diagnosis of the actual effects of liberal

peacebuilding efforts is in many ways as bleak those of the more radical critics, he seems clear that this is in spite of, and not because of, the intentions that Western powers put into these efforts:

> liberal peacebuilding in post-conflict environments has effectively begun to reinstate social and economic class systems, undermine democracy, cause downward social mobility, been built on force rather than consent, failed to recognize local cultural norms and traditions, and has created a virtual peace in its many theatres. (2008, 1)

Indeed, "IR's strategic reifications" – among which we may presumably count notions like human security – are so far from providing solutions to conflict torn societies. Instead, they "can be partly blamed for the spiraling of conflicts around the world" (Richmond 2008, 12). Richmond persuasively argues that a large part of the problem is a lack of knowledge of, or at any rate, a lack of sensitivity to, various important local cultural factors – customs, traditions, and the self-images of the people on whom the democratic institutions are to be foisted. The almost exclusive focus on the form of governance – that the "reconstructed" regime be a human rights respecting, democratic regime – "neglects interim issues such as the character, agency, and needs of civil society actors, emotion and empathy … The resultant peace is therefore often very flimsy and 'virtual' or neo-colonial at best" (Richmond 2008, 1).

Thus, one would think that more knowledge of, and greater sensitivity to, local factors might improve the success rate of the liberal internationalist program. This would allow us to tailor implementation to the specific needs and sensibilities of the relevant subjects, thereby securing the consent that would provide the crucial local legitimacy to the project. At times, this seems to be Richmond's claim: "What therefore needs to be considered by the peacebuilding community is how to identify the very rights, resources, identity, welfare, cultural disposition, and ontological hybridity, that would entice grass roots actors and individuals to accept the regulatory governance of institutions engendered in any peace emerging from liberal or non-liberal forms of peacebuilding" (2008, 2).

At other times, however, doubt is cast even over this view. Tapping into a line of thought that seems to gain currency in social theory at regular intervals, Richmond argues that "the other" – the subjects of the target community – may be "unknowable," at least to Western technocrats like us. Such epistemic problems further exacerbate the peacebuilding effort. A paternalist policy is bad enough; a paternalism that does not actually know what is best for its subjects is so much worse:

> The discipline's deeper contest is over how far its right to interpret the other, who may be unknowable at least without a deep investigation of more than simply political and state level structures, extends. But this right is so valuable, particularly in a context of an environment in which peace is defined by hegemons. Partly as a consequence, IR has predicated its disciplinary enterprise on constructing a right for its epistemic communities of policymakers, analysts, academics, officials, and other personnel, to interpret and make policy on behalf of unknowable others. Much of this move has been predicated upon the desire of this community to emancipate the other from war, violence, and unstable political, social, and economic structures. Yet how can we know if and when the other is emancipated? (Richmond 2008, 6)

We note the slight tone of hesitation in this passage. The "unknowability" of the other may, perhaps, be redressed by "deep investigation" that goes beyond "political and state level structures." Later we shall be asking questions about the relevance and plausibility of such a view. Yet, no matter what we think of this supposed epistemic predicament, there remains a crucial question of how "outsiders" can ever be in a position of legitimately passing policy-forming and institution-forming judgments on what constitutes emancipation for cultural others. For imposing *our* favored notion of good governance from without is the essence of paternalism, whether or not we have the requisite insight into what constitutes emancipation for the people in question. Thus, critics – moderate as well as radical – find the use of terms like "hegemony" and "neo-colonialism" more than merely rhetorical epithets, no matter how benign or "humanitarian" the motivating impulse of the new liberal internationalism might be.

These reflections eventually come to cast doubt even upon the idea of human security itself, in particular, on its right to shape a moral-political agenda of potentially universal validity. As we have seen, the idea of human security is meant to signal a turning away from a state-centered notion of security to one that emphasizes concern for the lives of individual subjects (and sub-state communities of subjects). Moreover, human security also signals a broadening of the notion of security itself, such that it is no longer exclusively concerned with armed violence, but also with other factors that impact on the life quality and prospects of human beings in their everyday life, such freedom from poverty and disease.

At first glance, one would think that these are aims and ideals that the critics would concur with.[5] Yet its intimate connections with the liberal internationalist paradigm also draw shadows of doubt over the very idea of human security. Thus, Richmond:

> Liberal peace projects aim more specifically at building the shell of a state where such structures have failed or never existed at all. Incorporating HS into this liberal peacebuilding project has been taken to effectively legitimate its different strands and discourses, and increasingly has outweighed the interventionary aspects of this project associated with victor's peace. HS has been utilized by theorists and policymakers in order to fill this empty shell by motivating international and local attempts to deal with issues which impinge upon the individual. This strategy has also had the side effect of legitimizing the state-building project by providing a more humanist dimension, rather than it being merely an exercise in the pacification of warlords or regional states as it sometimes appears. (2006, 78)

In this sense, it can be argued that the human security idea is as much a part of a Western, hegemonic imposition on cultural others as is the original idea of foreign-led post-war reconstruction. In particular, the idea that the rights and needs asserted through the concept of human security are *universal* smacks of just such a hegemony. This leads to the false and unreflective assumption that the human security program dictates political priorities that can rightly be applied or insisted on everywhere. Thus, Richmond: "At

5] Cf. Richmond's sensible claims concerning the need to go beyond "political and state level structures" (2008, 6).

no point in [the UNDP] is there an acknowledgement of multiple conceptualizations of peace, and that the liberal peace might be but one of those; the liberal peace is presented implicitly as an ideal form and ontologically stable. HS provides a framework to guide non-state and state actors in its achievement" (2006, 80). In all of this, supporters of the program overlook – or as the case may be, they realize it, but have no real concern for it – that "making a decision on the basis of pragmatic or idealistic humanitarianism is itself a hegemonic act made by third parties over 'others'" (Richmond 2006, 82). Noble intentions or not, there are deep and abiding problems with the very idea of foreign involvement in local post-war reconstruction.

III. MEETING THE CRITIQUE

In this section, we will take a first step toward meeting this critique of liberal peacebuilding. In section 1, we distinguished between two strands of this critique: (i) a primary argument offering a diagnosis of what goes wrong when things go wrong in liberal peacebuilding, and (ii) a secondary argument offering a negative judgment on the very idea of liberal peacebuilding. This secondary argument proclaims the moral bankruptcy or incoherence of the very idea of foreign involvement in post-conflict reconstruction, at least to the extent that such reconstructions are guided by liberal principles and ideals. It is clear from the flow of the dialectic that it is the observations gathered and conclusions drawn under the primary argument that is supposed to lend support to the secondary argument. Accordingly, the aim of this section is to show that this inference is premature, and that the record of recent failures of liberal peacebuilding operations, although certainly worrying, does not warrant the conclusion that the very idea of such peacebuilding is bankrupt or incoherent. This can be seen from the fact that the liberal internationalist can – and we shall even argue that she ought – take on board the crucial core of the critics' primary argument, and can do this without in any sense abandoning her commitment to the idea of liberal peacebuilding. The critics' error is to neglect the fact that the primary argument draws plausibility and urgency from concerns that lie at the heart of the liberal ideal itself. What the argument shows is that the current *practice* of liberal peacebuilding does not adequately reflect the principles and ideals of liberal peacebuilding, not that there is something intrinsically wrong about these principles and ideals themselves. Moreover, we shall argue that not only *can* these concerns be addressed within the liberal internationalist framework; we think it plausible to say that they are also *best* addressed within that framework. In particular, what is required is a better and more clear-eyed appreciation not only of the institutionalized *political rights* that have long defined the core agenda of the liberal ideal, but also of those more intangible but no less important needs that have more recently been added under the heading of human security. It may turn out, then, that human security, so far from being guilty by virtue of its association with the liberal internationalist paradigm, may be just what is needed to redress its shortcomings.

In this sense, our stance is by no means wholly dismissive. On the contrary, we think the liberal internationalist has much to learn from these criticisms. The liberal internationalist cannot claim to be satisfied with the success rate of recent and ongoing liberal peacebuilding efforts. The critics offer an insightful and largely compelling diagnosis of the factors that conspire to make this so: lack of knowledge of – and consequently, lack of sensitivity to – local culture, history, and traditions, and self-images; failure to draw on and incorporate local expertise; a top-down approach where foreigners call the shots and impose, in the shortest amount of time possible, bureaurocratic structures that mirror the structure of Western democratic institutions, but fail to achieve even the semblance of local legitimacy.

But the critics have not yet shown that these problems must be endemic to the idea of liberal peacebuilding, or that they are somehow integral to its principles. And indeed it would be odd if they had, since it should be clear that the kinds of concerns that they trade on are concerns that lie at the heart of the liberal tradition itself. When the ideological trappings of the rhetoric are toned down, it is clear that the liberal internationalist and the critics share some fundamental concerns about human freedom and the conditions of its flourishing. When the critic points out that political institutions can hardly be expected to achieve the legitimacy that is required for them to be sustainable if they are imposed in a manner that is insensitive to the needs, interests, and self-images of their would-be subjects, they are clearly speaking to liberal concerns. For being ruled by institutions of foreign origin, insensitive to one's needs, interests, and self-images, is the very antithesis of the liberal ideal, no matter how much those institutions preserve the formal structure of liberal democracy. "Local ownership" of political processes –self-determination – is, without a doubt, the supreme principle of liberal political philosophy. To this extent, there is no disagreement between the liberal internationalist and her critics. The critics are right to ask, however, whether what currently passes as the liberal agenda in post-conflict peacebuilding and reconstruction is in good keeping with this principle. Much of the evidence that they bring to bear on the matter suggests that it is not. But this question bears not on the validity of the liberal ideal – for in a real sense, the criticism implicitly confirms this ideal – but rather on our best prospects for achieving the ideal.

It is striking that the critics never outline an alternative set of principles and ideals for post-conflict peacebuilding and reconstruction. Thus, insofar as they do not argue for a strict non-involvement – that foreigners should never take part in post-war peacebuilding and reconstruction efforts in this way[6] –, we think the current debate is best viewed as a debate not about the validity of the liberal peace as such, but rather about how to conceive of it and how to implement it. Certainly, thinking of it this way allows us to keep the focus where it belongs, namely with human suffering and what to do about it.

Throughout much of this, one receives the impression that the critics are operating with an understanding of liberal philosophy according to which it is simply incapable of absorbing and addressing concerns such as these. Thus, according to a widespread criti-

6] We shall have more to say about this in our next and final section.

cal understanding of liberal thought, liberal political philosophy is exclusively concerned with individual rights of a certain kind, specifically, those individual rights that allow for meaningful implementation in political and bureaurocratic structures. In this sense, the current debate intersects with the debate between liberals and communitarians, which has been a mainstay of political philosophy since the 1970s.[7]

Against this background, critics then seem to hold that the liberal internationalist's notion of human security is simply more of the same: it signals an exclusively (or predominantly) individualistic conception of human value and human flourishing, and must thereby fail to address the kinds of concerns that are now at stake, inasmuch as these are concerns about less tangible matters, such as ideals and self-images, and – not least – community claims that might even, in some cases, be in tension with the individual rights asserted by the liberal.

We shall have more to say about the relevance of the liberalism—communitarianism debate in our next and final section. But for now it will suffice to note that while this form of argument certainly points in the direction of a problem that needs to be taken into account, it is wielded here in a very tendentious manner. Balancing the claims of individual and community is the defining problem of modern political philosophy on any reasonable approach to that task. Many liberals have tried to resolve this too decisively in favor of individual rights (perhaps thereby, as the critics allege, implicitly testifying to their Western, individualist bias). But to assert that the liberal approach is incapable – or any less capable than a competing approach – of allowing us to address such conflicting claims in any particular case is unfounded. Indeed, here is where critics neglect that the development of the concept of human security may be part of a solution, rather than just more of the same. For while the concept of human security is certainly rooted in a conception of individual rights and their political priority, it is not insensitive to competing claims as well. Human security beckons us to study the needs of concrete individuals in the concrete settings of their lives. In areas marked by prolonged and bitter conflict, certain material needs will quite naturally take precedence: freedom from persecution and the threat of violence; freedom from poverty, hunger, and sickness. But as human security marks a distinct broadening of the liberal agenda, it is simply wrong to assert that it cannot also accommodate the idea that the needs of human individuals to be part of larger communities is among their *basic needs,* inasmuch as it is through membership in such communities that individuals derive their basic sense of self and the value-sets around which they organize their lives. (Indeed, to the extent that human security makes any suppositions about the relative claims of individual and community, it is merely the negative supposition that the nation-state may not be the primary – or at any rate the only – community to which individuals belong. This is a point on which we take it that the critics would agree.)

7] The communitarian critique of liberalism targeted the re-emergence of rights-based political philosophy in the 1970s, chiefly in Rawls 1971, but also Nozick 1972. Key works in this wave include Walzer 1983, Taylor 1985, and Sandel 1982.

So far, then, we conclude that the critics have failed to provide an argument that brings out a fundamental flaw with liberal internationalism. True, they point to problems and challenges not currently met by liberal peacebuilding operations. These are important practical-political matters that must be addressed. However, the critics have given us no reason to think that they cannot be addressed, and are not in fact *best* addressed precisely within the liberal framework itself. Moreover, there is good reason to think that these are challenges that can only be met on a case by case basis. There cannot be a general solution – liberal or other – to problems of this kind. To this extent, we certainly agree with the critics' observation that what is required is more knowledge and greater sensitivity cultivated for any single case.

The critics suggest no parameters along which to judge the performance of international peacebuilding operations other than those which are part and parcel of the very liberal internationalist paradigm that they purport to criticize (e.g., self-determination and local ownership of political processes). Thus, insofar as they do not intend to rule out the legitimacy of all forms of international peacebuilding efforts, their arguments do not amount to a foundational criticism of the liberal internationalist paradigm, but rather precisely affirm it. The problem lies not, so far as the substance of these criticisms give us any right to assume, with the principles or aspirations of the liberal internationalist paradigm, but rather with the fact that the current practice of peacebuilding operations does not adequately reflect or embody these principles.

In peacebuilding, as in much else, we are prone to seek quick and easy low-cost solutions, where what is required is patience and investment. It might be useful to point to the fact that similar problems often beset humanitarian interventions, with which liberal peacebuilding projects are often connected. Here too, having decided that a particular situation warrants intervention, we are prone to seek low-cost, minimum-risk strategies, thereby spoiling much of what could have been achieved in the process (e.g., high-altitude bombing during the Kosovo intervention). This is tragic, and it does raise the question of whether there is any simple way of balancing the exigencies of intervention with the concern that politicians and military leaders must have for their own citizens and soldiers. Nonetheless, these debates do not – or at least not yet – cast a decisive shadow of doubt over the morality of humanitarian intervention. For that, a very different order of argument would be required; an argument that would show that it would never be right for a foreign power to intervene militarily within the borders of a sovereign nation. In light of a disaster of non-intervention such as resulted in the Rwandan genocide, it is hard to see how such an argument could be made plausible.

IV. CIVIL CONFLICT, INTERVENTION, AND PEACEBUILDING

We ended our previous section by drawing a parallel between the problems that we face in humanitarian intervention and the problems we face in liberal peacebuilding efforts. We intend this not merely as an analogy. In our view, there is a deep connection between the problem of humanitarian intervention and the problem of liberal peace-

building that is all but entirely neglected in much of the recent criticism. The plausibility of the criticism suffers as a result of the lack of appreciation of this connection.

When critics deride the new liberal internationalism as "neo-colonialism," they argue as if the current peacebuilding operations were entirely motivated by the lack of modern, democratic political institutions in the target country. We are familiar enough with the old justifications for colonialism in terms of "spreading civilization" to understand the nature of this implication. On this view, the mere perception of a "backward state of society" is enough to justify intervention and subsequent liberal reconstruction.[8]

But it cannot plausibly be claimed that this is how most liberal peacebuilding efforts are put in motion today. Rather, most such operations occur in the aftermath of the most severe forms of civil conflict, the consequences of which have typically been considered grave enough to warrant a humanitarian intervention. Since the critics never take on the burden of arguing that so-called humanitarian interventions are *never* justified, they cannot evade the question of how the interveners are to comport themselves in the aftermath of the intervention.

Unfortunately, space limitations prevent us from addressing this question as fully as we would like. However, some cursory remarks are in order. Most of the current literature on intervention takes its cues from Walzer 1977. There, Walzer argues for a strict, but non-absolute rule of non-intervention. The few exceptions that he admits are the ones that we today recognize as the occasion for humanitarian intervention proper – genocide, massacre, and enslavement.[9] By contrast, Walzer argues for a strict rule of non-intervention in cases that fall short of these levels of abhorrence. This means that foreign powers should in most cases stay out of a people's struggle for freedom from their own tyrannical government. The reason Walzer offers for this rule of non-intervention is one that we expect will resonate with many of the critics of current liberal internationalism. In a memorable phrase, Walzer writes: "It is not true that intervention is justified whenever revolution is, for revolutionary activity is an exercise in self-determination, while foreign interference denies to a people those political capacities that only such exercise can bring" (1977, 89).[10]

Walzer's argument for non-intervention, and specifically its rather strict conception of the cut-off line for intervention, met with no shortage of criticism.[11] The *pro et contra* that ensued is worth a closer study in its own right, but this will have to await

8] We allude, of course, to the infamous passage in Mill [1859] 1989, 13-14, where he goes on to argue that "[d]espotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end". A similar sounding passage can be found in Mill 1867, 252-253.

9] Shortly after the publication of the book, Walzer also came to admit massive forced displacement as a potential justification for humanitarian intervention. See Walzer 1980, 218.

10] It is worthwhile noting that Walzer's communitarian argument for non-intervention ultimately derives from an argument given by one of the great historical figures of liberalism, namely John Stuart Mill, in his 1867.

11] Cf. Beitz 1978, Luban 1980, Doppelt 1978, Slater and Nardin 1986.

another occasion. Instead, we will focus on the question of how an intervening power is to comport itself in the aftermath of a justified humanitarian intervention. Walzer's initial answer, as given in *Just and Unjust Wars*, was that the intervening power should retreat immediately upon succeeding in its narrowly circumscribed objective, namely to stop the ongoing atrocities. This, which Walzer would later dub the "in and quickly out test," serves a double objective: first, it exposes nations who seek to use the intervention also to serve their own hegemonic or imperial interests; second, it upholds the line of thought that led us to impose such strong restrictions on intervention in the first place – under no circumstances should foreigners seek to shape the politics and the institutions of a country, either toward or away from democracy. Democratic reforms must emerge organically from within, if they are to emerge at all.[12]

This is a view that Walzer has subsequently recanted – in our view, wisely. Walzer mentions "Uganda, Rwanda, Kosovo, and others" as cases where the "in and quickly out test" cannot be applied in the manner he and many others had envisaged in the 1970s. On his view, these are cases "where the extent and depth of the ethnic divisions make it likely that the killings will resume as soon as the intervening forces withdraw. If the original killers don't return to their work, then the revenge of their victims will prove equally deadly. Now 'in and quickly out' is a kind of bad faith, a choice of legal virtue at the expense of political and moral effectiveness. If one accepts the risks of intervention in countries like these, one had better accept also the risks of occupation" (2002, 246).

About this, Walzer is surely right. In many of the cases that today prompt us to consider the humanitarian intervention, one must be open for the possibility, even the necessity, of a prolonged presence if one is to intervene at all. And here, of course, is where the dialectic of liberal peacebuilding finds its place, and not merely in response to, say, lack of adequate political representation. What one hopes to achieve by such peacebuilding is to erect the foundations of political institutions that could make for a lasting peace. Of course, one hopes for such ideas and institutions to find some resonance with the people on the ground – with their self-images, with their culture and traditions –, for without such resonance one cannot hope that these ideas and institutions will survive or do much good. But in societies recently emerging from conflict, this can realistically only be an *aim* to steer for, not a solution to be applied along the way. For the critics would be wrong to assume that there is a "they" – or at any rate, a single or unique "they" – with whom such institutions must find cultural resonance. A central aim is to help build the kind of cultural and political solidarity whereby one might speak simply of "their" history, "their" traditions, "their" self-images, and so on. Meanwhile, we cannot neglect the fact that in many such situations, the culture and self-images that we are now beseeched to accommodate are forged through a long and bitter history of con-

12] Cf. Mill's argument that liberties bestowed on a people from outside cannot be expected to last long: "if they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent. No people ever was and remained free, but because it was determined to be so" (1867, 259).

flict with the group they are now trying to build a peaceful future with. When it comes to building for such a future, the critics have given us no reason not to think that fair and transparent liberal democratic institutions are the ones that stand the best chance. Which is not to say, of course, that the task is easy or will always succeed.

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Nationalist Criticisms of Cosmopolitan Justice

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Abstract. This paper critically evaluates some central arguments offered by nationalists against stringent international requirements of justice. The first part considers and rejects Michael Walzer's argument against international justice relying on a view about the social meanings of goods. The refutation points out, first, that Walzer's thesis is not true as an empirical matter, and, second, it is not an attractive normative position since it is biased towards certain conceptions of the good. The second part of the paper considers non-relativistic arguments for national partiality. It distinguishes between instrumental and intrinsic arguments and argues that neither form is capable of justifying the nationalist thesis. Instrumental arguments would have to rely on implausible empirical premises to justify national partiality. Intrinsic arguments either would have to invoke a view of the impersonal value of national self-determination that is unacceptable to liberals, or need to come up with a justification showing how the intrinsic goods produced by political communities are capable of overriding claims of outsiders.

Key words: global justice, nationalism, relativism, national self-determination.

Recent debates about international justice raise several related questions. Are there any distributive requirements applying internationally? If there are, are these requirements grounded in justice, or in some other moral notion? Are international distributive requirements the same as those that apply domestically, or different?

In this paper I examine a group of positions that either answer the question about the existence of distributive requirements cutting across borders in the negative, or claim that even if there are international distributive requirements, these are weaker and different in kind than the requirements of domestic justice. To adopt Henry Shue's phrase, these theories advocate the thesis that "compatriots take priority" (1996, 132). That is, they draw a stark contrast between principles of justice regulating domestic affairs and principles for regulating international affairs. The priority thesis does not claim that the interests of foreigners should not be taken into account at all for the purposes of determining distributive requirements: its distinguishing feature is that it takes account of their interests and the interests of compatriots in a different way (Beitz 1983, 593). Its advocates provide various accounts of what this difference consists in, with radically different theoretical backgrounds. In this paper I propose to distinguish between three kinds of arguments that have been offered in the literature for the priority thesis. One type of argument given by nationalists for special domestic distributive requirements rests on a relativistic view of justice, whereas the other two emphasize special benefits generated by national political communities. The paper is organized as follows. I first consider and reject Michael Walzer's argument against international distributive requirements relying on a special view about the social meanings of goods. The refutation points out, first, that Walzer's thesis is not true as an empirical matter, and, second, it is not an attractive normative position since it is biased towards certain conceptions of the good. The second part

of the paper considers non-relativistic arguments for national partiality. It distinguishes between arguments emphasizing the instrumental and intrinsic value of national attachments respectively, and argues that neither form is capable of justifying the nationalist thesis. Instrumental arguments would have to rely on implausible empirical premises if they wanted to establish the priority thesis. Intrinsic arguments, on the other hand, either would have to invoke a view of the impersonal value of national self-determination that is unacceptable to liberals, or need to come up with a justification showing how the intrinsic goods produced by political communities are capable of overriding claims of outsiders. Before I present the arguments, however, I briefly sketch the cosmopolitan outlook nationalists argue against.

I. INDIVIDUALIST MORAL UNIVERSALISM AND COSMOPOLITAN JUSTICE

Cosmopolitan liberalism rests on the premise that all humans are of equal worth and their lives and well-being are equally important from the point of view of justice. This general outlook is thought by cosmopolitans to justify certain requirements on the design of institutions, on the actions of individuals, and on the distribution of resources, so as to give an equal consideration to the interests of all humans. I do not here discuss the content of these requirements, however, let me briefly mention some of the characteristics of the underlying general moral stance only to contrast it with some nationalist theories that attack these.

The ground for the cosmopolitan outlook is a general individualist moral universalism, which has the following defining features.[1] It is individualistic, holding that only individual human beings have ultimate value. It is universal, in the sense that the status as a bearer of ultimate moral value extends to every human being, and it does so equally: each human being has equal moral value. Finally, the validity of this outlook is general, holding that individuals are of ultimate moral value for everyone. In virtue of these characteristics this outlook rules out attaching non-derivative value to institutions, political communities, culture, or relationships, and it also forbids weighting the value of individuals differently on the basis of features such as race, sex, or ethnicity.

On the basis of this general moral stance, cosmopolitans hold the thesis that there are international principles of distributive justice that are justified in a way that is continuous with the justification of domestic distributive principles. Furthermore, some normative features of individuals and the relations among them make it the case that international distributive principles roughly resemble domestic principles of justice we are familiar with from liberal theories of justice.

Arguments offered by nationalists often proceed by attacking one or several of the three main features of this moral stance, i.e. individualism, universality, and generality.

1] This characterization follows the description made by Thomas Pogge (2002, 169) and Brian Barry (1999, 35-6).

The next section considers one such argument. However, it is important to note that this strategy is not necessary for nationalists: as we shall see later there are attempts to justify the nationalist thesis which are compatible with individualistic moral universalism.

II. RELATIVISM ABOUT JUSTICE

The Argument from the Social Meanings of Goods

The first type of argument voiced by nationalists rejects the universal scope of moral individualism that underlies cosmopolitan theories of justice. The scope of moral principles has been seen as limited by some communitarian theorists on the basis of a relativistic view of morality.[2] In this section I am going to focus on Michael Walzer's version of the argument, as he is specifically concerned with distributive justice. Focusing on principles of justice that are supposed to guide the distribution of various goods in societies, he argues that such principles are not intelligible in abstraction from existing political communities. Principles of justice valid for a given political community are defined by the shared understandings of the members of the community. A given set of principles of justice applies to a political community where members' shared understandings imply this set. As Walzer states this claim: "All distributions are just or unjust relative to the social meanings of the goods at stake", and he thinks these social meanings, as well as distributive principles they imply, are relative to particular cultures (1983, 9).

Let us spell out the argument in more detail. First, distributive justice in Walzer's view is concerned with the distribution of social goods: *all* goods whose distribution needs to be guided by justice are social goods (1983, 7). Next, the meaning as well as the value of goods justice is in the business of distributing are defined by the understandings of the communities whose goods they are. This is a result of the conjunction of two ideas Walzer holds. On one hand, he views goods as having no "brute" natural meanings, thus he holds that they get their meanings through a social process of interpretation (Walzer 1983, 7-8).[3] On the other hand, the meanings of goods in Walzer's view differ across societies Walzer (1983, 8). Importantly, Walzer equates societies whose members share an understanding of goods with political communities: he thinks members of political communities share a language, historical consciousness, and culture to a sufficiently large extent to ensure that they make up distinct distributive communities. In addition, Walzer believes that the meaning of a good and its distributive criterion go together: there are no criteria for distributing social goods that are independent of the very meanings of the goods as they are understood in a society. The conclusion of this line of thought is that distributive criteria are inherently social as well. Furthermore, since the place where the

2] Alisdair MacIntyre, Charles Taylor, and Michael Walzer are perhaps the most prominent representatives of this relativistic stance. See MacIntyre 1985, Taylor 1989, Walzer 1983.

3] For this formulation see Mulhall and Swift 1992, 132.

meanings as well as the distributive criteria of goods are defined is a cultural community, there is no way to find principles for international justice since there is no equivalent for an interpretive community at the international level. Consequently, there are no requirements of justice that apply across political communities.

It might be countered that even if at present goods with which justice is concerned, and the principles of justice that should guide their distribution, vary across cultures, we may come up with a list of abstract goods that are general enough to be applicable internationally for purposes of defining a just distribution. Rawlsian primary goods would be an example. If we could come up with such a list, there could be consensus on principles of global justice which would govern the distribution of primary goods globally, which in turn would be translated into distributive arrangements concerning more specific goods by individual societies in accordance with their shared understandings of these goods. Walzer denies this possibility, however: he believes it is impossible to come up with a list of goods that, on the one hand make the same sense in all cultures and, on the other hand, are concrete enough to be able to serve as a standards for distribution. To recall, he thinks distributive principles are always relative to concrete goods with specific meanings, and the farther abstract goods are removed from these concrete ones the less determinate the standards guiding their distribution will be.

Having defined goods and distributive principles attached to them by reference to cultures, Walzer's theory goes on by presupposing an almost complete identity between cultural and political communities. It rests on a view of political communities where each or at least most members agree on the meaning and value of goods, as well as the way they should be distributed. In effect, Walzer presupposes that members of political communities agree in their conceptions of the good. Presupposing this, and holding that there is no way to come up with distributive principles for global justice employing more abstract goods, Walzer's theory takes nation-states as the exclusive domain for distributive justice. The global institutional structure in its current form consists of a number of nation-states, and the argument from the social meanings of goods implies that there are no international distributive requirements prescribing a different set of institutions to replace or supplement this structure.

Walzer's theory of justice can be criticized from a number of directions. For instance, it can be criticized in its general form as a version of cultural relativism about moral principles, using arguments that have been leveled against several communitarian authors such as Alasdair MacIntyre, Charles Taylor, or Michael Sandel, who hold in one form or another relativist views about morality. I do not discuss these general criticisms of moral relativism and will rather focus on criticizing Walzer's specific version of it since it may have greater initial plausibility, given its focus on differences between distributive principles across societies.

I understand Walzer's theory as having a more limited scope than the theories presented by other communitarians that confine rational discourse about all moral principles to cultural communities with shared understandings. Walzer's theory focuses on distributive justice, a field that is much more controversial than some other areas of morality, such as basic human rights. It has proved a lot easier for states to agree on the acceptance and interpretation of rights against torture, genocide, rights to freedom of speech, religion, or association, than to reach even minimal agreement on issues of distributive justice. This might be thought to create a prima facie case for Walzer's distributive pluralism. A strategy defending Walzer's relativism about justice might then proceed by drawing a distinction between basic human rights about which there is a prospect for international agreement, and requirements of distributive justice that are inescapably limited to domestic societies.

Let us see if this more limited Walzerian thesis is defensible. I am now going to present three arguments against it which, in my opinion, are sufficient to undermine the thesis.

Questioning the Contrast between Global Disagreement and Domestic Consensus

The first argument, offered by Allen Buchanan, proceeds by questioning the extent and permanence of global distributive disagreement on which Walzer builds his skeptical thesis about the possibility of reaching consensus concerning principles of global justice (Buchanan 2004, 204-5). The argument is of empirical nature: it aims to show that the supposed contrast between a largely homogenous public opinion about matters of domestic distributive justice and a globe characterized by irresolvable disagreement about matters of global justice is false.

It is obvious that political communities are not homogenous in the moral values of their members: in liberal democracies at least, members deeply disagree about moral issues, and disagreement is especially intractable with regard to issues of distributive justice. This makes the assumption about the existence of a contrast between domestic and international societies ungrounded. Also, there seems to be little reason to believe that domestic disagreement is more likely to be resolved than the international one in the long run. A claim that this is so should at least be supported by empirical evidence, which neither Walzer nor other communitarians manage to supply (Buchanan 2004, 204). We still seem to be in an early phase of international interdependence and cultural interaction, and it seems premature to conclude on the basis of a somewhat greater level of international disagreement about distributive justice that – in contrast with domestic disagreement – international disputes are less likely to have rational resolution. We can see this the most clearly when we consider the evolution and growing acceptance of international human rights standards: at the beginning of the 20th Century it would have seemed entirely unrealistic to expect states to give up significant portions of their sovereignty by subscrib-

ing to international human rights norms, which they nevertheless did in the course of the second half of the century.

Increasing Reliance on International Principles of Distributive Justice

The second argument against Walzer's position builds on the first one. Not only can we question the pervasiveness of international disagreement about distributive principles, we can also make the positive point that considerations of distributive justice actually already figure in and increasingly pervade international law and discussions surrounding it. As Thomas Franck has shown, considerations of justice have been institutionalized by being included in a growing number of international norms. This fact indicates that there is some convergence about issues of justice on the international domain (Franck 1995). Franck in his treatise lists and discusses a number of areas where considerations of distributive justice play a prominent role. These include (1) multilateral lending institutions that provide subsidized loans and credits to support economic growth and reduce poverty in poorer countries; (2) multilateral environmental agreements imposing obligations on states to take into account the interests of citizens of other countries and future generations by the conservation of a fair share of natural resources; (3) multilateral compensatory and contingency financing (treaty-based commitments of wealthier states to compensate poorer trading partners for extreme levels of commodity price fluctuations); (4) multilateral treaties governing the exploitation of natural resources on seabed and continental shelves and the distribution of benefits flowing from their use; (5) treaties regulating the use of outer space and the Antarctic, regarding them as the "common heritage" of mankind (Franck 1995, discussed in Buchanan 2004, 205-6). The developments discussed by Franck indicate that in a number of well-circumscribed areas in international law there is a growing consensus not only on the importance of distributive justice but also on the judgment that certain distributive arrangements are clearly unjust. This makes a compelling case against skepticism about the possibility of reaching an international agreement on matters of distributive justice even if at present there is no consensus on everything that distributive justice is thought to require.

Of course, these considerations do not show that there is an international consensus on a full conception of distributive justice. But then nor is there such a consensus domestically. What Franck's findings show is that it is a mistake to believe that considerations of distributive justice play no role at all in the international domain, and that current disagreements make it impossible to make progress towards a growing consensus.

The Role of Goods in Distributive Justice

The third argument against Walzer's distributive pluralism targets his skepticism about the possibility of finding a set of abstract goods that, on one hand, are general enough to be applicable globally and, on the other hand, are specific enough to support a standard of distribution. I will show, first, that abstract goods such as resources are in-

deed capable of providing standards for an interpersonal valuation of goods that can be used for distribution. Second, I will argue that a liberal theory of justice cannot accept the Walzerian premise that all goods that are subject to distribution under principles of justice have in every culture their own inherent distributive criteria.

First, we can easily see that abstract goods can indeed be applied in measuring the value of resources across cultures if we consider the way markets actually work. Markets operate on the assumption that, within the limits of a permissible range of goods, "anything can be traded for anything". This idea is institutionalized in the use of money as a medium of exchange, making it possible for any pair of traders to trade goods even without having a clear idea about what goods they want to end up holding (Waldron 1995, 144). So as a matter of general fact markets do not operate in the fashion Walzer sees distributive spheres operating: for most individual goods it is not the case that they get distributed on the basis of specific criteria built into their meanings. Goods get distributed on markets on the basis of their worth to individual participants. Thus, lack of agreement about the value of a good across cultures is not a problem. Goods can be traded among market actors even when they differ in their valuation of the good they want to exchange. The operation of markets shows that it is possible to rely on some very abstract measure, such as money, in the interpersonal valuation of concrete goods that need to be distributed.

Now, it is Walzer's main objection to the use of market exchange for the distribution of various kinds of goods that in liberal democratic societies there are many kinds of social goods whose distribution is a matter of justice, making up as many "distributive spheres", in which distribution should be determined by their own criteria.[4] He considers market as one of these spheres, but he claims its role must be limited to the distribution of some kinds of goods. The danger Walzer sees in relying on market exchange for the distribution of a larger range of goods is that money has the tendency to become a dominant good, i.e. a good whose possession enables individuals having it to command a wide range of other goods whose distribution is inappropriately sensitive to variations in individual wealth (Walzer 1983, 22). Each of these goods, e.g. education, medical care, food, Walzer thinks, should have its own "distributive sphere", sufficiently insulated from money, which should be confined to its own sphere and should not determine the distribution of other goods.

There is much conceptual unclarity in Walzer's account. Jeremy Waldron argues that it is a mistake to regard money as a good, alongside with other goods: money is only the "representation of the commensurability of the meanings and values of other goods, not as a good with meaning or value in itself" (1995, 147). On the other hand, even though not a good, money does have a social meaning, which Walzer's account misrepresents, at least for liberal democratic societies. Money cannot be confined to its own sphere, since its social meaning is precisely that it can be exchanged to a whole range of goods (Waldron

4] It should be noted, however, that the objection is valid only in liberal democratic cultures. It does not apply in caste societies, for instance, where the distribution of all goods is determined by one single distributive criterion, viz. one's position in the caste hierarchy. See Walzer 1983, 27.

1995: 147). Leaving aside these problems, I try to address Walzer's main motivation in objecting to market exchanges in the distribution of certain goods. The intuition behind Walzer's objection is the view that there are things money cannot, or rather should not, buy. Many of us consider it inappropriate to exchange public offices, court rulings, human body organs, or rights to basic liberties, for money.[5] However, all this shows is that market exchanges are allowed to take place only within a permissible range of goods, against the background of regulations making sure that justice or other moral requirements are not violated. In most cases exchange is prohibited because the goods or services featuring in them are themselves immoral. Murder is immoral, thus provision of murder for money is immoral.[6] There might be cases, however, when items ought not to be exchanged for money not because there is something wrong about the things that would be exchanged, but because there would be something wrong with exchanging them. Cases like this might include prostitution, or surrogate motherhood, where it might be thought that offering and receiving cash payments for securing consensual sex or bearing someone else's child is inappropriate. However, most blocks on exchange belong to the former group, and I will now argue that there is good reason to allow for exchanges for a broad range of goods. This argument, which I take to be the main objection to Walzer's view of the social meanings of goods, focuses on the value of market exchange as seen by a liberal theory of justice.

In a liberal theory of justice goods are not regarded as having their own distributive criteria built into their very meaning. On the contrary, people differ in their opinions about the value of certain goods since they have differing conceptions of the good, different ideas of what gives value to life, hence different preferences. Some would have more beauty products while others would rather choose to go on a hiking trip; some drink champagne while others prefer beer; some would want to go more often to opera while others would rather watch more TV. In each of these pairs of preferences some people would be willing to spend more of their resources on some goods rather than on others. If society decided to allocate concrete goods equally on the basis of a specific understanding of their value, some individuals would find that they are unfairly disadvantaged as compared to others. The reason for this is that justice is not only about the distribution of a given stock of goods: what products are available for distribution is also a question of justice. The kinds and the quality of resources to be distributed, and the kinds of activities prohibited or made possible, are also to be dealt with in accordance with justice. This implies that those goods distributive justice is concerned with should be valued in a way that takes account of the differing conceptions of the good people have, and takes account of them equally. In order to value a product someone consumes, in a manner that takes equal account of everyone's interests, we have to find a means to measure the costs to others of his consuming this product, i.e. the "cost in resources of material, labor, and capital

5] Although the list seems to be historically changeable, and there is certainly no consensus on some of its elements. Arguments about organ markets provide a good example of disagreement.

6] See Waldron 1995, 155-64 for an interesting analysis of the various cases belonging to this group.

that might have been applied to produce something different that somebody else wants" (Dworkin 1985, 194). Markets, at least in their ideal form, provide a way of measuring the value of one person's holdings of resources that reflect the true cost to others of her holding this amount of resources, hence they provide a standard for interpersonal comparison of resource levels that is not biased toward any conception of the good life. Considerations like this motivate Ronald Dworkin to take resources as the metric of distribution in his egalitarian theory of justice (2000). I do not here discuss the question whether we need the working of actual markets in order to define a just distribution, or we can find some other means, e.g. hypothetical markets, to achieve this.[7] Even if a theory of justice does not rely on actual markets, an equal concern for the well-being of everyone affected requires that we measure well-being for purposes of distributive justice in a way that is neutral across various conceptions of the good individuals hold.[8] This is why Rawls in his theory of justice proposes a list of "primary goods" as the metric of just distribution, rather than holding that goods ought to be distributed in a way that reflects their inherent distributive criteria as they are understood in a given society (1999a). Walzer's theory about the social meaning of goods and their distributive criteria is biased towards some conceptions of the good, hence it does not pay equal respect to the interests of all individuals among whom the problem of distribution arises.

To conclude, Walzer's requirement that goods are to be distributed in accordance with their social meanings is neither necessary for a theory of justice, nor is it desirable for a theory that aims to avoid favoring the preferences of some people at the expense of others. Justice requires that we measure individual well-being in terms of abstract goods, such as primary goods or resources, which provide an unbiased standard of interpersonal comparison. These abstract goods do not have inherent distributive criteria built into their meaning: their distribution should be guided by distributive principles we arrive at independently of the meanings of goods to individuals and communities.

III. PRIORITY TO COMPATRIOTS: THE NATIONALIST POSITION

Having argued against one position that confines requirements of distributive justice to domestic societies, I now turn to a second group of arguments against the cosmopolitan position. These arguments are not related to relativism about justice. In the remaining part of the paper I discuss the view that being involved in special relationships such as families, friendships, or national communities brings with it special distributive requirements. The main thesis of theoretical nationalism, a prominent doctrine advanced in various forms by contemporary authors, is that people are permitted or required to be partial to their own nations and fellow-nationals because they stand in a special relation-

7] I discuss this issue elsewhere. See Miklós 2009.

8] Unless otherwise specified, I use the term well-being in a broad sense, not denoting a welfarist view of distributive justice.

ship with them. This doctrine is about the form of ethical reasoning: it says that whatever people's interests consist in, we should care more about our fellow-nationals' interests than about other people's (Hurka 1997, 143). What forms of partiality nationalists have in mind and what degree of it they regard as acceptable is rarely specified. For clarification we can list a few characteristics of partiality, though the list is controversial not only among theorists but also when it comes to commonsense moral intuitions. First, positive duties owed to fellow-nationals are thought to be less easily overridden by considerations of cost to oneself than positive duties to citizens of other countries. Further, positive duties to fellow-nationals are often thought to take precedence over one's positive duties to outsiders in case of conflict. Next, the threshold at which a positive duty can override a universal negative duty may be lower if the positive duty is owed to a fellow-national. On the other hand, the threshold at which a universal positive duty can override a negative duty can be higher if the negative duty in question holds with regard to fellow-nationals.[9]

Whatever the exact form and degree nationalists think national partiality should take, its implication for global distributive justice is that distributive requirements applying within nations are more stringent and possibly different in kind than distributive obligations applying on the global domain. Justifications of this thesis have been attempted along the lines of two strategies: instrumental and intrinsic justifications of the value of national partiality.

Instrumental Justification

The instrumental justification starts from impartial moral principles, considering the interests of all humans equally. It proceeds by showing that partiality for conationals is justified since it has good effects impartially considered. One version of this strategy is represented by the route followed by Robert Goodin, who argues that fellow-nationals are better placed to look after the interests of one another, and are therefore required to give priority to one another's interests on universalistic grounds (1988). Goodin's strategy views special relations among compatriots as representing a useful convention where particularistic duties are viewed "as an administrative device for discharging our general duties more efficiently" (1988, 685). He regards such duties as cases of what he calls assigned responsibility, which he illustrates with the example of establishing a lifeguard on the beach: such a person is singled out to fulfill a general duty to rescue others in distress, since appointing one person as a lifeguard can overcome coordination problems that might be created by the presence of a larger number of people on the beach than the number required for fulfilling the duty of rescue. As a consequence, ordinary beachgoers are relieved of their duty to rescue others from the water (Goodin 1988, 680-1). By analogy, then, citizens of a state are thought to be relieved of their duties of justice towards citizens of other states, since these states are assigned responsibility for the interests of their own citizens. This justification of national partiality is instrumental because it proceeds by

9] This characterization is borrowed from Scheffler 2001, 52-3.

showing that a set of distributive rules incorporating national partiality is the best available setup for making sure that at the end of the day the justice is being promoted, taking the interests of all humans equally into account.

In their general form, instrumental justifications of national partiality are unlikely to succeed, for the following general reason. As we saw, they purport to justify the claim that, whatever people's interests consist in, we should give priority to our fellow-nationals' interests over those of others. However, as Charles Beitz argues against what he calls the consequentialist justification of the priority to compatriots view, it is implausible that such justifications can establish this general thesis since they would have to rely on implausible empirical assumptions (1983, 593). That is, they would have to presuppose a fair background distribution of resources against which states' taking care of the interests of their citizens might be justified. Given the hugely unequal current international distribution of resources and the tendency of free-market mechanisms to generate injustice without appropriate institutions maintaining background justice, more of international redistribution could bring about a better state of affairs from an impartial point of view. Now, Goodin recognizes that special responsibilities can be assigned to agents only against the background of a fair initial distribution of resources (1988, 685). It is very implausible to suppose that a setup where the Mozambiquean and the Swiss state are each exclusively responsible for the well-being of their own citizens produces the best overall state of affairs from an impartial point of view. However, an arrangement where each state would be allocated an equal initial per capita share of the earth's resources, and then left free to do whatever it can to perform its special responsibility for its citizens, would still be unjust if states are not self-sufficient. Liberals share the view that the operation of free markets tends to generate injustice unless it takes place against the background of just institutions correcting for unfavorable distributive effects. Thus, even in the domestic case, partiality in special relationships is regarded as permissible only if there are background institutions that implement the impartial requirements of justice. Individuals have a duty to create and uphold such institutions that maintain the conditions of impartiality, against the background of which communal projects and personal commitments can take place. Analogously, if such just global institutions are in place that maintain a fair background distribution and correct for unjust distributive effects of market transactions, there may indeed be legitimate forms of giving priority to fellow-nationals. However, this idea is different from what the priority thesis in its general form purports to establish, as it is silent about just background institutions.

Intrinsic Justifications

I now turn to intrinsic justifications of national partiality, which pose a more significant challenge to cosmopolitanism. Such justifications do not defend national partiality by pointing out its instrumental role in bringing about an overall desirable state of affairs, considering the interests of all humans equally. Rather, they claim that the relationship

between fellow-nationals is in itself sufficient to warrant special distributive requirements that do not apply among humans as such.

There are two basic rationales offered for the intrinsic importance of national partiality. One position regards some goods provided by nationhood as good impersonally, and justifies special duties among fellow-nationals by showing that they are necessary for securing these goods. The other strategy proceeds by showing that special relations between compatriots have a substantial effect on their lives. The importance of these relations comes from their effect on individual well-being and underwrites special distributive requirements.

Since the intrinsic defenses of national partiality are not cast in terms of a thesis about the scope of validity of ethical reasoning, those nationalists who want to maintain the special distributive status of relational facts need not subscribe to relativism. In one form, the nationalist doctrine is both non-relativistic and agent-relative. It is non-relativistic if it takes at least one ethical principle as having universal validity, namely the principle that special relations are of intrinsic importance, and carry with them special distributive requirements among participants. Members of every national community ought to be partial to their fellow-members, and not only in those cultures whose norms include a requirement of such partiality. On the other hand, the doctrine is agent-relative, since it prescribes partiality to one's own fellow-nationals: it does not demand that we should act so as to maximize the number of people being partial to their conationals. Therefore, this nationalist position has something in common with the relativistic argument about justice, namely that, when aiming to offer principles for regulating international affairs, it regards national distributive requirements as having an ethical status that is independent of their overall effects on the well-being of all humans.

In what follows I will present the impersonal and personal versions of defending partiality on the basis of the intrinsic significance of communal attachments, and will argue against each in turn. Treating them separately serves analytical purposes, though they are often not distinguished clearly in writings about nationalism.

The Impersonal Value of National Self-Determination

The first group of arguments holds that national partiality is justified partly because some goods provided by nationhood, such as the survival or flourishing of national culture, or national self-determination, are good impersonally and special duties among fellow-nationals are necessary for securing them. This strategy regards these goods as good impersonally in the sense that they are "not reducible to the goods of individual persons, or to goods located in individual persons' lives" (Hurka 1997, 144). One should show greater concern for the survival or flourishing of one's national culture, or national self-determination, not because this is a way of promoting the interests of one's conationals but because of the importance of these things in themselves.

This position goes against individualist moral universalism by holding that fundamental importance may attach to relations between persons, or persons and collectivities, without having to justify this importance by recourse to an equal consideration of the well-being of all individuals. Agents are viewed as already encumbered with definite duties and commitments to particular persons and groups, and it is claimed that these relational facts figure in moral reasoning as foundational elements (Miller 1995, 50-1). That is, in justifying moral requirements the normative force of these relationships does not derive from their being compatible with a set of basic principles considering the interests of all humans equally: their binding force is not endowed upon them by their effects on the well-being of individuals.

A number of impersonal goods have been associated with nationhood and thought to justify partial attitudes. For one, it has been argued by some communitarian authors, most straightforwardly perhaps by Charles Taylor, that the cultural survival of national groups and national minorities, e.g. the survival of French culture in Quebec, is good. It is a good not only in the sense of being good for Quebeckers as individual persons, but also good in itself. Francophone Quebeckers who now deeply care about the existence of a French culture in Quebec three generations from now do not necessarily believe that their great-grandchildren will lead better lives if they are born and raised in a French culture than what their lives would be as members of an English culture. Most probably these people would grant that after the lapse of a sufficiently long time the disappearance of French culture in Quebec would not make any specific person worse-off. If they continue to regard the survival of their culture as a good then, they must view it as an impersonal good in this sense: it would be a good thing if Francophone culture survived even if this would not be better for anybody (Taylor 1994, 58; Hurka 1997, 145). The implications of the importance of cultural survival for international distributive justice are not clear, however. As long as we do not think that the impersonal value of national cultures justifies more stringent national distributive requirements than those on the international domain, we can grant that national cultures are good impersonally without having to give up requirements of global justice.

To turn to another of these goods endorsed by nationalists as impartially valuable that is more immediately relevant to issues of international distributive justice, let us discuss the case of national self-determination. Arguing against international distributive demands of justice, nationalists claim that the self-determination or autonomy of national political societies is valuable in itself, and that principles regulating international affairs should respect national self-determination. For nationalists this value implies a division of labor between domestic principles of distributive justice and principles regulating international affairs. International principles should serve to maintain background conditions in which self-governing political societies can flourish, and take responsibility for their collective choices. No international distributive requirements are justified above those necessary for securing conditions of the existence of self-governing political communities, since additional requirements would violate national self-determination as expressed

in society's taking responsibility for its choices. The nationalist ideal is a world of self-governing societies, where nations manage their own affairs in their own political society in accordance with their culture and way of life. International redistribution would not respect the political autonomy of nations, thus applying principles of distributive justice on the global domain is not desirable.

David Miller supports this thesis with an example that seems on its face intuitively compelling. Suppose there is a decent but non-liberal society that respects most of the human rights of its residents, nonetheless it does not grant them some of the liberal civil and economic rights. Even liberals would not endorse intervention by other countries, for instance by military means or by way of economic sanctions, in the domestic affairs of such a society, Miller conjectures. This shows, he argues, that we respect the national self-determination of political societies, and he concludes that international redistribution similar in scope to that in liberal societies is ruled out because it would violate this value (Miller 1995, 77-8).

I leave aside the question how fine-tuned Miller's example is, however, it seems that it has much greater force in the case of military intervention than that of providing incentives for decent societies to become liberal. It seems to me that liberals would have no qualms about influencing political processes in non-democratic countries by providing economic incentives, such as offering the opportunity of participation in beneficial trade regimes, thus the force of the example may come from our reluctance to support coercion whenever other incentives are available, or from the possibility that military or economic sanctions would cause more harm than benefit.[10] Disregarding this complication, I first consider why it is unacceptable to regard national self-determination as impersonally good for purposes of determining distributive requirements. Next, I argue that if we view national self-determination as good for individuals, its value is unlikely to be able to justify the nationalist's claim for national partiality.

Objections to the Impersonal Interpretation

Liberals will object to viewing national self-determination as being impersonally valuable for purposes of justifying requirements of distributive justice. They reject this view on the basis of the individualist moral universalism that is at the core of liberalism. Liberalism rests on the premise that the moral justification of actions, policies and institutions should rest on an equal consideration of the interests of those individuals, and only those individuals, who are affected by them. It insists that a just regime cannot be a final end in itself; rather it is "something we ought to realize for the sake of individual human persons, who are the ultimate units of moral concern… Their well-being is the point of social institutions" (Pogge 1994, 210). It seems unlikely that a holistic view of the value of

10] Rawls disagrees. He claims that, for reasons of stability, international organizations should not offer their decent but non-liberal member peoples incentives to become liberal even in ideal theory (1999b, 84-5).

self-determination can figure in a theory of international justice that claims to be liberal. A distinctive point about liberalism is its insistence on referring ultimately to individual lives in justifying the content and scope of principles of justice and not supposing that "society is an organic whole with a life of its own distinct from and superior to that of all its members in relation to one another" (Rawls 1999a, 234). States can make normative demands on individuals and on other states only if these demands can be justified with reference to the equal consideration of the well-being of each individual concerned. In the face of the appeal of these considerations, the significance of people associating in communities with special bonds of sentiment and obligation between them cannot simply be assumed to be foundational, without the need for justification (Kuper 2000, 652).

This normative individualist view applies at the level of the justification of moral principles in general, and principles of justice in particular. It is compatible, however, with viewing some goods as communal in the sense that their content is specific to certain groups. For instance, some goods are culturally generated and might not exist outside the relevant culture. Access to internet may be regarded as a good in societies at a given level of technical development, possessing a culture that relies heavily on this form of communication.[11] Other cultures may not attach similar value to it. In this sense many goods are generated by groups, and have to be viewed in a holistic manner. However, we have to distinguish between this ontological sense of holism and its normative or justificatory sense. Even though the goods that need to be distributed may not be interpreted at the individual level, principles for justifying their distribution must ultimately take into account only the interests of individuals.

Nevertheless, the value of self-determination may be seen as analogous to other values that are not individualistic, not only in the sense that they are generated at the communal level, but also in the sense that their value does not ultimately derive from their value to individuals. The insight behind regarding national self-determination as impersonally good is that we do recognize that people value certain kinds of relations in a manner that goes beyond their being instrumental to promoting the good of individuals. Proponents of the impersonal value of national self-determination see political bonds analogously. The conception of the good that lies behind their doctrine has at its core an insistence that social bonds in general and the relationship between citizens in political communities in particular are valuable in themselves, over and above their value as means to promoting the interests of individuals. This view of the good life is not identical with the conceptual charge leveled against liberalism by communitarians such as Michael Sandel, that liberalism rests on a mistaken view of the person, failing to see the importance of constitutive attachments in forming individual identity and interests (1982). The present claim is not so much about the conceptual incoherence of abstracting from particular attachments when justifying a conception of justice, as about the substantive content of this conception. Since national self-determination is viewed by this version of nationalism as an im-

11] I owe this example to János Kis.

personal good, its advocates think it should be reflected in the way political communities relate to their members and to other political communities. Distributive justice should on this view be the business of self-governing political communities while principles regulating international affairs should make sure to maintain the conditions necessary for the working of self-governing political communities.

Liberals reject the view that political bonds should be viewed as representing some communal good over and above the interests of individuals when justifying principles of justice. Viewing national community or culture as an impersonal good is inappropriate for a just political regime. As we have seen, the reason for this is normative individualism that is at the core of liberal political principles. It is true that people are members of several communities, such as families, religious faiths etc. As members of such communities they might have conceptions of the good that regard their relations with fellow-members as an impersonal good: for instance they might believe that they ought to view family ties as inherently good, apart from the value they contribute to the lives of family members. However, liberals argue, political community should not be viewed like this for public justification. The principles that are supposed to guide the political organization of society and the distribution of resources should be based on an impartial consideration of the good of individuals only. Political institutions determine citizens' rights and duties, and regulate and enforce the distribution of resources among persons with competing claims to them. Hence it would be unfair for them to privilege any one conception of the good. While there might be views that regard it as inherently good for the life of a human being to be devoted to participation in political life, and see political activity as an impersonal good in the sense of not being reducible to the value it contributes to individual well-being, it is inappropriate to organize political institutions and structure distribution in accordance with this view of political life. Doing so would amount to privileging one specific conception of the good over others under circumstances when people differ in their conceptions of the good. These considerations give us compelling reason to reject the version of the nationalist argument that is based on the impersonal value of national self-determination.

National Self-Determination and Individual Well-Being

I now turn to a reformulation of the nationalist argument on the basis of the significance of national self-determination for individual well-being.

Nationalists sometimes argue for the importance of national self-determination and the special distributive requirements flowing from it by pointing out that people value participation in the public and civic life of their political society, as well as being attached to their particular culture. As John Rawls argues, one function of political societies is to maintain their members' proper self-respect as participants in their society's history and culture (1999b, 34). Rawls finds this function justified since, as he puts it, "in this way belonging to a particular political society, and being at home in its civic and social world, gains expression and fulfillment" (1999b, 111). Let us try to spell out the argument behind this claim. First, it assumes that national or cultural groups are important for the self-re-

spect of their members. On one interpretation along the lines of an argument put forward by Avishai Margalit and Joseph Raz, national or cultural groups are important since they provide "an anchor for their [members'] self-identification and secure sense of belonging" (1994, 133). That is, members' well-being is bound up with the flourishing of the national or cultural group with which they identify or belong in a crucial way. The next step in the argument is to show that national self-determination, i.e. political communities having the right to make decisions about their communal good and life, is a necessary constituent of national flourishing. Finally, for the argument to succeed, the importance of national belonging or flourishing to their members' well-being should be sufficiently weighty to justify a claim to national self-government.

This argument for the importance of national self-determination is thought by nationalists to imply the ideal of a world of self-governing societies, where peoples manage their own affairs in their own political society in accordance with their culture and way of life. An important aspect of national self-determination so understood is national sovereignty over distributive matters. Since international redistribution would not respect the political autonomy of peoples, nationalists argue, applying principles of distributive justice at the global domain is not desirable.

This argument combines considerations of society's taking responsibility for its collective choices with stressing the importance of its members' self-respect as self-governing participants in society's history and culture. For the sake of argument, I leave aside important problems with holding individuals accountable for the choices of the majority or governing elites of their societies.[12] Instead, I now focus on the question "Is the value of self-determination for members of political communities likely to justify the nationalist's restriction of the scope of principles of distributive justice to nation-states?"

To recall, in this section we are examining an individualist interpretation of the claim that the political self-determination of national societies warrants special domestic distributive requirements. If nationalists stick to the premise of individualism, according to which principles of justice should ultimately consider the interests of individuals affected by social institutions, they can try to salvage the point in two ways.

The first way to proceed in an argument for nationalism on an individualist ground is by incorporating communal self-determination among the goods individuals strive to attain. The argument would be that since self-respect is an important element of one's well-being and since communal self-determination is an essential means of nurturing individual self-respect, individuals have a right to participation in the political life of their political society. This construal of the value of self-determination would be in line with the Rawlsian aspiration that "we want to account for the social values, for the intrinsic good of institutional, community, and associative activities, by a conception of justice that in its theoretical basis is individualistic" (Rawls 1999a, 233-4). To the extent that collective

12] I consider the soundness of this assumption elsewhere (Miklós 2006).

entities have any moral importance, it is derivative, i.e. it must be justified by reference to the interests of individuals.

However, this defense would take us back to the instrumental case for national partiality. Instrumental defenses are problematic for the general reason noted earlier, and we can easily see how the argument from the value of self-determination is vulnerable to a specific version of that criticism. It runs as follows. If political self-determination is an important means of maintaining one's self-respect, every individual is presumed to have an equal claim to this good, as well as to other goods that are important for other reasons. Hence, liberals will object that the individual good of self-determination is unlikely to override claims of justice to all other goods by individuals, members of the same nation, or non-members. Resources are presumed to be important instruments for realizing individual life plans, and individualist moral universalism demands that the interests of all individuals be taken equally into account when justifying principles governing their distribution. Therefore nationalists should show that promoting one's self-respect by self-determination through one's political society is so much more valuable for individuals than claims to other goods by non-members that it is capable of overriding large international distributive inequalities. If they fail to show this, the value of political self-determination to inhabitants of a rich country cannot override claims of inhabitants of poorer countries to a fair global background distribution. Given the large current global differences in wealth, however, it would be a highly implausible assumption to make, and even nationalists themselves do not make it. Since the value of political self-determination is incapable of overriding outsiders' distributive claims, principles of international justice will continue to apply, and considerations of the good of self-determination figure as only one element in a theory of international justice.

There is another route nationalists can take in their defense of national partiality on the ground of moral individualism. This is not an instrumental argument that proceeds by showing that having a right to national self-determination promotes the interests of each individual, thus it needs to be secured in order to bring about a higher level of overall well-being in the world. Instead, it focuses on the intrinsic importance of special relationships within national communities. It claims that special relationships can generate special distributive requirements, because they bring about some good or goods for the individuals taking part in them, which call for their own criteria for distribution. National self-determination is justified not because it will have good effects impartially considered by taking equally into account people's preference for governing their lives through communal decisions, but because it reflects a special relationship in which members stand with one another. Thus, in this argument the focus is not on the overall effects of special relations but on the division of benefits and burdens arising within these relationships.

Thomas Hurka has put forward a version of this argument for national partiality. He argues that nations are intrinsically valuable because fellow-nationals as members of

a scheme of political institutions are jointly creating some goods. To take one of his examples, Canadian identity is valuable because Canadians have created and maintained political institutions ensuring the rule of law, liberty and security of citizens, and also social security such as universal health care (Hurka 1997, 152-3). A common history of fellow-nationals involving the joint creation and provision of such goods brings about a special relationship which is valuable and sufficient to justify differential distributive requirements among them (Hurka 1997, 152).

This account of the intrinsic value of special relationships among fellow-nationals is problematic, however. To begin with, Hurka himself recognizes that it blurs the distinction between membership in nations conceived as cultural communities, and membership in nations as politically organized groups. These two types of relationship need to be distinguished, however: nations as political communities essentially embody a common set of laws and institutions regulating a system of cooperation, whereas nations conceived as cultural communities do not. Many nationalists make the unjustified inference, on the basis of their equivocating on two different meanings of the term "nation", from the value of national self-determination among *fellow-nationals* to the requirement of partiality for *fellow-citizens*. However, this requirement obviously does not follow, given that the two groups do not coincide. If we consider goods produced by political communities, on the other hand, justifying the obligations owed by members to one another with reference to goods produced by them does not ground these obligations in the associative nature of the relationship, but in some other moral principle or principles. The force of Hurka's examples of the Canadian welfare system and the rule of law more plausibly comes from a conception of members as recipients of benefits of political cooperation, with an obligation of fair play as the grounding moral principle, or from conception of members as participants in and subjects of a just institutional scheme, where the grounding principle is a duty to support and comply with just institutions. In either of these cases, the force of the argument that we have obligations to the nation derives from the fact that we are subject to institutions characterizing politically embodied nations.[13] In other words, political obligation in such cases is not genuinely associative.

If this is the argument, however, and it is indeed the mutual benefits produced by cooperation or the justice of political institutions that make nations intrinsically significant for justice, then it remains to be seen how the benefits produced justify partiality for fellow-citizens. The argument, as we have seen, is expected to fit the general tenor of individualist moral universalism according to which the justice of institutions or the acceptability of actions depends on their effects on individual lives impartially considered. This stance makes a prima facie case for some justice-based global distributive requirements. However, Hurka provides no argument from the joint production of benefits to a requirement of partiality to fellow-citizens. Recently there have been attempts to fill out

13] See the argument made by Margaret Moore in 2001, 36-7.

the missing element in the argument and to justify special domestic distributive requirements on the basis of a relational account of distributive justice. For lack of space, I leave it to a different occasion to discuss that position.

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Global and Local Sovereignties

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Abstract. This paper offers an analysis of sovereignty that focuses particularly on domain or subject-matter as a component of sovereignty. While traditional analyses of sovereignty typically focus on supremacy, authority, and territoriality, subject-matter is also part and parcel of the concept of sovereignty and provides the key to understanding its role in a global age. Despite important human rights, environmental, and security concerns, state sovereignty remains a desirable political convention when supplemented by narrowly circumscribed global sovereignties.[1]

Key words: sovereignty, global justice, cosmopolitanism, human rights.

As we approach the second decade of the twenty-first century, we are faced with two realities. First, we live in a global world. Second, this global world is populated by sovereign states with different, sometimes conflicting, methods and interests. These two realities give rise to four areas of global concern with regards to state sovereignty: (1) human rights concerns; (2) environmental concerns; (3) security concerns; and (4) concerns about supra-national organizations such as the European Union. In this paper I will argue that despite the legitimacy of these concerns, sovereignty, when properly circumscribed by subject-matter, is a useful political concept that can help resolve tensions between local sovereignty and global interests.

I. THE FOUR AREAS OF GLOBAL CONCERN

The first set of concerns arises out of the widely shared belief that human beings, no matter what their racial, ethnic, religious, or national affiliation, are ultimate objects of moral concern, and that this translates in practice to a set of shared human rights. The rights enshrined in the Universal Declaration of Human Rights are supposed to apply globally, to every human being simply by virtue of being human.[2] Those rights must be respected and must not be traded off for other types of political gains. Yet, those who hold the offices of state sovereignty often abuse the rights of their citizens. Furthermore, it is at least arguable that the imposition of an unjust global order resulting in, or insufficiently mitigating the effects of, widespread abuses of power,[3] poverty, disease, and malnutrition across the developing world, generates further abuses of individuals' rights to subsistence

1] Thanks to Thomas Pogge, Stuart Yasgur, Andrew Hall, Michael Fuerstein, Jonathan Rick, Daniel Viehoff, and Tom Beauchamp for helpful comments on earlier drafts of this paper.

2] I bracket for the purposes of this paper issues relating to animal rights.

3] Largely, though not exclusively, because of international borrowing and resource privileges attached to sovereignty.

and security. State sovereignty appears to provide a handy justification both for lack of intervention in cases of human rights abuses, on grounds that we have a duty to respect sovereignty, and for inaction or insufficient action with regard to poverty and disease, on grounds that the responsibility for providing resources to citizens lies with the state.

The second set of concerns arises out of the problem of shared natural resources. Our ecosystem has not conveniently cut itself up to match territorial boundaries. What a country does internally has widespread ramifications both for present individuals in other countries and for future individuals everywhere. Once again, state sovereignty limits our ability to address environmental concerns across boundaries.

The third set of concerns relate to security matters, either local or shared. Local concerns include a narrowly American (or British, or whatever) perspective, as in: "The national security of the USA is threatened by the policies of or the lawlessness within other sovereign states." Shared concerns arise out of the global outlook enshrined in the "mission statements" of terrorist networks that pose a threat to everyone, as in: "We are all at risk of terrorist attacks, and circumstances in some sovereign states reinforce those risks." There is also the threat of weapons of mass destruction and nuclear proliferation. Again in such cases, sovereignty limits what can be done to address such threats to security.[4]

Finally, the rise of supranational organizations and institutions such as the European Union, as well as the phenomenon of globalization in general, appears to be eroding the convention of state sovereignty, possibly even rendering it somewhat obsolete. In legal philosophy, the idea of moving "beyond sovereignty" both in our understanding of the authority of law and in our understanding of cross-border relations has been floating around for at least a decade.[5] For example, in a discussion of the European Union, Neil MacCormick announces the passing away of the sovereign state. "Where at some time past there were, or may have been, sovereign states, there has now been a pooling or a fusion within the communitarian normative order of some of the states' powers of legislation, adjudication, and implementation of law in relation to a wide but restricted range of subjects" (MacCormick 1993, 16).[6] David Held argues that an appropriate world order ought to be organized around cosmopolitan law, and that in such an order, "the nation-state withers away." Cosmopolitan law, he says, "demands the subordination of regional, national, and local "sovereignties" to an overarching legal framework" (Held 2005, 26).

4] At least in principle if not always in practice.

5] Another set of challenges have to do with the un-geographic or multinational nature of many corporations and businesses, giving rise to issues of jurisdiction and to the need for unified business practices. But that is a matter I can set aside because it does not, on its own, warrant circumscriptions of sovereignty. In such cases, agreements and conventions between sovereigns accompanied by some global regulation appear to be by and large sufficient.

6] See also Gould 2006 for a rehearsal of the problems associated with state sovereignty and the need to move beyond sovereignty and towards "transnational localities" in our understanding of self-determination.

What are we to make of all of this? Are we beginning to move towards politics without sovereignty? Or is there still a role for sovereignty to play, and if so, how can it coexist with human rights, environmental, and security concerns? I will argue that despite these concerns, there is still a role for sovereignty to play. State sovereignty has almost always been circumscribed by subject-matter. Just as we might redraw territorial boundaries, we might also rethink the subject-matters over which state sovereignty legitimately ranges. There is, I will argue, a strong need and an available justification for the coexistence of both local and global sovereignties. The concept of sovereignty properly understood can accommodate this coexistence.

I will proceed as follows: first, I will present an analysis of the concept of sovereignty. Second, I will present three arguments for local sovereignties: (1) an argument from effectiveness; (2) an argument from self-government and political self-expression; and (3) an argument from the need for checks on global institutions and regulations. Third, I will argue that global sovereignties are required in two general arenas: (1) the arena of shared resources and common concerns; and (2) the arena of fundamental or essential individual interests, which we can express in the language of basic human rights. I will conclude that sovereignty, properly understood and circumscribed, is a convention that should be retained and that is consistent with the reality of globally shared concerns and fundamental interests.

II. RECONCEPTUALIZING SOVEREIGNTY?

Contrary to what is widely claimed,[7] sovereignty is not in need of radical reconceptualizing. Rather, if we scrutinize our traditional understanding of sovereignty, we can find within it the solution to problems associated with sovereignty. We can start with a standard definition of sovereignty as supreme authority within a territory (Philpott 2001, 16-17).[8] Sovereignty, on this widely accepted view, involves three essential components: (1) authority, meaning the power to legislate, execute, and adjudicate; (2) supremacy, meaning that there is no higher authority than the sovereign; and (3) territoriality, meaning that this supreme authority is exercised within a bounded geographical region. Internally, this conception of sovereignty entails duties of compliance on the part of the people within the territory in question, and externally, it entails duties of non-intervention by other state and non-state actors.

Two notable restrictions and one notable exemption arise out of the convention of state sovereignty: first, state sovereignty restricts the claims of individuals on any insti-

7] See for example Dabbour 2006, Risse 2006, and Gould 2006.

8] An alternative definition of sovereignty would include legitimacy in the definition of sovereignty, thus understanding sovereignty in terms of: (1) authority; (2) control; and (3) legitimacy (cf. Liftin 1997). But Philpott's definition is preferable because control can be subsumed under supremacy and authority, and legitimacy introduces a normative component that is better kept separate from an initial understanding of the concept of sovereignty itself.

tution or authority outside of their own state.[9] Second, it restricts the ability and, some would argue, the responsibility of outsiders to interfere in cases where there are internal abuses.[10] It also appears to provide a moral exemption[11] for state actors to consider only their own interests and the interests of their citizens to the exclusion of all outsiders.[12]

Concern about the troubling consequences of these restrictions and exemptions in important domains such as human rights has led many to conclude that we either have to give up on state sovereignty, rethink the concept entirely, or endorse it only as the lesser of several evils.[13] But what about subject-matter as a component of sovereignty? If we break down the concept of sovereignty into four rather than three components, some of our concerns can be accommodated. While Philpott's analysis is a helpful place to start because it makes explicit the territorial component of sovereignty, focusing only on authority, supremacy, and territoriality obscures the centrality of a fourth component: namely, domain or subject-matter. Sovereignty is supreme authority within a territory *over a range of subject matters.* Subject-matter is not merely an external constraint on supreme authority; it is part and parcel of the concept of sovereignty itself.

Two examples illustrate the way in which this component is already implicit in our understanding of state sovereignty. Were we to take the position that there is a strong right to privacy no matter what legislation is enforced in any particular country, we would be saying that the state's domain is the public sphere and does not extend to matters properly within the private sphere. This illustrates that our concept of sovereignty can already accommodate different views with regard to appropriate subject-matter. We may think about the separation of church and state as another illustration: a simple way to understand this convention is to say that it removes from the subject-matter range of sovereignty the domain of the spiritual or ecclesiastical. Any authority the state has in relation to privacy and religion has to do with the necessity for regulating the interaction of those spheres or associations with other aspects of societal organization, and not any jurisdiction over those spheres as such.[14]

Just as sovereignty is territorial, it is also subject-specific, and we can coherently argue about the subject-matters it ranges over. We can even read Hobbes's account of sovereignty as including an (admittedly narrow) subject-matter constraint. Hobbes allowed

9] For instance, the state is taken to bear primary responsibility for providing subsistence and security guarantees to its citizens, thus limiting the claims individuals can make on other institutions or governments.

10] One need only think about what is happening in Darfur to see the force of this point.

11] What Buchanan calls the Permissible Exclusivity Thesis (2005, 112).

12] Thus, we find recurring foreign policy arguments based solely on US national interests rather than on the interests of the peoples at whom the foreign policy is directed.

13] For example, because of the potential for abuses of world sovereignty.

14] This understanding of sovereignty as ranging over some subject-matters and not others can easily be read into the work of religious-minded thinkers such as Augustine (especially in his *City of God*) and Luther (especially in his "On Governmental Authority").

that the sovereign cannot force a subject not to defend his own bodily integrity and related survival interests. For example, the subject has the right not to self-incriminate. This is true even if the sovereign legislates that subjects do not have the right not to self-incriminate (Hobbes 1996, 144-5 [Ch. XXI § 11]). The simplest way to understand this is as a subject-matter constraint: on the Hobbesian picture, the domain of sovereignty extends over all matters except an individual's right to defend his own survival. These considerations suggest that subject-matter is already a part of the concept of sovereignty.[15]

Does the subject-matter component of sovereignty make it useless, or worse, vacuous, because it does away with a meaningful notion of absolute sovereignty? No, just as territoriality does not make it useless or vacuous. Sovereignty is always territorial, and this immediately entails one way in which supreme authority is qualified. [16] It also always ranges over some subject-matter, and this immediately provides a simple way of cashing out the other sense in which supreme authority is qualified. We can then avail ourselves of two ways of understanding *absolute* sovereignty, should we choose to stick with that terminology. One is to understand absoluteness to mean that the limiting components in the definition are lacking in content, in which case absolute sovereignty would simply be supreme authority. On this understanding, only an all-encompassing world state would fit the description, and subject-matter does not pose a special problem. If the main argument for absolute sovereignty has to do with the existence of a final arbiter in order to avoid conflict, territoriality and division of powers already rule out that possibility.

The other way is to acknowledge that the concept of sovereignty includes two inherent limitations, territory and subject-matter, and to argue that absoluteness is not a function of lack of limitations. Thus, we can have absolute sovereignty within a circumscribed territory and with regard to a circumscribed domain. Absoluteness would then refer to the degree of power or authority held by the sovereign in question. The concept of sovereignty is not thereby rendered vacuous. Rather, understanding sovereignty in this way helps reconcile our moral responses to internal abuses and the reality of globally shared concerns with our sense that there is a use and a value to maintaining the convention of state sovereignty. While state sovereignty restricts in some ways the rights and responsibilities of outsiders, sovereignty does not extend over all subject-matters within a given territory.

Another objection to acknowledging subject-matter as an internal component of sovereignty is a "who decides" question. How would we settle questions about delimiting subject-matters? The short answer is that it can be done by agreements, by bargaining processes,[17] and by appeal to pre-existing bodies of international law and norms.

15] Philpott acknowledges subject-matter only as an external constraint on absoluteness. The argument here is that subject-matter functions in the same way that territoriality does -that is, not as an external constraint but as a component internal to the concept of sovereignty itself.

16] Cf. Philpott 2001, 16-17.

17] Cf. Hochstetler et. al. 2000 for an empirical study of bargaining about sovereignty with regard to certain domains.

International courts will have a large role to play as well. I cannot get into issues of practical implementation in this context, but I will have more to say about justifications for subject-matter delimitations in section 4. I note here only that territoriality in a global age already does away with the possibility of a final court of appeal. Instead, what we have are dynamic political processes that evolve and, in evolving, change our conceptions of appropriate territorial and subject-matter delimitations. We can set up our institutions in better or worse ways such that these dynamic processes take place within a more or less just framework and are likely to produce better or worse outcomes. For an institutional framework to be just and likely to lead to better outcomes, corrections have to be made for blind spots within the overall system. Removing certain subject-matters from the domain over which state sovereignty extends is a step in that direction -or so I will argue below.

State sovereignty may previously have signified supreme authority within a territory with regard to all subject-matters. In the last century, however, this has come to be circumscribed in various ways: by agreements and covenants such as the UDHR and the two Covenants, by international economic organizations capable of imposing sanctions, by bodies such as the Security Council and supra-national organizations such as the EU, etc. There are also good arguments for further circumscriptions with respect especially to environmental matters, which I will discuss in section 4 below. That the two Covenants (on Economic, Social, and Cultural Rights and on Civil and Political Rights) are currently agreements among sovereign states does not undercut this point: they impose limits on state sovereignty and themselves require institutions to enforce them. Those institutions, in turn, become the seat of supreme global authority on the subject-matter covered by the Covenants. Thus, we can say that in our world today, there is ample room for normalizing subject-matter circumscriptions based on an already-existing trend in international law. This trend is grounded in an enhanced recognition of the fundamental moral importance of human rights. The convention of state sovereignty allows for further circumscriptions of subject-matter if sufficient justification for such circumscriptions exists.

We can now sum up our analysis of sovereignty thus far. Sovereignty is supreme authority within a territory over a range of subject-matters. State sovereignty is supreme authority that is territorially circumscribed and usually also circumscribed by subject-matter. Global sovereignty is supreme authority that is not territorially circumscribed but can be circumscribed with regard to subject-matter. On this understanding of sovereignty, more than one sovereign may exist within the same territory. This allows us to make sense of the coexistence of global and local sovereignties -an arrangement, I will now argue, that is better able to capture all the relevant normative considerations that bear on the new realities of our global world.

III. THE JUSTIFICATION FOR LOCAL SOVEREIGNTIES

This section explores the place of state sovereignty within a theoretical framework that accepts an individualistic, universalistic conception of justice. Such conceptions of justice assume that all and only individuals are ultimate objects of moral concern. Thus,

any justifications for political conventions ultimately have to make reference to the good for all affected individuals.[18] Three strong arguments for local sovereignty are consistent with this fundamental assumption: (1) a voluntarist argument from the value of self-government and political participation; (2) a division-of-labor argument from greater effectiveness; and (3) an argument from the need for checks and balances provided by distributing sovereignty over several dimensions.

Voluntarist arguments for sovereignty could have a more or less communitarian flavor. In their more communitarian manifestation, the idea is that states are superimposed on and gain their legitimacy from underlying "political communities," as Michael Walzer call them,[19] typically conceived as a group of people sharing at least a history or a historical narrative, a language, a set of cultural practices and norms, and possibly also a religious tradition. Such communities are valuable because they contribute to the well-being of their members, in particular by providing a menu of options, only against the backdrop of which individuals can make meaningful autonomous choices.[20] States are superimposed on communities of this sort, and state sovereignty is justified because it is the political expression of the self-governance of the underlying political community.[21] The appeal to political community is meant to provide a non-arbitrary way of individuating "peoples" such that the arbitrariness of boundaries objection does not rear its ugly head.

There are a number of problems with arguments of this kind. They have to do with potential and actual mismatches between the good for the community and the interests of the individual members of the community. Such arguments also tend to overstate the role communities play in individuals' lives and identities, and their necessity for providing menus of options to choose from. These problems arise at the level of the move from the individuals to the political community. But even if we set those problems aside, the second move, from the political community to the state, is equally problematic. Few if any states are superimposed on a single political community of this kind.[22] The homogeneity and identification with a single group envisioned in this picture are lacking in a world where most states are states with multiple political communities -and when they

18] Some version of this assumption appears, among other places, in Barry 2001, 134, Kukathas 1995, 246; Kymlicka 1989, 21, Pogge 2002c, 167-228, Raz 1986, 194, Waldron 2003, 1-20 and Walzer 2000, 53.

19] E.g. in Walzer 2000, and in Walzer 1980. As noted by Veit Bader, Walzer goes back and forth between a communitarian understanding of 'political community' and a citizenship-based one. Most of his discussion, however, crucially relies on a communitarian understanding (Bader 1995).

20] For this argument (that communities are valuable because they provide a range of options for their members, not that this provides a justification for the convention of state sovereignty) see for example Kymlicka 1989.

21] A prominent example of this type of position is Walzer's (see for example the discussion at and around p. 212 in Walzer 1980, and cf. Walzer 2000).

22] A point that has been made repeatedly, e.g. by Veit Bader (1995, 217-18).

are apparently not so, it is often because those outside the dominant political community are being oppressed.

Nonetheless, we can make the voluntarist argument by appealing instead to a more diluted, citizenship-based conception of political communities. If we understand constituting a political community to require no more than participation in shared political institutions and the sharing of a common territory over time, state sovereignty still admits of a voluntarist justification. In this picture, state sovereignty is understood as the mechanism for embodying the will of the people and is thus justified simply because it is an expression of autonomy and of the right of the people to self-govern, whether or not the underlying people constitute a political community of the communitarian sort. Here the justification from self-government is an extension from the individual case. This provides a voluntarist justification for self-government, which in turn justifies the convention of state sovereignty insofar as that convention is required for the exercise of self-government.[23]

Another fact lends support to the idea that we ought not move away entirely from the convention of state sovereignty. Rawls has called it "the fact of reasonable pluralism."[24] There are a plurality of reasonable conceptions of the good life, and therefore a plurality of legitimate but different, and potentially incompatible, ways of organizing political life. Insisting on total legal cosmopolitanism -that is, on a single unified body of cosmopolitan law deriving its authority from one single source -may limit the ability of different communities to consensually organize their lives in multiple ways. Local sovereignty provides an effective means for facilitating such differences in organization, civil law, and other social and political arrangements. One might characterize the flaw with total legal cosmopolitanism as overemphatic paternalism about the good for individuals. While some measure of paternalism is to be expected when it comes to social justice, there must also be room for an accompanying principle of autonomous choice and responsibility. State sovereignty, accompanied by reinforced global restrictions with regard to narrowly circumscribed subject-matters, provides a better model in this respect.

There is a further argument relating to self-government from the connection between considerations of identity, political participation, and self-respect. It has become fairly clear over the past few decades that some degree of integration within a political community is necessary for stability and success in representative governance. Often, people's well-being and sense of self-respect is bound up with their sense of the dignity, recognition, and status of their communal identifications as well. People's sense of self-

23] There is also an argument to the effect that the communal political expression of one's membership in a community is intrinsically valuable and indelibly tied to well-being. Self-determination is required for such communal self-expression, thus providing a justification for local sovereignties to exist when superimposed on nations. This line of argument is presented by Yael Tamir (though she is not discussing sovereignty as such) in her defense of the right to national self-determination (1993, esp. Ch. 3). But in reality, sovereignty is not required for communal political self-expression. This point is made in Margalit and Raz 1990, 451.

24] See for example Rawls 1996, 36-8.

respect thus becomes partly tied to the official status of their representative political community, possibly because of a perceived connection between their identity as citizens of a state and the status of the state to which they belong.

Thus, the vehicle of state sovereignty is a useful vehicle for democracy because it provides a clearly circumscribed setting within which an integrated sense of identity necessary for full democratic participation may be realized. Where people feel directly connected to the final decision-making process, they are more likely to participate and to try to make an active contribution. State sovereignty is capable of giving individuals a clearer sense of ownership over the processes that govern their lives, insofar as public life is aided by a sense of shared bonds and associations. The value of political participation thus instrumentally justifies the convention of state sovereignty and also possibly favors smaller states over larger ones.

The second set of arguments is from the greater efficiency of the operation of political institutions when sovereignty is localized. If the ultimate authority on political questions that arise in Myanmar resides somewhere in Belgium, the bureaucracy involved and the greater complication of the political process will decrease the efficiency of the operation of local political institutions, thus incurring costs with respect to the fulfillment of the political interests of individuals.[25] Therefore it is important that sovereignty be localized with regard to most matters, on pain of making all political processes inefficient and cumbersome, thereby defeating a central purpose of their existence: to improve the quality of life of their citizens, in part by providing for greater expediency in resolving political and social problems as they arise.[26]

Of course, the importance of participation and effective self-governance does not imply that the concentration of power should be specifically at the level of states. This is why I prefer the locution "local sovereignties." Greater participation and the efficiency of political institutions may be achieved by distributing sovereignty among towns, counties, neighborhoods, states, and the global community, so that different institutions have supreme authority over different subject matters, and not everything is concentrated at the level of the state.[27] The point is simply that some measure of local sovereignty is ultimately desirable in international politics.

25] Evidently, the proponents of a world-state would not want to abolish all local authorities anyway, so the force of this point is limited. But there is something to be said for having the *supreme* authority on most questions (and not simply the delegated enforcer) be localized for purposes of efficiency. A lack of such localization provides too wide latitude for interference in internal matters that are usually best understood by the "locals" anyway. In addition to constituting an abrogation of autonomy (provided the local sovereignty is representative), such latitude for interference can easily lead to too much second-guessing, thus potentially giving rise to problems of efficiency in the running of local affairs. This is why, in anything but matters of fundamental human rights and matters of common concern (as I will argue in section 4 below), local sovereignty is more appropriate.

26] For division of labor justifications for the state system, cf. e.g. Goodin 1988.

27] There have been a number of arguments to the effect that sovereignty should be "dispersed" in this way. See for example Held 1995 and Pogge 2002b.

The third set of arguments is from the need for checks on global institutional power. This argument has been eloquently presented by Jean Cohen, who argues that doing away with the convention of state sovereignty and the presumption of the equality of states merely opens the door to another "age of empires." Legal cosmopolitanism, she argues, will inevitably be used to defend unilateral, and ultimately unjustified, interferences in internal matters, giving rise to a dynamic of forcing people to be free (Cohen 2004, 21).[28] This is an important consideration. The existence of numerous loci of authority and legality is vital to create a balance of powers necessary for the maintenance of healthy pluralism and the enhancement of justice in international relations.

However, the point about the connection between legal cosmopolitanism and the types of abuses Cohen has in mind (in particular, the US offensive in Iraq and the tone that accompanies the so-called war on terror) is somewhat overstated. Cohen attributes unilateral abuses of power and the danger of "empire" to an overly cosmopolitan outlook, and takes legal cosmopolitanism to exacerbate that problem (2004, 2-3). Yet, such abuses occur even in the absence of an "overly" cosmopolitan outlook. In fact, they are possibilities inherent in the state system itself, and point to the absence of the checks that could come from a global sovereign. International law is severely lagging behind in respect of inter-state conflicts and human rights concerns; it therefore leaves room for abuses by not having both sufficiently strict legislation and a sufficiently independent sovereign body to adjudicate.[29] While accepting the point about the need for checks and balances and the desirability of "distributing" sovereignty, we can also acknowledge the great desirability of suitably circumscribed global sovereignties that can replace the *ad hoc* system currently in place for humanitarian intervention. To illustrate this last point, one need only think about the differences in action on Iraq and Darfur. But this is a point I will return to in the next section.

On balance, and given considerations of self-government, effectiveness, and the need for checks and balances, there is still a large role for state or local sovereignty to play despite globalization and worries about internal and external abuses. Nonetheless, there are some subject-matters that are not best placed under the jurisdiction of states. I now turn to arguments for subject-matter circumscriptions and for global sovereignties.

IV. THE JUSTIFICATION FOR GLOBAL SOVEREIGNTIES

A central reason for global sovereignties is the exemption provided by the convention of state sovereignty for states and state actors to consider only or primarily the interests of their citizens. This gives rise to a need for a balancing mechanism. In this section, I will argue that the existence of global sovereign institutions is sorely needed in two gen-

28] See also her 2006 article.

29] The Security Council can hardly be called an independent body, though it does embody some of the markers of sovereignty.

eral arenas: the arena of fundamental individual interests (or basic rights), and the arena of common concerns. In each of these areas, locating sovereignty at the level of the state will fail to achieve the targeted goals and is therefore inappropriate. Having global sovereign institutions with very narrow subject-matter scope in conjunction with local sovereignties provides a better set of safeguards and fits better with all the normative considerations relevant to international politics.

We know that the basic rights of many individuals are regularly abused. We know that environmental sustainability is at severe risk, and the well-being of present and future individuals is thereby being severely jeopardized, as is their right to a clean environment. We know that states can and do avail themselves of presumptions against intervention generated by the state system to protect themselves against the consequences of human rights abuses. They also avail themselves of the argument from their obligation to attend to their internal interests first in order to circumvent environmental controls.

The proper response to this disturbing set of facts is that neither basic rights nor environmental issues are matters over which state sovereignty ought to extend. Excluding the former is required by moral cosmopolitanism.[30] Excluding the latter is required by the moral conviction that people ought to have a say in matters that fundamentally shape their lives. The problem of addressing issues of common concern is a public goods problem and therefore requires a public solution. This justifies the need for global sovereignty in order to avoid either "tragedy of the commons" situations or injustice in the effects of divergent power with regard to the use of public goods.

Moral cosmopolitanism holds that all individuals, no matter their place of birth or origin, have equal moral standing (cf. Beitz 1983). This gives rise to an institutional requirement to attend to their fundamental interests, violations of which severely limit the capacity of individuals to lead a meaningful life. If we accept the Rawlsian thesis that we have a duty to uphold and promote just institutional arrangements, and an understanding of rights as claims against institutions, we are led to a requirement to put in place institutions that can govern the delivery of the objects of basic rights. Reflection on the high incidence of abuses of human rights over the past century and well into this one underscores the emptiness of declarations like the UDHR in the absence of an enforcement mechanism for their implementation. On the other hand, it also underscores the danger of *ad hoc* unilateral interventions under the rubric of "humanitarian" intervention, in the absence of independent sovereign institutions to legislate, adjudicate, and delegate their execution. The need for permanent, stable, global institutions that have supreme authority with regard to such matters -positions in which should not depend on existing power differentials among states -becomes apparent in light of these twin dangers.

30] Regrettably, not everything can be done in a single paper. I am therefore assuming the correctness of moral cosmopolitanism and of an individualistic justificatory outlook for the purposes of this paper. My goal is to show how, internally to this perspective, the co-existence of local and global sovereignties is justified.

Moreover, it seems a morally basic observation that people ought to have a say in the governing of their lives. This would be vacuous if it did not involve having a measure of control in matters that fundamentally shape those lives. Environmental concerns are a basic category of such matters, as the decisions of some individuals have enormous ramifications on the lives and possibilities of all other individuals. Sustaining the environment is not a local matter, and therefore ought not be under the exclusive control of local actors. Given the natural partiality people and states have for their own interests, and the natural ensuing tendency to ignore the interests of other individuals, there is a need for global regulations to correct for that partiality. In the absence of a clean environment and natural resources, the ability of individuals to have a decent quality of life is severely limited. This gives rise to a need for global institutions to regulate environmental matters.What about global security concerns? Here we have to tread carefully. Pragmatic concerns about abuse of power are particularly strong when it comes to security issues. There may also be severe problems of equity and conflict of interest between domestic and global security concerns. Nonetheless, insofar as this is a shared concern, and insofar as the lack of centralization ends up resulting in unilateral action that is largely unchecked and certainly unregulated, there may be reason to have a global sovereign responsible for security issues.

Perhaps ultimately, security matters are best dealt with by agreements among local sovereignties rather than by a single global institution. But even if stopping short of global sovereignty with regard to this matter, there is a need for stronger international regulations and for more centralized and impartial actors to be involved. This would provide a destination for states to bring security-related concerns, thus making state-to-state confrontation not the only viable option. A global sovereign would act as a facilitator for mediating disputes, and would create limitations on stronger countries using their power to bully other countries to their own advantage. This would make it possible to coordinate security activities in a principled way, thus removing the perverse incentives inherent in the current state system to foment non-state actors for internal reasons, thereby inadvertently giving rise to security threats externally.[31] It should also be noted that long-term solutions to large-scale security problems are much aided by an increased focus on human rights, social justice, and stability, as their absence is what generates the circumstances for fostering the kind of radical terrorism we have the unfortunate burden of living with.

The unifying factor among these two issues -the environment and security problems -is that both are matters of common concern, with regards to which there are two issues at stake: a justice issue and a pragmatic issue. The central justification for the existence of global sovereignties that regulate such matters is justice-based. When there are goods held in common, the current system gives rise to a dynamic where the most powerful can pursue solutions that are in their interest while landing the weak with the brunt of all the

31] E.g. the case of Pakistan supporting (or even actively promoting) non-state actors to fight against India, thus inadvertently giving rise to what becomes a significant worldwide threat.

negative effects. Further, it may well not be rational for a state to pursue environmental regulations in a context in which such regulations are not global, because that state would end up bearing all the costs. This may provide each state taken individually with a kind of "sucker exemption" not to pursue regulations the lack of pursuit of which end up having drastically negative consequences for others. The presence of global regulating institutions removes such considerations from the picture. By coordinating the actions of all states, it nullifies the sucker exemption for each state, thus facilitating the obtainment of just solutions.

While less forceful when we are concerned with justification, pragmatic arguments nonetheless have some independent weight aside from considerations of justice. To take the case of security concerns, the lack of a global regulating body makes it the case that individual states have to pursue their security interests as they see fit. The lack of coordination and the narrow perspective they take in such cases often have terrible consequences. An often-cited example is US support for the *mujahideen* in Afghanistan as a way of countering the security threat it faced from the Soviet Union; this support is not causally unconnected to the rise of Al-Qaeda. US support given to Saddam Hussein to counter a perceived Iranian threat is also not causally unconnected to the extent of the power he ended up wielding, both internally and regionally. Of course, the possibility that measures taken to counter security concerns turn out badly will remain even if a global institution exists to deal with inter-state security matters. But the wider perspective and more impartial consideration such an institution would give is likely to lead to better results.

Even if the moral considerations outlined here are convincing, much thought has to go into the setup and structure, including the incentives structure, of such global institutions in order to arrive at an arrangement that embodies the greater representativeness and equity being sought. I am not here undertaking this task. Instead, my task has been to outline the moral justifications for global sovereignty in areas where the sovereign states system suffers from moral blind spots.

Local and global sovereignty are not mutually exclusive, and make room for a setup that can be responsive both to paternalistic concerns and to democratic ones while building in enough checks and balances to avoid, as far as possible, abuses of power by having a number of different sovereign bodies operating in the same or overlapping regions. Some institutions would have sovereignty limited with regard to territory and subject-matter, and others only with regard to subject-matter. Local sovereign units would be territorially circumscribed, but also circumscribed by the greater limitation of the subject-matter over which they have authority, thus reducing the perverse incentives attached to state sovereignty by reducing both its scope and the powers and privileges it brings with it.[32]

32] On the question of perverse incentives attached to sovereignty by the current global world order (such as the international resource privilege and the international borrowing privilege), cf. Pogge 2002a, 112 -15.

Global sovereign units, by contrast, would not be territorially bounded but would have final authority over a much narrower subject-matter. Thus we would have numerous global sovereign units, each of which would have supreme authority with regard to some narrow subject-matter, and all of which would act as checks and balances on each other. This is by virtue of the fact that they would operate in parallel on overlapping territories, and inevitably sometimes overlapping interests. Thus, sovereignty would be horizontally and vertically dispersed,[33] and numerous sovereign units will have input and a part to play in administering and implementing the decisions that come out of the sovereign global units.[34] This provides an additional layer of checks on abuses by the global institutions in question and vice versa. Considerations of checks and balances give us further reasons to hold on to the convention of state sovereignty, suitably modified to accommodate the existence of other larger, and possibly also smaller, sovereignties.

The role of global sovereign units would be to legislate, enforce, and adjudicate matters of fundamental interest and common concern. However, this would not require military intervention in all cases of violations. Intervention can take many different forms, including censure, fines, sanctions, and finally, as a last resort and in limited cases, military intervention.[35]

When it comes to considerations that are preconditions for a good life, to considerations of shared concerns and to the requirement of sharing control, global sovereignty is needed. There must be a stable, predictable, and principled way of ensuring that individuals have a recourse against abuse, and that intervention is undertaken in cases where that is appropriate. There must also be a space where communities, however constituted, can govern their lives independently and according to the peculiarities of their local contexts. A setup that has room for both local and global sovereignties takes account of these twin requirements.

V. CONCLUSION

The aim in this paper has been limited. I have not tried to offer an exhaustive picture of the proposed global and local institutional reforms, nor have I tried to give an account of how such reforms might be practically implemented. Instead, I have offered an analysis of sovereignty that provides us with a conceptual framework from within which we can better understand the evolving role of sovereignty in contemporary politics, the reasons for local and global sovereignty, and how they can productively coexist. I have also offered

33] Cf. Pogge 2002b, where he describes a system with a number of "nested territorial units" as embodying a "vertical dispersal of sovereignty."

34] Veronique Zanetti argues for a similar point, though she advocates world government rather than a number of global sovereigns each charged with a narrow set of subject-matters. Cf. Zanetti 2003, 204-18.

35] On this point (that there are many peaceful means of coercion short of military intervention), cf. Zanetti 2003, 217.

arguments internal to a cosmopolitan outlook for the desirability of local sovereignty and the necessity of global sovereignty.

On the understanding that sovereignty always includes a subject-matter component, the tension between the requirements of sovereignty and the protection of human rights and matters of common concern is resolved: it is no violation of local sovereignty to execute and implement those matters over which such sovereignty does not extend. It is rather merely an execution by a different sovereign body of the matter under its jurisdiction. Global and local sovereignties are conceived of as complementary units within a just world order designed to ensure that democratic participation and local decision-making can be combined with the appropriate mechanisms for safeguarding the basic rights of all individuals, no matter what their place of birth or residence. The setup envisioned is such that it provides its own internal and external checks and balances, in part by maintaining and capitalizing on what is good about the political convention of sovereignty. Continuity in our understanding of sovereignty is also maintained, because what is envisioned is a series of changes to the subject-matter component of sovereignty -what redrawing boundaries would be for the territorial component. And the subject-matter component, I have tried to argue, is already implicit in our traditional understanding of sovereignty.

Philpott claims that revolutions in ideas about justice and political authority are what give rise to revolutions in sovereignty (2001). Perhaps the new revolution in ideas about justice has to do with our ever-expanding recognition of humans as humans, and of the global scope of justice. Revolutions in access to information and the great degree of interconnectedness in the contemporary world make us unable to set aside what happens in far away places. Perhaps this is the "revolution" that is spurring us to consider new ways of thinking about sovereignty. My suggestion is that we have available to us an understanding of sovereignty that does not depart radically from the ways in which it is already understood and implemented, while opening the door to an improved international framework.

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