ABSTRACT. A number of theorists have tried to resolve the tension between a western-oriented liberal scheme of human rights and an account that accommodates different political systems and constitutional ideals than the liberal one. One important way the tension has been addressed is through a “neutral”, or tolerant, notion of human rights, as present in the work of Rawls, Scanlon and Buchanan. In this paper I argue that neutrality cannot by itself explain the difference between rights considered appropriate for liberal states and rights considered to be human rights proper. The central arguments used by neutralist theorists presuppose, rather than justify, this differential treatment. Instead, that difference can be understood only by reference to the purpose of human rights as distinct from the constitutional rights of a liberal state. This requires us to reassess the point and purpose of a theory of international justice, in contrast to justice for a domestic and politically separate society. In the case of a theorist like Rawls, human rights represent guides to the foreign policy of a liberal state, rather than to principles by which all states are expected to abide. That is because of Rawls’ acceptance that no common, authoritative, third-party, institutions capable of imposing duties on all agents uniformly exist or can exist. This also makes his theory inherently conservative about human rights, given that they are simply to act as a guide to which states can be treated as legitimate when it comes to liberal foreign policy: those that possess institutions that can be said to represent a peoples, rather than being imposed through violence. This standard is lower than the ideal set of rights extended to all in a liberal society.

KEY WORDS: cosmopolitan neutrality, human rights, international justice, international relations, Rawls

Human rights should represent universal standards by which to judge all societies’ treatment of their members. Yet the tension between which universal claims we deem can be imposed on others, and our desire to tolerate difference, has led some theorists to be very sensitive, compromising even, in drawing those standards. John Rawls’ The Law of Peoples has been interpreted as a compromise between universality and toleration with the compromise justified on the basis of neutrality in developing standards to govern a number of different and diverse political orders. Whilst Rawls himself often sounds as if he is addressing exactly these

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2 These orders correspond, in Rawls’ work, to the politically separate institutions governing ‘peoples’, TLP, 23 ff.
concerns, the aim of this paper is to show that this is not the case. The value of political neutrality by itself, I argue, does not, and cannot, contra Alan Buchanan and Tim Scanlon, furnish a principled reason for accommodating diversity in international justice. For Rawls, international neutrality is a consequence of, rather than a basis for, his account of international justice. The limited nature of his list of human rights does not arise out of a prior commitment to neutrality. Rather, the conditions Rawls sets for his theory of international justice generate both neutrality and the list of rights to count as human rights. Rawls wants to establish principles of just foreign policy for liberal states in a world of states which are not all liberal, and in which there is no “world order” or global basic structure, in the sense of shared political institutions capable of authoritatively imposing obligations and duties across different peoples. Were there an international equivalent to the basic structure of domestic states, in the relevant respects, then his two principles of justice would probably apply. In the absence of such a structure, the subject of justice – to whom or what principles of justice are to apply – has to be of a different kind. Rawls explicitly states that the project applies to this different subject at the beginning of his book, yet few of his critics have seen the theoretical implications of this starting point.

Without these theoretical moves, appeals to neutrality appear to make Rawls’ theory deeply inconsistent. The best place to see this is in what gets onto his list of human rights. That list is explicitly shorter than the full list of liberal rights Rawls supports for a domestic liberal society. Not surprising, then, that a recurring criticism of The Law of Peoples is that it fails to keep faith with a formerly universalist approach to justice. In Rawls’ defence, theorists claim that arguments from neutrality, a constitutive part of justice, justify this differential approach. The first part of this paper focuses on these arguments, which have been used before and after their invocation in The Law of Peoples. Neutralist concerns are regularly referred to by Rawls in that work. They were, however, invoked

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5 TLP, 9–10.
4 Rawls produces a limited list of human rights (life, liberty, property and formal equality), and he is clear that a liberal state would not be limited to these minimal prescriptions: TLP, 65.
5 TLP, 78 ff.
in an earlier paper by Tim Scanlon, to which Rawls refers, and have subsequently been subscribed to by Alan Buchanan. I hope to show how these neutralist arguments presume the lowering of standards at the international level that they aim to justify, and that neutrality cannot, by itself, provide such justification.

The latter part of the paper offers a methodological reappraisal of the Law of Peoples (TLP from now on). It is this which will help to explain, if not justify, his limitation of human rights to a minimal list. My aim is to show that critics have attacked the wrong target. In designing a theory of just liberal foreign policy, TLP does not offer principles binding on every state with respect to their citizens. Its business is to determine what liberal states should do in a world in which liberal principles may or may not be met in each domestic context, and in which there are no common institutions capable of distributing rights and duties across all persons, but rather politically independent states. Why this should explain differences in principles developed in each context is explored after my discussion and rejection of neutrality as an explanation of Rawls’ position. I stress that my aim is to offer a plausible explanation of the relationship of TLP to justice as fairness, so as to direct criticism of that work to where I believe the dispute lies in essence. I do not offer a general defence of it, nor a defence of its particulars.

There has been a great deal of criticism of TLP, and in some cases my discussion goes over ground that has been covered. However, few discussions have fully criticised the neutralist perspective, especially as expressed in the works I cite by Buchanan and Scanlon. Furthermore, much of the critical work has focused on international distributive justice, whereas this paper is concerned primarily with human rights in international justice. Focusing on that aspect of the theory will also help to focus attention on the methodological differences which underpin the dispute with cosmopolitans.

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Neutrality in international justice can be summed up in three theses. Firstly, international justice calls for only a minimal list of human rights. Secondly, this list contains only the most basic human rights (those associated with security, subsistence, liberty, property and formal equality before the law). And finally, if states satisfactorily apply the list – whilst satisfying some basic procedural requirements on their political and legal systems – then they will count as legitimate states for the purposes of international justice. That means that no other state will be justified in interfering with them, either militarily or through seeking to impose economic sanctions; or even by the offer of incentives to make their constitution more liberal.

The consequences of adopting the minimal list of human rights are quite dramatic. Any set of economic and social rights which go beyond subsistence will not count as human rights proper on this view, in spite of being enshrined in international covenants. Equally worrying is the fact that any substantive equality rights, such as the substantive (rather than formal) equality of women, or rights against discrimination, do not get included. The kinds of non-liberal society Rawls wants to accommodate include what he calls non-liberal, but ‘decent’, hierarchical societies. These can have in place the basic human rights list, which guarantees protection against state persecution. Yet they may nevertheless contain laws which discriminate against women, by, for example, not permitting them to drive, work where they wish, or hold certain public offices. They may also contain economic regulations which disadvantage some minorities, for example through denying them tax incentives, land use permissions, or even access to some professions on the basis of equal opportunity. It is further unclear what the status of other recognised rights, such as the right to ‘privacy and family life’, is in this scheme, or for that matter how we should use the scheme to interpret difficult cases, including the

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10 The other requirements for membership of the ‘politically reasonable society of peoples’ include a non-aggressive foreign policy, having an adequate system of law, and that judges in that system act on the basis of a ‘common good conception of justice’, even if this is not liberal justice.

11 TLP, 84 ff.

12 TLP, 74 and 75 ff. Thus the restrictions protect liberty of conscience, ‘(but not equal liberty) of conscience’ – 79.
disproportionate issuing of punishments, so long as these are in line with formal equality before the law.\textsuperscript{13}

Thus, a just society of peoples can contain states with constitutions that accept, even encourage, forms of discrimination, and societies that neglect some internationally recognised human rights standards. More dramatically, liberal states would not be permitted even to try to encourage constitutional change in such a society through providing economic incentives.\textsuperscript{14} The argument offered for this stance is that neutrality, or sometimes ‘toleration’ at the international level, demand it.\textsuperscript{15} One can see how dramatic this position is by comparing Rawls’ view of domestic neutrality with his version for international justice. Domestic neutrality demands that institutions and policy within a state be designed with no intention to give advantage to persons holding any reasonable conception of the good over any other.\textsuperscript{16} Yet in \textit{TLP} the neutralist justification does not treat all reasonable conceptions of the good in this neutral way. Societies are tolerated on the basis of a list which is not “politically parochial”, but which will not treat all reasonable comprehensive views of the good life in a neutral way. Some may be discriminated against, as Rawls admits.

Thus this notion of international neutrality or toleration produces a puzzle. How is it that political neutrality as an aim or value issues in seemingly different policies at the international level than it does domestically? Indeed these “neutral” international policies have lower human rights standards than some of the basic ones promoted by the United Nations. Not only that, but they also seem to prioritise neutrality or toleration between states, rather than between individuals. Thus they have different beneficiaries in the international case than in the domestic. In the next section I look at some possible defences of this stance on international justice, with the aim of setting them aside as unsatisfactory. It is my contention that these, by themselves, cannot provide the justification or explanation of the account of international justice found in the \textit{Law of Peoples}. What might provide such an explanation I briefly sketch in the final part of this paper.

\textsuperscript{13} The right to privacy and family life is set out in Article 12 of the \textit{Universal Declaration of Human Rights}, 1948, and Article 17 of the \textit{International Covenant on Civil and Political Rights}, 1966.

\textsuperscript{14} \textit{TLP}, 83 ff.

\textsuperscript{15} \textit{TLP}, 59–60, 63, 67.

An early version of the neutralist position can be found in a paper by Scanlon. There he argues that human rights are unlike other kinds of right because they are essentially not linked to institutional forms or institutionally specific mechanisms for achieving their ends. Thus, for example, the right against torture, or cruel and unusual punishment, has less such commitment than the right to due process or various political rights. This, supposedly, makes these rights ‘most clearly exportable’. Now, one should note that Scanlon is not claiming that the other rights are not rights; he is merely claiming that they are less clearly exportable. That is, some claims that count as rights for us correspond to institutional mechanisms that others may not have.

As a neutralist support for limiting human rights claims, this argument is weak. Claiming a political right always makes some (implicit) reference to the institutional mechanisms required to secure it, including the claim that they should exist where they do not. Even a human right as ‘exportable’ as the right to life, or to security, requires a police force, together with judicial and penal systems, in order to operate. The argument is not, therefore, about whether some rights are associated with institutional mechanisms and others are not. Rather, the only argument that could be used here is that there are some institutional mechanisms that all states should have, and others that they cannot be morally obliged to have. Any rights which correspond only to the latter mechanisms cannot be exported because not everyone is obliged to have those mechanisms in their states (assuming that not everyone has them already). Yet making this way of understanding what can and cannot be exported itself implies that we have an account telling us which mechanisms states are morally obliged to have. That, of course, would be to offer standards for the moral legitimacy of states. So the ‘exportability’ of rights cannot by itself explain why our rights list is limited. We need together with it an account, in moral terms, of why some rights (together with their institutional mechanisms) are not

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17 ‘What differentiates this claim of a right from the rights embodied in our constitution, however, is in part that it does not focus on any particular institutional mechanisms that would count as “reasonable” protections against the threat in question.’ – T. Scanlon, ‘Human Rights as a Neutral Concern’, in eds P. G. Brown and D. Maclean, Human Rights and U.S. Foreign Policy: Principles and Applications (Farnborough: Heath: 1980), 86.
18 Ibid.
19 Ibid.
21 H. Shue, op. cit., 35 ff.
applicable beyond liberal borders and others are – which is to say, we need a justification for international neutrality, which ‘exportability’ seems to presuppose.

**NEUTRALITY, TOLERATION AND ‘WIDE ACCEPTANCE’**

A different argument appeals directly to toleration of other cultures. This says that a list of demands for international legitimacy should be relatively uncontroversial so as to show toleration for a diverse and wide range of cultures: those that accept a relatively uncontroversial, basic, set of rights. But again, why tolerate those states that, whilst accepting a very limited set of rights indeed, do not themselves tolerate different conceptions of the good held by citizens within their jurisdiction? It remains unclear why toleration at the international level implies such a wide degree of inclusiveness, including even those states which do not support equality among citizens, whilst the same is not implied at the domestic level. There, any view, practice or action designed to favour the comprehensive moral views of some citizens over others is ruled out as unreasonable. So, if toleration demands that one set of rights should be applied across persons in a morally just state, how can it demand that a different, lesser, set be applied across persons in different states?

One can see the aim of these strategies. Neutralists do not want to expose human rights discourse to the accusation of imposing a western-centred view of legitimacy. Consequently, they try to find a way of demonstrating that a theory of international justice can be palatable from other perspectives than the purely “Western” liberal one. For example, Buchanan tries further to spell out the Rawlsian neutralist position with the notion of ‘wide moral accessibility’, a desirable trait of principles of international justice. But as laudable as this sounds, nothing he says makes ‘wide moral accessibility’ different from ‘less morally demanding’ or simply watering down one’s moral principles. What is missing is an account of why such views should be morally preferable at the international level. If the argument is that this watering down of principles is necessary to make the theory acceptable to more people – that is, if it

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22 ‘Especially when the object is to develop universal legal standards – in this case conditions for recognitional legitimacy that will be applied to states organised around diverse cultures – the kind of humility or toleration prescribed by Rawls here seems appropriate.’ – Allen Buchanan, ‘Recognitional Legitimacy and the State System’, op. cit., 55 (emphasis added).

23 Ibid.
is a realist compromise – then that is, indeed, one way to argue for it. But to hide this behind principled-sounding terms such as ‘moral accessibility’ is misleading at best. In fact wide moral accessibility simply means appealing to a wider range of views about morality. As that cannot be an independent moral value, or principle, especially for the international arena with its history of moral abuses, we need a distinct reason to find value in that width of appeal.

Even argued on the more realist basis of compliance, however, the wide accessibility criterion remains problematic. A theory that can guarantee a high degree of compliance, it seems, is better than one which cannot. However, insisting on a limited itinerary of demands solely because of their inclusiveness, especially in the sphere of human rights, is a dereliction of duty. Such rights are often claims made for, and by, individuals whose interests might not be recognised in their state. To lower the standards just to include that state, then, would be to relinquish key interests of individuals for the sake of compromise. We need, then, a principled account of the limits of such relinquishing, otherwise compromise can go too far.

A NON-LIBERAL OVERLAPPING CONSENSUS: REASONABILITY AND DECENCY?

Neutrality as developed for Rawls’ domestic theory seems, putatively, to be justified by what he calls the burdens of judgement: the idea that under conditions of relative freedom, human beings will naturally develop a plurality of moral views. Buchanan tells us that we should show proper recognition for these burdens by opting for a widely accessible set of principles internationally. Neutrality in the domestic case is appealed to because of the burdens of judgement and their result: the existence of a plurality of conflicting comprehensive moral views. The idea is that

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24 Rawls would reject this, as he does not want a simple *modus vivendi*: TLP, 16 and 19.
25 ‘An institutional moral theory enjoys moral accessibility if and only if its principles enjoy support from a wide range of ethical theories and ethical traditions, both secular and religious.’ – Buchanan, ‘Recognitional Legitimacy’, op cit.
26 ‘The moral accessibility criterion is especially appealing in the case of a moral theory for the institutions of international law, given that the effectiveness of international law depends very heavily on voluntary compliance, owing to the lack of a global enforcement mechanism.’ – ibid.
28 ‘Opting for a relatively uncontroversial set of basic human rights, human rights that are recognised as such from the standpoint of a wide range of ethical theories and traditions, shows a proper recognition of the burdens of judgement.’ – Buchanan, ‘Recognitional Legitimacy’, op cit.
people, even reasonable people, exercising their reason freely under free institutions, will naturally arrive at different and conflicting views on matters concerning the good life. Buchanan tries to apply this to the international case with the claim that these conflicts between reasonable people will include conflicts over the correct form of political association. However, this approach fails to explain why plurality at the international level should give rise to a wider neutrality than plurality at the domestic level, which is the position endorsed by the neutralists. It cannot be due to there being more divergence, given that the divergence that matters for the sake of a theory of justice is between reasonable comprehensive views, not divergent comprehensive views per se. It is the notion of reasonableness that is widened in the international case, and for that we need some kind of justification.

Reasonable citizens living under free and democratic domestic institutions will accept that the free exercise of reason inevitably leads to differences in comprehensive moral views. Some of these will be incommensurable and irreconcilable at the level of reasoned argument. This gives rise to the need, and acceptance, by such citizens of institutions which do not favour one or other of these views over the rest. To do otherwise would be to impose burdens on the rest as a means for furthering the favoured view, thus failing to accept the burdens of judgement. Accordingly, principles adopted must be neutral between different conceptions of the good life, so long as those conceptions are reasonable (accepting the burdens of judgement, they refrain from seeking non-neutral advantage from the state). The same view, when applied in the international sphere, needs to provide principles which will cover liberal and non-liberal states. They must, then, be neutral between different views, liberal and non-liberal, of how political states should be organised – hence the wider notion of neutrality. That means human rights must be justified on a thinner basis than in the domestic liberal case, consequently comprising only a truncated list.

This argument for neutrality, however, does not work for international justice. For here we are not being asked to accept reasonable views, meaning those which accept the burdens of judgement. Non-liberal societies of the kind accommodated by the truncated requirements of the

29 ‘Acknowledging the burdens of judgement means recognising that reasonable people can disagree over matters of value, including the question of how society ought to be organised. A proper acknowledgement of the burdens of judgement entails an unwillingness to impose one’s own values on those who could reasonably reject them as inconsistent with their own reasonable values.’ – ibid.

law of peoples are not societies which accept the burdens of judgement. Some of these societies will be inegalitarian, enforcing advantages for some conceptions of the good life over others, even if they are not strictly speaking oppressive or repressive. In the domestic case, reasonable views and persons are those that are not disposed to use institutions to impose, or favour, their conception over others. In the international case reasonableness, and so neutrality, will allow a degree of imposition. To put this more sharply: this notion of neutrality violates the separateness of persons that was so important to Rawls’ influential theory of justice. It does this by taking it that all citizens can be regarded as being spoken for by the representatives of states as independent bodies with their own particular conception of the political good or of justice, which need not be reasonable. It is also worth noting what consequences this view could be taken to have for domestic justice. If neutrality demands accepting non-liberal states, based on conceptions of the good or on comprehensive moral views which might be inegalitarian and non-neutral across, say, religious lives, why is that not appropriate as a conception of neutrality for the domestic level? That is, if the adoption of this, wider, standard of international neutrality is morally acceptable, why is an equal degree of width not morally acceptable domestically? Surely taking lower moral standards to be acceptable internationally has a “bounce-back” effect in understanding what principles are acceptable domestically.

But perhaps this misses an important aspect of Rawlsian theory. It is the role that reasonableness plays in domestic justice that is transferred to the international sphere, and not its content. Domestically Rawls employs an important contrast between a mere modus vivendi (determined by the balance of forces, and by nature unstable) and an order based on accepted just principles. It is enough to have the latter in order to have a stable order in which agents exercise their ‘civic’ virtues to arrive at decisions within the confines of an existing ‘public reason’. If we can achieve this kind of non-modus vivendi – stable relationships with fellow states which are not liberal – that is a valuable achievement. Its value lies in peaceful coexistence of a non-transient kind. For, realistically, all we have to work with at the international level is the States System, which no one is likely to give up. If a stable and peaceful order can be achieved within that system, that is better than a state of war. And indeed, according to Rawls, a sphere of ‘decency’ is identifiable which lies between liberal and

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‘unacceptable’ states. It is defined by respect for human rights and ‘well-orderedness’. Thus occupying a middle ground is valuable for the sake of peace and should be recognised as such in principles setting out a law of peoples. The argument, however, is circular. The notion of decency gives the impression that these states, whilst not perfect, are nevertheless “acceptable” (in Rawls’ own words) from some independent moral perspective. Yet decency, or acceptability, is itself defined according to the limited list of human rights demands. This is especially problematic because the reason we are working with a limited list of human rights demands in the first place is to accommodate this particular range of non-liberal states. Without a principled reason to accept a limited list other than its wide real-world acceptability, we have no independent standard by which to assess decency or acceptability.

SELF-DETERMINATION AND NEUTRALITY

Perhaps in the background of the neutralist’s account of just international relations is a plausible acceptance of degrees of autonomy for different political communities. Hence Rawls’ choice of the term ‘peoples’ rather than ‘states’. Peoples are moralised political groups: groups whose internal constitution and institutions allow us to say that, in some sense, their state is representative of the community in question. It would seem that Rawls has adopted Walzer’s plea for sovereignty and self-determination of a very robust kind. Walzer’s test is the idea that there is some sense of ‘fit’ between the political community and the state institutions which represent it. Rawls gives some flesh to this idea with the addition of the conditions that a list of human rights must be upheld, and that the state must be well ordered. These conditions of ‘fit’ serve as an account of self-determination because without them it could hardly be said that a society, or political community, freely accepts the political institutions it has. This makes it a stronger account than Walzer’s of when we should attribute self-governance to a society, rather than seeing it as ruled by force alone. Because mere self-governance is the target concept here, rather than full liberal justice, the standards accommodate that aim. It is at least plausible

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33 ‘... one should allow, I think, a space between the fully unreasonable and the fully reasonable.’ – TLP, 74.
34 Rawls makes this point against cosmopolitan liberals in TLP, 82–3.
36 In fact Rawls thinks human rights are necessary conditions of any system of social co-operation: TLP, 68.
that a people can be self-governing, in the sense of freely accepting and identifying with their political institutional order, without being liberal.

Can this desire to accommodate a degree of autonomy in the affairs of political communities, by itself, justify international neutrality? It is hard to see how it can. For, whilst the inclusion of human rights constraints seems to make it a principled account, which human rights are in fact included is explicitly decided by the need to accommodate more than liberal states. Without an independent account of self-determination, its value and its limits, we are no closer to discovering why Rawls should settle on the list of rights he does, or on a principled account of international neutrality. But let us accept for a moment that there is such a thing as the independent value of self-determination or political autonomy for a community. Then the specific conditions (including the list of rights) Rawls outlines can be taken to be his account of free political association, which is valuable even in the absence of full equality. Is this by itself sufficient to justify the limited requirements (including the limited list of rights) of the law of peoples? By itself, no. For the value of political autonomy is used to determine whether societies conform to international justice, according to TLP. Why then is that standard not sufficient to hold our own society as just, even if it fails fully to satisfy the full liberal principles of justice? Why are we obliged to see our society as unjust in lieu of those principles being satisfied, but not obliged to see other societies as unjust in lieu of those principles? Without an answer to that question, whatever independent value self-determination may have gets us no further in answering why international justice should be conceived differently from domestic justice.

NEUTRALITY AND LAST RESORT

Scanlon has another argument, to the effect that there is a ‘strong presupposition against interference in the affairs of another country’. This presupposition can be overridden only by relatively serious abuses, and the minimal character of human rights identified by Scanlon is supposed to ensure this. But this is a red herring, unless one thinks international justice is solely about foreign policy intervention and then mainly about war.38

37 ‘To argue by analogy, there is a strong presupposition against interference in the affairs of another family, but this presupposition does not preclude intervening to protect a battered wife.’ – Scanlon, op. cit., 87.

38 According to Rawls the ‘special role’ of human rights in a law of peoples is that ‘they restrict the justifying reasons for war and its conduct, and they specify limits to a regime’s internal autonomy.’ – TLP, 79.
However, if we refuse to limit international justice to foreign policy, there is no reason to see human rights as standards for drastic measures. They might be understood to be principles for characterising states and their duties, even where no forceful intervention of any kind is appropriate. Is it legitimate for states to observe only certain minimal rights – and be under no further duties – even when refusing to meet rights such as the right to a basic education or equal treatment (non-discrimination)? Even if we reject the legitimacy of such a refusal, this is not by itself a sufficient ground for intervention. To use Scanlon’s own analogy, the fact that we identify problems in the conduct of a family’s internal affairs does not automatically give us the right to interfere forcefully. Nor is illegitimacy restricted to such explicit harms as physical or emotional blows. If family relations were such as to systematically disadvantage female children in life (say by diverting educational resources to male children) some kind of action would be warranted, though not necessarily of the interventionist kind appropriate to stop wife-beating. One might consider persuasion, diplomacy, incentives, information, education and so forth. But undertaking such actions implies acceptance that the existing state of affairs is not considered entirely legitimate. Thus, a presupposition against intervention, whilst ruling out certain responses to injustice, is not by itself a reason for adopting a neutralist stance about justice itself.

**JUST FOREIGN POLICY**

One thing should, by now, be clear from this discussion. Each appeal to neutrality I have considered fails because it does not give an independent justification for adopting the particular kind of neutrality offered at the international level. That version of neutrality, in the views I have considered, tolerates considerably more (has lower standards) than liberal theorists would consider appropriate in a domestic context. Without an account of why this is appropriate for international justice, the view is no more than superficially plausible.

**WHAT IS MISSING?**

In what follows I wish to sketch an account of a missing component I believe necessary to explain the neutralist view. In doing so, I draw on some of the above ideas, but I place them against the background of an independent justification for adopting this neutralist stance. My purpose here, however, is merely to provide a plausible explanation of why some
theorists, in particular Rawls, have adopted the neutralist approach. It is not to justify that approach, although I believe that the key objections that can be raised against it can also be raised against cosmopolitan views. Nor is my aim here to consider the detail of Rawls’ principles. Rather, I want to look simply at the rationale or methodology that leads a theorist to develop a different set of principles (even in ideal theory) for international justice, than she might develop for domestic justice. I shall rest content if I have given some more than superficially plausible explanation of if not justification for, such a move.

The missing component, as evidenced by Rawls’ text, is an account of the wider purpose of a theory of justice developed for a particular subject: a political society in the domestic case, and inter-societal relations in the international case. For that purpose to be different, something significantly different needs to be established about the different subjects in question. We need to identify what feature of the international sphere makes it morally distinct from the domestic sphere, such that it makes a difference to our moral concerns at the level of principles. The clue as to what this feature might be is found, quite explicitly, at the beginning of the *Law of Peoples*, and to some extent in the earlier essay version. In the introduction to the book, Rawls is at pains to explain that he is not developing principles that define moral duties for all states, but rather principles that define duties for the foreign policy of liberal states. That is, the subject of justice, to use Rawls’ terminology, is different in both cases. What different consequences this might have, I shall come to promptly. However, the first question to ask is this: why make such a move in the first place?

All principles of justice, for Rawls, are designed with a specific responsible agent or ‘subject’ in mind. Why is foreign policy the subject here? This move rests on the acceptance that there is no ‘global order’, ‘world order’ or ‘international order’ of the kind cosmopolitans talk about, which can play the role of subject, at least not in one important sense. For the existence of such an order subject to principles of justice requires at least two conditions to be satisfied. First, the order must affect the relations between persons, in such a way that it affects individual life chances; and second, the order must be truly a “background” order, in the sense that it has agency and can determine background conditions for people and

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40 In criticising the *Law of Peoples*, Simon Caney, for example, continually refers to the justice of a ‘world order’, or an envisaged ‘international order’ which is nowhere present as a constituent concept in Rawls’ discussion: op. cit., especially 99, 103, 111. Pogge uses this language of ‘global orders’ too, whilst restricting it to economic orders – T. Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2002), 94 ff.
their interactions by authoritatively imposing rights and duties on specific agents. To be sure, the first condition is more than satisfied, and currently in a negative way, by the status quo of international relations. But the second condition most definitely is not, certainly not to the degree required to achieve person to person justice across the face of the globe.

The only world order that we have is one of horizontal relationships. That is, whilst states, private persons and collectives can act in ways which impinge on the lives of others, no body exists whose relationship to all these is that of authoritatively setting background conditions – having the independent capacity to regulate and adjust for the accumulated horizontal effects of the agents involved. That would require the capacity to impose obligations and distribute rights across agents, and the capacity to enforce those obligations and rights. That is what makes an agent responsible for the consequences of horizontal relationships and effects. Only such an agency could constitute a true set of “background” conditions of justice, for only such an agency can be described as constituting a common set of institutions for members of a political community. Consequently, principles of background justice, equivalent to domestic principles of justice, must find an international agent satisfying this description. Yet all current international institutions, economic and legal, are based upon the principle of state consent. They are in that sense purely horizontal, unable in principle to act as an authority imposing positive obligations on any agent that state parties have not agreed to by signing treaties or joining associations.

In the absence, then, of a unified basic structure that satisfies these two conditions, there is no ‘world order’ for principles of justice to apply to. There is, to be sure, a world state of affairs that can be described in moral terms as good or bad. But that is different from a political

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41 The idea that a basic structure must be capable of imposing rights and duties, and must represent an authority capable of introducing a common system of law applying to all relevant agents, is explicitly laid out by Rawls in *Political Liberalism*, op. cit., 109, 258, 264, 265.

42 As, for example, is accepted by Allen Buchanan, ‘Recognitional Legitimacy’, op. cit., 55.

43 The United Nations, for example, is a voluntary organisation and its security measures do not impose any positive obligations on non-members. It is itself, founded as a mutual assurance organisation, aimed at securing peaceful relationships, and rests upon a recognition of the voluntary nature of state relationships, ideas expressed in Chapters I, II, and VII of the UN Charter, 1945.

44 Strangely, Allen Buchanan, in ‘Rawls’ Law of Peoples: Rules for a Vanished Westphalian World’, op. cit., 705, states adamantly that there is a global basic structure, purely on the basis that there is a horizontal effect. Yet, in his earlier article, ‘Recognitional Legitimacy’, op. cit., he emphasises the deep-seated voluntary nature of international relations.
order subject to principles of justice. Without *common* institutions, too, there is no sense that we belong to one political community the relations of which embody reciprocity. That, again, requires common institutions which authoritatively distribute rights and duties fairly across all members. To what, then, are principles to apply at the international level?

The only current institutions with at least the potential authoritatively to impose background rights and duties across a unified political community are the institutions of individual states. In the face of this fact we can do one of two things. Either we can propose a different institutional order, perhaps a global government, perhaps something between the status quo and a global government, or we can develop principles appropriate to the current “order”. Most liberals reject the idea of a global government in principle, opting for something in between that and the status quo. The “something in between”, however, is not as coherent as some cosmopolitans believe, and I shall explain why below. Rawls, on the other hand, simply adopts the latter option. Principles are not to govern common duty-imposing institutions, but rather to govern the foreign policy of liberal states. Were it not for that move, then perhaps the principles of domestic justice would apply globally.

Someone might object that this is insufficient to distinguish duties of foreign policy from duties of global justice. Moral principles defining these duties will, after all, have the same moral aims, even if they do not govern the same means. In other words, why is the foreign policy of individual liberal states not charged with bringing about the same conception of individual-regarding justice applicable in the domestic case? The problem with this kind of objection stems from the principles that would have to be imposed upon liberal states in order to bring about the desired end. Two important values would be put at risk: the value of cooperation at the international level, even with non-liberal states; and the value of mutual peace and security. Consider a principle which made it obligatory to enter into full international relations only with other liberal states. Or consider a principle that liberal states have a duty to engage in government-, constitution- or culture-changing actions in other societies (whether by intervention or incentive) with the aims of making them liberal and making them conform to cross-state distributive principles. Both these moves challenge a fundamental feature of inter-state relationships: the self-governance of distinct political communities, and therefore the equal standing in world affairs of self-governing political societies. Both

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45 ‘The Law of Peoples proceeds from the international political world as we see it, and concerns what the foreign policy of a reasonably just liberal people would be.’ – *TLP*, 83.

46 This is precisely the kind of principle considered by Simon Caney: op. cit., 110.
of these moves also challenge peace among political societies operating with different conceptions of justice. What the second principle does in particular is to make liberal states proxies for a global government.

The idea that such moves could be successful is predicated on two premises. First, that liberal societies are powerful enough to take such actions, and to take them in a way that preserves international peace; and second, that it is the proper role and business of liberal societies to be the primary agents of global justice. The first premise is not only contingent but unsustainable without a very tough form of global rule by a liberal state (or group of liberal states) regulating the life of all the world’s communities: the equivalent, in fact, of a global government, with all its associated problems. The second premise ignores the fact that in a world without a common basic structure – which is to say a common set of background authoritative institutions – this aim would enslave liberal states to the purpose of bringing about global justice (by whatever means at their disposal) through the restructuring of societies that reject full liberal principles of justice. It would also make the world subject to deep peace-threatening instabilities because it would throw into question the very basis of the international order upon which relations rest: the equal standing of sovereign states.

Consider Rawls’ rejection of the proposal that there should be redistribution between two differentially well-off societies (whilst permitting aid). In a world where societies are de jure politically distinct, and therefore not subject to the authority of third party institutions, a society cannot determine the internal decisions of another society in such matters as what kind of economy it will have. To concede a right to a redistribution of resources, then, without common decision-making and implementing institutions, is unfair. Consequently, to require the enforcement of the difference principle is to posit either an authority that does not exist, or duties on states continually to intervene in other states, taking on themselves the burdens of a global governance structure – settling disputes and enforcing distributions within and between other states. By negating the equal standing of states, this would endanger peace and security, including that of the basic structures of liberal states.

In a world, then, without even the desire for a full, global, basic structure on domestic lines, respect for the political independence of peoples recognises a distinct value. That is the value of peaceful relationships between peoples who do not share a basic structure and the value, in those societies of cooperation according to a conception of justice, even if a mistaken one, through their institutions. Rational limits must, of course,

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47 See **TLP**, 117, for two societies’ examples.
be defined for what is to count as a political society, or people, rather than persons ruled by force. Thus, basic human rights must be observed and a significant number of institutional guarantees satisfied such that a society can be said to be well ordered. An account of the common nature of a people’s institutions, and also of their political independence, is articulated as a value to be upheld. Any actions by a liberal state aimed at internally altering other states, other than persuasion, deny the value of respect for political independence in a world of states. Positing a duty to undertake such actions thereby denies that, even in the absence of a shared global basic structure, political justice is the common project of each community and the equal standing of states a value to be endorsed.

TLP accepts that these features of the international sphere mean that justice here must concern the relations between political societies so conceived.48 This in turn underpins a distinction between international justice as principles for liberal foreign policy and international justice as some nebulous conception of “global justice” without a clear and distinct subject. Foreign policy is directed at just relations with other political societies, rather than at being a proxy global governance structure. Liberal states are charged with establishing relationships which will amount to an association of liberal and decent peoples (i.e., of all genuine political societies). The aim of this association, apart from securing international peace, is voluntary subscription to something ‘analogous to a basic structure’: consensual institutions regulating trade so as to establish background equality of opportunity between states (not between the members of states across state boundaries).49 The account does not seek to develop obligations, or principles defining obligations, which apply to all political societies. These principles apply only to the foreign policy of liberal societies.50 So why limit obligations, in this way, only to liberal societies? There are a number of reasons why this might be thought appropriate, but a central one is that liberal foreign policy must be seen as an extension of the justice of liberal domestic institutions. No such extension can be posited in the case of non-liberal societies. Concepts such as ‘liberal’ and ‘decent’, and the values that underpin them are, by definition, part of a

48 TLP, 36.
49 TLP, 42, n. 52.
50 ‘This concern with the foreign policy of a liberal people is implicit throughout. The reason we go on to consider the point of view of decent peoples is not to prescribe principles of justice for them, but to assure ourselves that the ideals and principles of the foreign policy of a liberal people are also reasonable from a decent non-liberal point of view.’ – TLP, 10.
liberal outlook. If international justice does not demand that decent peoples become liberal, it cannot demand they have a liberal foreign policy.51

**The Depth of Dispute**

If the view I have sketched is accurate, then the dispute between cosmopolitans and neutralists or constructivists is much deeper than cosmopolitans have perceived.52 It is at the level of deciding what a theory of international justice is about. Cosmopolitans outline the moral injustice of current world inequalities in personal well-being and freedom, and propose that justice must be about rectifying those inequalities. They face problems, however, when identifying the subject of justice: the appropriate agent to which principles defining duties of justice apply. Constructivism, on the other hand, begins with the question, ‘which agent are these principles to govern?’53 Constructivists reject a theory of global justice which would comprise the obligations of all states, irrespective of what mechanism it would take to enforce them, and irrespective of the nature of those states.54 The account is not designed to tell us what justice is, in abstraction from the types of institution the just operation of which we are trying to determine. Rather, it tells us what principles should govern the operation of a given type of duty bearer: a given responsible agency. Where there is a unified basic structure corresponding to a single political community, the value properly served by that structure is justice as fairness. Where no common authoritative institutions exist, however, which are common to all agents, other values must come into play. As I have sketched, these are the values of peace, security, fair voluntary cooperation, and the values that these imply, such as the equal standing of politically independent societies pursuing a conception of justice.

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51 Decent peoples will honour the principles of the Law of Peoples, but not for liberal reasons: TLP, 83, 92–3.
52 Even where theorists explicitly recognise the point of Rawls’ theory as providing principles for liberal foreign policy, they continue to speak in terms of a theory of just international relations: e.g., C. Beitz, ‘Rawls’ Law of Peoples’, op. cit. – compare 670 and 680, where he talks of ‘world society’.
The limited list of human rights Rawls offers aims to give a rational articulation of these values. Firstly, it acknowledges that for there to be a society, rather than a reign of terror, basic rights need to be in place, rights which guarantee governance through recognised duties, and not through violence alone. Secondly, human rights identify what it is for a community, or for minorities within a community, to live free from political persecution, thus recognising security, together with peace, as values. Thirdly, they give a rational account of the threshold of legitimacy for states in the society of peoples: those which liberal states can legitimately associate with. These rights, fitting together as they do, guarantee a society which is not based on political repression, even if it is not fully liberal. A much fuller table of rights would make demands not strictly corresponding to the political freedom of a society. So, to the objection that *TLP* has no independently rational account of why the traditional list of human rights should be truncated in any particular way, we can answer that the rational account aims (even if the detail is not fully worked out) at the minimal guarantees that governance structures of a community are genuinely accepted, and not simply based on repression. Its function is not, then, the traditional one of simply setting out what rights all persons would receive from a liberal constitution.

**Some Objections**

Now, as I said above, my aim has not been to fully work out and defend the neutralist view. Rather, I have sought simply to explain it more plausibly. This has involved pointing out the deeper structure and methodology of the view upon which any critique should focus. Cosmopolitan critics have, however, misunderstood the aim of the neutralist view, and so criticised it for failing to live up to an aspiration it never had. There are nevertheless some preliminary objections worth raising here.

First, it seems legitimate to question the notion of free self-governance of a people, used by Rawls, which falls short of liberal institutions.\(^{55}\) Without liberal equality, can there truly be the kind of freedom which allows us to say that rulers do not only have power over a community, but actually represent it? Whilst Rawls’ human rights list includes a right to subsistence and economic means, a ruling group could potentially secure its position by giving greater resources to its supporters.\(^{56}\) However, it

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\(^{55}\) A key statement of this is in *Political Liberalism*, op. cit., 109.

\(^{56}\) *TLP*, 65.
seems plausible that no society can be ruled by such means alone for very long, for the very fact of disparities in resource allocation which are not acceptable to members of a society is enough to raise resentment and desire for change. The significant factor is whether governing power is secured by force alone, and that seems to be ruled out by the demands of human rights and well-ordered institutions.

Another objection might be that Rawls’ theory is actually an example of non-ideal theory rather than ideal theory. For it is premised on facts about global relations: the existence of separate states, the absence of a global basic structure in the appropriate sense, the existence of particular types of economic relationships, and so forth. However, the point about a global governing structure is that it is in principle undesirable, undermining the very values it is supposed to serve. In that light, Rawls’ theory purports to show us that an acceptable set of principles can be worked out for the existing institutional arrangement. If the aim of ideal theory is to offer principles which are appropriate to that state of affairs, then TLP develops an ideal theory.

But there might be a possible institutional arrangement between the status quo and a global state which does not have the negative characteristics of the latter, and has more positive characteristics than the former. The problem with this proposal, however, lies in how political societies, as politically free and equal, could voluntarily develop institutions which undermine that very freedom and equality. The very fear of a world state is based, in great part, on fear of a despotic denial of political self-determination. Whilst TLP proposes principles outlining the behaviour of liberal states, it does not propose any fundamental changes in global enforcement institutions. A theory which did this would threaten the very state of affairs in which societies can be treated as free and equal. For example, then, Thomas Pogge’s proposal for a ‘vertical dispersal’ of sovereignty is a challenge to the current system of states, and of course to the authoritative rule of political communities organised into states. Its proposal that people belong to, and have allegiances to, various levels of membership, local and international, not limited to states, is deeply troubling. For it does not give any sensible route to the achievement of such an aim. First of all, he introduces such proposals, at least in spirit, as if there were some higher authority than states which could impose or secure a global order of “multi-layered” authority, in a world which includes non-liberal states. Second, he does not solve the problem of authorita-

57 For the Kantian arguments against a global state, see TLP, 36.
58 TLP, 82–3.
59 TLP, 83.
60 T. Pogge, World Poverty and Human Rights, op. cit., 181 ff.
tive decision-making by common institutions. For where disputes exist, there must be an authoritative resolution to such disputes, either through the prerogative of voluntary state relations, or through some “higher” authority, meaning global government. As evidence that this problem can be resolved, he proposes that forms of de-centred, law-governed, coexistence already exist. Yet this ignores the fact that in all domestic cases there are established ways of settling disputes about which branch of state has priority (or absolute sovereignty); a failure of these signals a constitutional crisis, whilst internationally, law is fundamentally based on state voluntarism. Even the jurisdiction of a criminal court, in this context, requires formal state agreement. Consider also Pogge’s proposals for an international committee to give democratic bills of health to governments. That move faces the same two stalls of state authority vs. supra-state authority, for it questions the appropriate locus of legitimacy, seemingly giving it to the democracy committee.

All this teeters too unstably between a system of politically separate states (or some kind of political self-organisation by politically separate units) and a world state. As I have shown, Rawls’ account is designed for the former, and there seems to be nothing on offer of a different authoritative order in-between. But let us assume such an institutional design was available. We would still be faced with a difficult question about what constitutes justice. For we would need clear principles instructing current moral agents (individuals, collective bodies or states) on which reasonable duties they are under and which will bring about the desired superior institutional order. I am not aware of any such clear principles of action which do not have the problems outlined above. TLP offers a very conservative solution to such a problem, but the conservatism of that work is a symptom of the parameters within which it is elaborated. Those who reject that conservatism can more effectively criticise it by focusing on those parameters.

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61 Ibid., 179.
62 Ibid., 155 ff.