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LIBERALISM, POLITICAL PLURALISM, AND INTERNATIONAL JUSTICE

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree of Philosophy in the Graduate School of the Ohio State University

By

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The Ohio State University
1998

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In this dissertation, I try to develop a liberal theory of international justice based on John’s Rawls’s theory of justice. Social justice and political legitimacy of the state have been the major concern of political philosophers. So far, there has been only marginal concern about issues of international justice. This is not justifiable. John Rawls gives some indication of how a liberal theory of international justice can be developed. However, Rawls’s suggestion is both too obscure and faced with difficult problems.

Although Rawls believes that the moral methodology of this international justice is similar to the one developed in *A Theory of Justice*, he claims that the liberal theory of international justice is not and should not be a direct extension of his liberal theory of social justice, which applies to only some societies with certain political and social conditions. Rawls believes that two principles of international justice will be derived accordingly: the principle of international equality and the principle of basic human rights. The principle of international equality requires that states have some equal states’ rights. The principle of basic human rights requires that basic human be honored by all states. Such a combination of states’ rights and human rights in a theory of international justice
causes controversies. On the one hand, the statist does not agree that human rights can be a fundamental principle of international justice. The cosmopolitan, on the other hand, rejects the idea of giving states such primary moral status in a moral theory of international justice.

Rawls is not convinced by these criticisms. One important claim, I believe, Rawls wants to establish in his theory is a combination of international (or global) political pluralism and universal moral requirements. However, Rawls does not provide clear and sufficiently strong arguments for this. In this dissertation, I want to show how the goal of combining pluralism and universalism is possible and morally justifiable.

I make clarifications of the notion of pluralism from two perspectives. First, I distinguish political pluralism from value pluralism. Second, I distinguish conditional pluralism from unconditional pluralism. I believe the kind of pluralism that Rawls wants us to accept is conditional political pluralism—I call it "Critical Political Pluralism." I argue that Rawls's most important element of his moral methodology, the notion of the Original Position, can be used to demonstrate the moral ground of Critical Political Pluralism.

However, there are problems with Rawls's account of the Original Position. I will explain why Rawls's own account of the Original Position does not work for the purpose of explaining the moral ground of Critical Political Pluralism. So, I suggest an alternative account of the Original Position. I shall explain why my alternative account of the Original Position can provide moral support for the intended Critical Political Pluralism.
Furthermore, Rawls's own account of the extension of the Original Position at the international level does not work for deriving his two principles of international justice. I shall explain why my alternative account of the Original Position can work better, which also leads us to see why it is necessary to make some revisions to Rawls's two principles of international justice and his conception of international justice. Two important elements of my re-interpretation of Rawls are, first, that I criticize Rawls's account of the derivation of the principle of human rights and, secondly, that I do not agree with Rawls's rejection of any idea of international distributive justice under the current or similar conditions of international relations. I shall explain why there is a moral ground for accepting a principle of international distributive justice. The above outline of my reconstructed Rawlsian theory of international justice is basically an ideal theory. I shall explain how this ideal theory is relevant and will work for this real world by considering the relationship between the ideal and the non-ideal theory.

After establishing the Rawlsian theory of international justice, I then cope with two important criticisms of the Rawlsian theory, the statist and the cosmopolitan. I shall explain why the statist criticisms of Rawls are not acceptable as well as why the cosmopolitan critique is not reasonable and thus does not pose a serious challenge to the Rawlsian theory of international justice.
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CHAPTER 1

INTRODUCTION:

FUNDAMENTAL ISSUES OF INTERNATIONAL JUSTICE

1.1 The Need of a Theory of International Justice

The fact that the major social institutions of the state can and do have significant impact on people’s rights and well-being has been of great concern to political philosophers. A theory of social justice can be seen to address this concern by articulating what is morally desirable (and perhaps practically feasible) in designing and regulating social institutions and the state. However, another important realm of politics that can and does have significant impact on people’s rights and well-being is often neglected by political philosophers. This is the realm of international politics. The fact that international affairs can and do affect significantly people’s rights and well-being must give rise to moral concerns for political philosophers. But such concerns are addressed, if ever, only in quite marginal ways. This is not justifiable. Some even argue that we are not likely to adequately address the problems of social justice without at the same time addressing problems of international justice.\(^1\) There is some plausibility to this claim. It is fairly observable that many oppressive regimes are treated as if they were legitimate by
more powerful states, which choose to support them because of self-interested or strategic reasons. What is morally more disturbing is that some of these oppressive regimes could not be able to rule with an iron fist without such external supports. It is also fairly obvious that many so-called Third World countries are so economically exploited and politically dominated that their social and political conditions get deteriorated to the extent that these societies can only fight to survive and social justice is simply irrelevant. Under such conditions of international politics, it is understandable why some claim that problems of social justice and political legitimacy are not likely to be adequately addressed without at the same time addressing problems of international justice. A lot needs to be said in order to have some understanding of the relationship between social justice and international justice. However, I shall not pay particular attention to the relationship between these two sets of problems, although in presenting my discussion of a conception of international justice, I will explain how social justice is related to international justice. At any rate, the foremost question that motivates this dissertation is how problems of international justice are to be adequately addressed. This dissertation attempts to examine some important aspects of problems of international justice and to defend a conception of international justice.

The fact that international justice has been only a marginal concern in the tradition of Western political philosophy established by people like Plato, Aristotle, Hobbes, Locke, Hume, Rousseau, Kant, Hegel, Marx, J.S. Mill, presents an obstacle to my project; compared to the studies of political legitimacy of the state and social justice, we lack a tradition of rich philosophical discussions and arguments that can help us identify
and define issues of international justice. Even contemporary political philosophers like John Rawls and Robert Nozick are relatively silent on this issue. Still, I believe this project is worth trying. Given today’s rather closely interdependent international relations, addressing issues of international justice is just as urgent a topic as addressing those of domestic politics. In discussing how a conception of international justice is possible and justifiable, I think we can further address the fundamental concern of political philosophy regarding how people’s rights and well-being should be protected and advanced.

There have been widespread doubts about the possibility of any meaningful attempt of presenting or even discussing a conception of international justice. Skeptics will have doubts either about the possibility of justifying any conception of international justice or about the practicality of applying such a conception of international justice in the real world. Of course, those who have doubts of the first kind will ipso facto have doubts of the second kind. But a skeptic of the latter kind need not deny that it is possible to have a justifiable conception of justice. She will be skeptical only about the possibility of a general realization of international justice in the real world. Although skepticism of both kinds raises serious questions, my study will not try to address these questions but will simply assume that it is possible to have a justifiable conception of international justice which can be practical under some conditions, that is, it is possible to establish well-ordered international relations based on some conception of international justice. These are major assumptions. Making such assumptions, this study is thus quite limited in its goal. This study aims to discuss how a certain conception of international justice is possible and justifiable, but does not aim to discuss whether it is possible to justify this
conception of international justice vis-à-vis the skeptics' challenge.

To be more precise, I will discuss how it is possible to use Rawls's theoretical and substantive notions, developed in his liberal theory of justice, to address some important issues that a desirable conception of international justice has to address adequately. In this respect, it is quite appropriate to see my study as a discussion of how a Rawlsian conception of international justice is possible. But I should note at this preliminary stage that my study is not meant to be merely exegetical. Rather, I hope to discuss some philosophical issues that a Rawlsian conception of international justice has to face and deal with.

1.2 A Rawlsian Conception of International Justice

Since I said earlier that Rawls is relatively silent on issues of international justice, why, one might wonder, is it of particular interest to discuss a Rawlsian theory of international justice? I will not try to show that a Rawlsian approach to issues of international justice is more favorable than any other alternative approach, though I shall discuss two alternative views. There are some considerations that lead me to choose to discuss a Rawlsian theory of international justice. One background reason for undertaking such a project of examining a Rawlsian conception of international justice is that Rawls's theory of justice is developed within the most important tradition in Western political theory—the liberal contractarian tradition established by Locke, Rousseau, and Kant. Thus, it is of interest to see how a conception of international justice can be developed
out of such a tradition. A more specific reason for taking this particular approach to international justice is motivated by Rawls's own brief explanation of how such a tradition can be used to form a conception of international justice. Rawls's conception of international justice is interesting because I believe it can help us understand and address some important issues of international justice.

Rawls himself claims that some of the methodological and substantive notions developed in his theory of social justice can be used to develop a conception of international justice. In a short paper, "The Law of Peoples," Rawls claims that the notion of the Original Position can be extended to develop a liberal conception of international justice. However, the way Rawls uses his own notions to discuss problems of international justice and the resulting substantive principles of international justice have been severely criticized as either inconsistent or even inadequate by those who accept fundamental ideas of Rawls's theory of social justice. Rawls is not convinced that such criticisms are right.

Rawls's critics argue that it is only consistent and correct for Rawls to extend his methodological and substantive notions to the international realm. These critics argue that a globalized version of Justice as Fairness is more favorable than Rawls's own proposal. Being aware of such criticisms, Rawls believes that he is addressing some serious issues of international justice that cannot be adequately addressed by simply extending his liberal theory of social justice. But, since his discussions of how these notions are to be used in the international realm are relatively short and, it seems to me, insufficient, it is not straightforwardly clear what issues of international justice worry
Rawls such that he thinks it inappropriate to apply straightforwardly his theory of social justice to international affairs. In the remainder of this introductory chapter, I shall try to explore some of the issues that I think worry Rawls.

To do this, I want to give a very brief and general characterization of Rawls's theoretical commitments of his liberal theory of Justice as Fairness by putting his theory within the larger background, that is, the tradition of liberalism. Although different people understand 'liberalism' differently, it is still possible to identify some beliefs commonly held by Rawls and many liberals. I have to make a disclaimer at the outset. Since my purpose in discussing these common liberal beliefs is to pave the way for seeing some important issues of international justice that I think worry Rawls, my remarks shall not pay attention to the details as to how these beliefs are argued.7

As I see it, Rawls and many liberals seem to accept the following positions. First, they believe that the principles of justice and in particular the notion of the political legitimacy of the state should not be established, as far as possible, on any substantive, particular conception of the good. For these liberals, a just society, or more specifically a legitimate state, should not be established for the purpose of promoting a particular conception of the good. On the other side of this conviction, they also argue that individuals ought to be given equally extensive right to choose and pursue their own conceptions of the good. For Rawls and many liberals, a just state or a well-ordered society is one in which its citizens enjoy this equally extensive right to choose, revise, and pursue their life plans to the extent that each individual's exercise of this right is compatible with others' exercise of the same right. Rawls and some liberals are often
seen as arguing that social justice, in particular political legitimacy, must be established on giving primary respect to individual persons in this regard. A just state is thought to be neutral with regard to particular conceptions of the good that individual persons have and pursue.

This requirement for respecting individual persons' choices of their own conceptions of the good is supposed to be universally applicable, according to these liberals. In this regard, they often argue for a universally valid conception of social justice. At the most general level, a society can only be just by following this liberal conception of social justice, though it is possible and permissible that there are some minor differences in secondary rules between just societies. For these liberals, the fundamental idea is that human beings qua human beings, no matter who and where they are, should be respected as the ultimate decision-makers regarding their choices of conceptions of the good. In holding this view, they may argue that such a requirement can be practical only when certain social and economic conditions are met. Such a constraint on the condition of practicality is compatible with their fundamental belief that this requirement is universally valid, at least in principle. Thus the second common belief of many liberals is the universalism of social justice which contains the requirement of respecting individual persons as the ultimate decision-makers with regard to the choice of their own conceptions of the good.

The third conviction commonly held by liberals is their endorsement of a pluralism of values. The reason for holding this belief is quite obvious. If individual persons should be respected regarding their choices of conceptions of the good, different
conceptions of the good and their background beliefs ought also to be respected, if people
do choose differently. For these liberals, a just society is also a society protecting a
diversity of values. It should be noted here this value pluralism does not imply that a
liberal has no commitment to a certain value. This notion of value pluralism is to express
liberals' respect for others for holding different views about value. Liberals have their
own views about value. But they often claim not to, as far as possible, force these values
through their liberal theory onto others.

Fourthly, it is a common view that liberals typically hold an "asocial
individualism." That is, liberals are often seen to argue that the principles of justice are to
be determined by individuals making decisions prior to (or independently of) social and
historical conditions or practices. For these liberals, individuals are not only capable of
this kind of "independent" thinking, but are also required to do this when they are to
decide on fundamental issues of social justice.

These four beliefs—that is, value neutrality, universalism of social justice (which
prescribes respect for individual rights), pluralism of values, and asocial individualism—
are usually seen to be held by Rawls and many liberals. Let us say that these four beliefs
(and perhaps others) together form the core of standard liberalism. These four claims are
expressed and argued for by Rawls in A Theory of Justice. The notion of the Original
Position and the conception of Justice as Fairness are often seen as expressing and
explaining the reasons for these four claims. In chapter 2, I will give some further and
more detailed explanations of these two notions. Since my concern is with the issues of
international justice, I shall not provide very extensive discussions of Rawls's various
arguments and explanations of Justice as Fairness as the most favorable conception of social justice. My focus will primarily be on his arguments for the Original Position. The purpose of discussing Rawls’s arguments for these claims is to set up the starting theoretical background for further discussions of how a Rawlsian conception of international justice is derived and justified, and what issues this conception is intended to address vis-à-vis the challenges of the two alternative approaches I mentioned earlier.

The reason I choose to discuss only these two alternatives is that they criticize Rawls’s conception of international justice from two not just different but also mutually critical positions. While these two alternative views attack each other, they both attack Rawls’s conception of international justice for different reasons. One of these two alternative views is derived from the standard liberalism mentioned earlier. Let us call the liberal conception of international justice derived from standard liberalism the “cosmopolitan liberal” (or “cosmopolitan” for short) conception. The other alternative that I shall discuss can be called a “state-centric” view. This state-centric view is traditionally supported by the states’ rights theorists and recently argued for by Michael Walzer.

One core claim of the cosmopolitan is that the standard liberal view of social justice ought to be extended to the international realm. In this view, the conception of social justice and the conception of international justice are fundamentally the same. The state-centric view of international justice typically denies the cosmopolitan view. Let us call those who accept this state-centric view of international justice “statists.” The statists endorse a pluralist view of social justice, that is, different societies can be justified in
accepting different conceptions of social justice and political legitimacy. This is typically denied by the cosmopolitan.

1.3 Fundamental Issues of International Justice

There are significant moves made by Rawls in A Theory of Justice. Rawls claims that the notion of the Original Position can be extended to discuss issues of international justice. But he does not seem to think that the notion of Justice as Fairness as characterized in A Theory of Justice applies to international affairs. This immediately gives rise to a question about the consistency of Rawls's conception of international justice. For if the notion of the Original Position is the device or method of deriving the most appropriate conception of justice, Justice as Fairness, as Rawls claims, then we would naturally think that the international application or extension of the Original Position will also produce an international version of Justice as Fairness. Rawls's claim that we will not use the device of the international Original Position to reach the corresponding international version of Justice as Fairness must suggest that some other relevant considerations override the derivation of the international version of Justice as Fairness from the international Original Position. These considerations, not all explicitly expressed by Rawls, touch on three fundamental issues of international justice that will be addressed throughout this dissertation. Let me explain these three issues in the following three sections.
1.3.1 The Units of Primary Moral Consideration: Individuals or States?

First, when we are to consider what is just and unjust in international relations or in international society, we have to take a perspective. The question is: which perspective? There are various perspectives that we may take. But, as we will gradually see in later chapters, two perspectives seem to capture one important debate in many current disputes over international justice. One is the perspective of individuals, and the other is the perspective of states. Taking the perspective of individuals is that we base our reasoning of international justice primarily on the protection and promotion of people’s rights and well-being and decide on principles of international justice accordingly. On the other hand, taking the perspective of states is that when we reason about what is just and unjust in international politics, we base our reasoning primarily on how the decided principles of international justice would affect states’ rights. Thus, when we reason about what is just and unjust in international society and decide on principles of international justice, we have first to answer the following questions: should we treat individuals or states as the units of primary moral consideration? What is the justification of choosing either of the two?

One might wonder why we have to choose between these two. Why not the perspective of communities? I think there is no straightforward answer to this. But it is clear that in discussing problems of international justice, people’s rights and well-being are our ultimate concern. Taking the perspective of communities may help us address this concern. However, it seems to me that such a communitarian approach is often adopted
by those who take the perspectives of states. In this case, there is at least an overlap between the two. A communitarian need not be a statist. Given the fact that no pure communitarian argument has stood out in the discussions of international justice, I will not pay particular attention to find a plausible argument on its behalf.

Rawls believes that the units of primary moral consideration in addressing issues of international justice are different from the units of primary moral consideration in dealing with matters of social justice. He seems to believe that states, under certain conditions, but not individuals, ought to be the units of primary moral consideration when we reason about principles of international justice. Rawls is convinced that international relations do not embody the same conditions under which it is appropriate to take the perspective of individuals as he does in arguing for the theory of Justice as Fairness. Rawls's view in this regard is quite different from the standard liberal view.

The familiar liberal view is that individuals are and must be the units of primary moral consideration, no matter whether we are concerned about social justice or international justice. States, according to this standard liberal view, would have a certain moral standing only in a secondary sense. Rawls's suggestion of making states the units of primary moral consideration in deciding on fundamental principles of international justice seems to imply that states enjoy a primary moral standing in the matters of international justice. I should note here that Rawls does not argue that all states enjoy the same primary moral status. His view actually is that only just states are entitled to this. Even such a view is not accepted by many cosmopolitans. But what is Rawls's justification for this? What is Rawls's concern? What worries the cosmopolitan?
Although so far I have discussed some aspects of the issue of the proper units of primary moral consideration in the matters of international justice by focusing on the disagreement between Rawls and the cosmopolitan, it is an issue of international justice even for non-liberals. The statist apparently will maintain that states, not individuals, are the units of primary moral consideration. But he will have to justify this claim. I am inclined to think that Rawls’s account is more acceptable than either of the two, as I shall argue.

1.3.2 Universalism vs. Pluralism

The second issue of international justice is about how social justice is related to international justice. As I indicated earlier, the standard liberal view holds that the liberal conception of social justice is universally valid in the sense that the liberal principles of social justice are the ones that all normal and rational persons would accept, if they are to reason about social justice in a certain way. In this view, there is one justifiable conception of social justice, even though many societies in fact accept different conceptions of social justice. According to the standard liberal view, political legitimacy depends on social justice in the sense that a legitimate state must be a just state (that is, a state whose major institutions follow and are known by its people to follow justified principles of social justice). In this view, there will be only one conception of political legitimacy accepted by the standard liberal view. The standard liberal view holds not just such a universalist view about social justice and political legitimacy, but also a
conception of international justice which justifies intervention in the name of the liberal
principles of social justice.

The statist typically endorses a pluralist view of social justice and political
legitimacy. The statist's pluralist view is not merely for expressing the fact that there are
different conceptions of social justice and political legitimacy accepted by various states.
The statist maintains a kind of normative pluralism in this regard. For the statist, a state
ought to be respected for whatever conception of social justice and political legitimacy it
accepts or practices, except in extreme cases. Thus, the statist will not only reject the idea
that there is any universally valid conception of social justice and political legitimacy, but
also reject a conception of international justice which justifies intervention in the name of
the liberal conception of social justice. However, the statist need not reject the idea that
there can be a justifiable conception of international justice which contains some
principles that are universally valid. It should be noted here that, in the statist view, such
universally valid principles of international justice are not (and should not be) designed to
regulate the internal affairs of any state. The statist would maintain that these principles
are designed to regulate only the external relations between states.

The disagreement between the standard liberal view and the statist view about the
relation between social justice and international justice gives rise to the second issue of
international justice. universalism vs. pluralism. The issue can be stated as the following:
should an appropriate conception of international justice be constrained by and command
a universal conception of social justice and political legitimacy? or should it respect
different conceptions of social justice and political legitimacy accepted by different states?
To determine the answer for this question, we have to ask: what is the concern here? The liberal concern is that an appropriate conception of international justice ought to provide moral ground for us to address the fundamental concern about people’s rights and well-being. This is especially an urgent concern in a non-ideal world full of so many oppressive states. A conception of international justice based on (and commanding) some universal principles of social justice or general moral principles will give us moral ground to address such an urgent concern. But the statist-pluralist believes that the cosmopolitan claim is tantamount to a claim favoring intervention. For the statist, intervention even for this reason in most cases is not going to work in most cases. The statist believes that intervention in most cases is likely to make the situation worse, locally or from an international point of view. In addition to this practical reason, for a statist-pluralist like Michael Walzer, intervention for this reason in most cases violates the right to self-determination. Walzer claims that it is not allowed as a matter of international justice to intervene in the name of people’s rights to life and security.

Rawls believes in a pluralist view of social justice and political legitimacy. But he does not explain how this pluralist view can be adequately accounted for in his theory. Following Rawls, I also believe that such a pluralist view of social justice and political legitimacy is more plausible than the standard liberal-universalistic view. Let us label this pluralist view “political pluralism.” I should remind the reader that we are not talking about descriptive political pluralism, but instead about a normative political pluralism. According to this normative political pluralism, different conceptions of social justice and political legitimacy ought to be respected. Although I believe that an appropriate
conception of international justice should require respect for different conceptions of social justice and political legitimacy. I also believe that such a conception of international justice should also provide moral ground for intervention in order to address people's rights and well-being in situations where intervention is more adequate than non-intervention, everything else considered. But there must be some balance between these two. The kind of political pluralism that I think can achieve these two is a critical political pluralism. This critical political pluralism not only justifies the requirement of respecting different conceptions of social justice and political legitimacy, but also provides some moral ground for criticizing some social practices as unjust and political regimes as illegitimate and even justifies intervention in some cases. I think and shall argue that Rawls provides us theoretical resources to account for such a critical political pluralism.

One more remark about the issue of universalism vs. pluralism. It is possible that in a certain world all states adopt the same conception of social justice and political legitimacy, while there is a set of different principles of justice for regulating international relations. Although this is conceptually possible, no one seems to venture into this possibility, so far. One question we need to answer about this possibility is whether the alleged principles of international justice have some sort of priority over principles of social justice. The cosmopolitan sometimes has a view somewhat close to this possible situation. In this dissertation, I shall not pay particular attention to this possible situation. However, I will discuss a somewhat similar case presented by the cosmopolitan.
1.3.3 Human Rights vs. State Rights

The above mentioned two issues—the issue concerning the proper units of primary moral consideration and the issue concerning universalism and pluralism in deciding on fundamental principles of international justice—can be seen as issues concerning some general features of a conception of international justice: should a conception of international justice be constructed from the perspective of individuals or from the perspective of the state? Should a conception of international justice be constrained (or commanding) some universal moral principles or universal principles of social justice? Or should it respect political pluralism? Answers to these questions do not seem to touch directly on any substantive principle of international justice. However, the debates over these two issues, as I characterized them, are often expressed in terms of substantive principles like human rights and state rights. Debates over the issue of human rights vs. state rights are directly about the substantive content of a theory of international justice. The third issue of international justice is the issue of human rights vs. state rights. Although these two substantive conceptions are used in the discussions of the above two issues, it is at least conceptually possible that conclusions drawn from discussing each of the first two issues need not imply a certain position toward the issue of human rights vs. state rights.

This third issue can be discussed in different ways. It depends very much on the content of human rights and the content of states’ rights. Also, it depends on how one ranks the priority ordering or, to use Rawls’s notion, the lexical ordering\(^\text{16}\) between the
two. The content of human rights can vary. For example, the United Nations' Universal Declaration of Human Rights of 1948 contains about two dozen rights.\textsuperscript{17} It is claimed that these rights listed in the UN Declaration are to establish only minimal standards of decent social and governmental practice.\textsuperscript{18} In this view, these rights are fundamental and minimum. But in Rawls's view, the UN list of human rights contains more than fundamental human rights. Rawls thinks that some of the rights in the UN Declaration may be more suitable for some societies with some particular cultural background, but not for other societies.\textsuperscript{19} Rawls seems to suggest that not all of the rights listed in the UN Declaration are basic human rights. Rawls believes that only basic human rights are a minimal requirement that every just society must satisfy.\textsuperscript{20} In other words, Rawls believes that not every right listed in the UN Declaration is universally valid (that is, it is justifiable to require each and every society to accept the entire UN requirement) even for just states. But the cosmopolitan does not agree with Rawls on this matter. The cosmopolitan tends to argue for a more extensive list of human rights such as the UN Declaration.

Another aspect of the issue of human rights vs. state rights is the debate over the question about whether or not it is appropriate to adopt human rights as part of fundamental principles of international justice. A statist like Walzer does not think that human rights, no matter how basic, are suitable to serve as fundamental requirements of international justice. Walzer seems to think that human rights are people's claims against their governments, not states' claims against another state. In most cases, according to Walzer, no state should be allowed as a matter of international justice to violate the rights
of another state in the name of human rights. Walzer believes that the states’ right to political sovereignty and territorial integrity are the most fundamental requirements of international justice. In most cases, these state rights ought to be respected and may not be overridden even by human rights.

The cosmopolitan argues that a statist position like Walzer’s in this regard is unjustifiable. For the cosmopolitan, the requirements of justice are universally valid. No state may be justified for violating human rights simply because its conception of political legitimacy does not contain the requirement of respecting human rights. A state ought to respect human rights and any legitimate and just state will do this. According to the cosmopolitan, intervention can be justifiable for the sake of human rights just as revolution is justifiable. People can be justified in revolting against their government that violates human rights. For similar reasons, according to the cosmopolitan, a foreign state can be justified in intervention which often means violating other state’s rights to political sovereignty or territorial integrity. The cosmopolitan does not believe that national boundaries are of such moral status that state rights may not be overridden even by human rights.

Walzer does not think that it is appropriate for a theory of international justice to impose the requirement of human rights. Human rights are requirements of social justice, not of international justice. Walzer believes that while people can be justified in revolution, foreign states cannot be justified in intervening in the name of human rights. Walzer cannot agree with the cosmopolitan. It seems that for the cosmopolitan and the statist human rights and state rights are not compatible for a theory of international justice.
In this regard, a theory of international justice must address this issue. Rawls's conception of international justice addresses this issue in a way that would be seen by both the cosmopolitan and the statist as unacceptable. For Rawls's conception of international justice contains two principles of international justice: a principle of international equality (which asserts state rights) and a principle of human rights.

These are the three issues of international justice that my discussion of a Rawlsian conception of international justice is concerned with. This should not be taken to imply that there are no other important issues of international justice. But I think if a theory of international justice can adequately address these three issues, it would shed new light on how problems of international justice can be better dealt with. I mentioned at the beginning of this chapter that I shall defend a Rawlsian conception of international justice. Thus I shall also defend a claim that my account of the Rawlsian conception of international justice can address these issues more adequately than the cosmopolitan and the statist conceptions of international justice can. My plan for such a defense can be illustrated in the following outline of my dissertation.

1.4 An Outline

Rawls's liberal theory of justice spelled out in A Theory of Justice is often seen as arguing for those fundamental liberal beliefs that I briefly identified earlier. However, according to some commentators, Rawls's view has received modifications or changes in a series of subsequent works since the publication of A Theory of Justice.21 Rawls
himself claims that his theory has not changed in its fundamental aspects. The only change is about, as Rawls calls it, the “presentation” of the theory of Justice as Fairness. Since my interest is not in giving an exegetic presentation of Rawls’s theory, I shall leave this question undecided. What is of more interest to me is to investigate how it is possible to construct a liberal conception of international justice based on some of Rawls’s notions, especially his idea of the Original Position and the conception of Justice as Fairness. Many of Rawls’s subsequent papers seem to propose a more general theory of justice, which includes more explanations regarding Rawls’s views about pluralism and international justice. One question that interests me is how Rawls can use the notion of the Original Position to construct his more general theory of justice, which includes a pluralist view of social justice and a conception of international justice.

The purpose of presenting Rawls’s general liberal theory of justice is to indicate why Rawls’s conception of international justice can deal with those issues of international justice adequately. I think the crucial step toward presenting Rawls’s general liberal theory of justice is his methodology—that is, the notion of the Original Position. However, as I shall show, Rawls’s account of the Original Position is not suitable for this purpose. In Chapter 2, I shall suggest an account of the Original Position which I believe can serve as the methodological device of his general liberal theory of justice and, more importantly, help explain how a Rawlsian conception of international justice can be defended.

Also important is that this new account of the Original Position can explain how the critical political pluralism that I mentioned earlier can be accounted for within
Rawls's theory. This being done, I shall discuss how Rawls's two principles of international justice can be derived and justified in chapter 3. Rawls actually gives a very general and brief account of the derivation and justification of these principles. However, Rawls's account is not very satisfactory, as I shall show. After the explanation of how the derivation and justification of Rawls's two principles is done, I then shall explain why Rawls's conception of international justice can address the three issues of international justice adequately.

But is Rawls's conception of international justice more acceptable than the cosmopolitan and the statist views of international justice? Each of these two views launches various criticisms at Rawls. In Chapter 4 and 5, I shall try to explain how Rawls's conception of international justice can hold against these criticisms. In Chapter 4, I shall discuss the statist approach. The statist rejects Rawls's idea of including human rights as fundamental requirements of international justice. What is crucial to the statist position is the notion of state rights. I shall examine two lines of arguments, one more traditional, the other proposed by Michael Walzer. I shall try to show that both arguments fail. Even if we grant the notion of state rights to the statist, he still cannot be justified in maintaining that human rights cannot be requirements of international justice.

In Chapter 5, I shall discuss the cosmopolitan critique of Rawls. The cosmopolitan attacks Rawls on several fronts: Rawls's notion of political pluralism, the principle of international equality, states as the units of primary moral consideration in the matters of international justice, and Rawls's minimal notion of human rights. Such criticisms of Rawls from the cosmopolitan perspective are found in Thomas Pogge and Charles Beitz.
Pogge's criticisms express the typical cosmopolitan concern and approach to the three issues I discussed earlier. Beitz's view, on the other hand, represents another typical concern of the cosmopolitan, the problem of international distributive justice. I think and will try to explain that the cosmopolitan criticisms do not hold against Rawls.

In Chapter 6, I shall give a concluding remark on what I have achieved in discussing these views about international justice and what is left to be done.

This study is not intended to present a complete theory of international justice. Rather, my goal in this study is to use some of the theoretical resources provided by Rawls to discuss the three issues of international justice as described briefly above. One central theme of my investigation is to establish the justification of critical political pluralism. I believe Rawls provides enough theoretical resources to establish this critical pluralism. And these three issues of international justice can be adequately addressed in light of this critical pluralism.

Notes:

1 Kant maintains that problems of establishing a just state are part of the problems of establishing a just international order and cannot be solved unless the latter is also solved: see his "Idea for a Universal History with a Cosmopolitan Purpose," pp. 47-48. Recently Thomas Pogge holds that social injustices cannot be entirely explained by referring to domestic factors. External (or international) factors also play an important role in the maintaining of unjust regimes. See his Realizing Rawls, pp. 227-239.

2 Some attempts are made to establish the connection between traditional political theories and normative international political theories that may be developed from them. See for example, Terry Nardin and David Maple (eds.), Traditions of International Ethics.


5 For a general understanding of Rawls's conception of Justice as Fairness, see Rawls, A Theory of Justice, pp. 7-22.

6 See, for example, Charles Beitz, Political Theory and International Relations, part 3, and Thomas Pogge, Realizing Rawls, pp. 240-280.

7 There exists an ocean of literature about liberalism. In addition to those works by Locke, Kant, and Rawls.
the secondary resources I use for summarizing up some common liberal beliefs are Margaret Moore, *Foundations of Liberalism*, Stephen Mulhall’s and Adadam Swift’s *Liberals and Communitarians*, Will Kymlicka’s *Liberalism, Community and Culture*, and Michael Sandel’s *Liberalism and the Limits of Justice*.

It seems obvious that Rawls holds such universalist view about social justice in *A Theory of Justice*, although he is convinced that different societies can be justifiable in accepting different conceptions of social justice in “The Law of Peoples.” Throughout this dissertation, I adopt the pluralist view that Rawls endorses in “The Law of Peoples.”

For a quick and general explanation of the Original Position, see *A Theory of Justice*, pp. 7-22. In “The Law of Peoples,” p. 51, Rawls seems to suggest a modified conception of Justice as Fairness for the international. But since the essential egalitarian elements of Justice as Fairness are absent in this “international conception of Justice as Fairness,” I shall treat Rawls’s conception of international justice fundamentally different from Justice as Fairness. Actually, in p. 75 of the same article, Rawls rejects the idea of extending the Difference Principle of Justice as Fairness to the international.

For a discussion of this, see Chris Brown, *International Relations Theory*, pp. 52-81. It should be noted here that communitarians such as Michael Sandel, A. McIntyre, have not paid much attention to problems of international justice except Michael Walzer. But Michael Walzer proposes a statist argument about international justice.

It is sometimes not entirely clear that this is the case. For he uses “peoples” and “societies,” instead of “states,” from time to time. But he also uses about the “society of states” and “people organized as states” (see *A Theory of Justice*, p. 378). I think this can be very confusing, since Rawls does not give any exposition of their meanings. To fix this, I shall take Rawls’s “peoples” and “societies” to refer primarily to states. This may limit the scope of Rawls’s intended theory, for to fix these terms to refer to states only, my account of Rawls’s conception will be limited to cases where states exist. Rawls may intend that his theory applies to a broader range of cases, including cases where humans exist without organizing themselves in the form of states. If Rawls does indeed intend this, then I shall say that my account is only an interpretation of Rawls’s theory with regard to its application to the society of states.

*Rawls, op. cit., p. 75.*

*Walzer, *Just and Unjust Wars*, pp. 87-90.*

*Walzer, *Just and Unjust Wars*, p. 61.*


The text of the Universal Declaration of Human Rights can be found in Ian Brownlie (ed.), *Basic Documents of Human Rights* which also collects many other documents like the European Convention of Human Rights, the International Covenant on Civil and Political Rights, and so on.


Jean Hampton claims that Rawls’s more recent works undertake a quite different view about political philosophy. Hampton even argues that Rawls’s recent works reveal a significant similarity to Hobbes’s approach to political philosophy. See her “Should Political Philosophy be done without Metaphysics?” Stephen Mulhall and Adam Swift argue that Rawls’s recent works is better seen as the product of Rawls’s response to the so-called communitarian criticisms launched by Michael Sandel, Alasdair MacIntyre, Charles Taylor, and Michael Walzer. And they argue that Rawls has incorporated some of the communitarian ideas into his recent articulations of his political philosophy; see *Liberals and Communitarians*, part two. William Galston also thinks that Rawls’s recent works reveal significant changes. Galston argues that pluralism is the issue that drives Rawls to such changes; see his “Pluralism and Social Unity.” Rawls himself denies that he has significantly changed his view. He maintains that his recent works are best seen as presenting his philosophy in slightly different ways; see his *Political Liberalism*, introduction. Since my purpose of discussing Rawls is primarily not exegetical, I shall leave aside the question about whether and/or how much Rawls has changed since the publication of *A Theory of Justice*. 24
CHAPTER 2
RAWLS'S GENERAL LIBERAL THEORY OF JUSTICE AND CRITICAL POLITICAL PLURALISM

2.1 Introduction

In this chapter, I want to discuss how Critical Political Pluralism is possible and justifiable for Rawls's general liberal theory of justice. I want to do this by discussing why Rawls's account of the derivation and justification of principles of social justice is not suitable for explaining and justifying this Critical Political Pluralism. After this is done, I then propose a somewhat different way of understanding Rawls's methodology and argue that Critical Political Pluralism can be explained and justified accordingly. To explain how Critical Political Pluralism is possible for Rawls's general theory of justice is important, because this is one key notion to understand how Rawls's conception of international justice can be accounted for. To argue for Critical Political Pluralism is tantamount to arguing that some conceptions of social justice other than the liberal conception of Justice as Fairness (JF) can be justifiable. Rawls makes this claim but does not explain how it can be justified. In this chapter, I shall try to argue that Rawls's claim
of Critical Political Pluralism can be accounted for in accordance with my proposed new understanding of Rawls’s method of deriving and justifying principles of social justice.

Since the notion of political pluralism is of such importance to Rawls’s theory, it is necessary that I say something about how this notion is to be understood. Here I want to make a rough distinction between two forms of political pluralism. One form of political pluralism is unconditional: with very extreme exceptions, each state is justified in its own way of ordering its society and organizing its internal political affairs; for this reason, all or almost all states are to be respected with regard to their existing social orders and political systems. The other form of political pluralism is conditional: states can be justified in adopting different ways of arranging their social orders and organizing their internal political affairs only when such social orderings and political arrangements meet certain requirements. Rawls’s Critical Political Pluralism is an example of the second form of political pluralism. In light of this distinction, “political pluralism,” when not specified, is used to refer to the first sense of political pluralism.

Rawls is usually known for arguing for a particular theory of justice, that is, JF. Rawls’s general theory of justice differs from JF because, among other things, the former is more general. Rawls’s general liberal theory of justice is more general in two senses. First, it has a wider scope of subjects than the liberal theory of JF. This general theory of justice is designed to explain not only the derivation and justification of different conceptions of social justice, but also the derivation and justification of a conception of international justice. Secondly, Rawls’s general theory of justice is more general than JF.
because the values typically associated with JF are not seen by this general theory as values that ought to be accepted by all societies. For this reason, an important feature of Rawls’s general theory of justice is that the liberal values typically seen to be associated with JF are not claimed to be universally valid, because these liberal values of JF are not inherently connected to other conceptions of social justice and Rawls’s own conception of international justice. Given these two features of Rawls’s general theory of justice, it needs to be explained why this general theory of justice is liberal in character, nonetheless. In my view, one important aspect of this general liberal theory of justice is that Rawls’s notion of the Original Position (OP) can be used to account for the derivation of different conceptions of social justice and, in an extended sense, Rawls’s conception of international justice. In this and next chapters, I shall explain how OP can be used to derive and justify these conceptions of social and international justice.

In *A Theory of Justice*, Rawls claims that we can extend the method of the OP to decide on principles of international justice. In “The Law of Peoples,” Rawls reasserts this claim and gives us a brief explanation of how this extension works. What deserves our attention is that in *A Theory of Justice* Rawls does not seem to think that JF applies to international affairs. And, in *A Theory of Justice*, he does not say whether the principles derived from the international Original Position (IOP) constitute a liberal conception of international justice. In “The Law of Peoples,” Rawls clearly states that he attempts a liberal conception of international justice. But this alleged liberal conception of international justice is not an international extension of JF. For Rawls does not think it is appropriate to extend JF to cope with issues of international justice. He thinks that JF is
a conception designed for dealing with only one particular subject—the basic structure of liberal democratic society. In addition, there is an important substantive difference between the two.

According to Rawls, the substantive difference between the general liberal conception of justice and JF is that the former lacks three egalitarian features of JF: the fair value of the political liberties, fair equality of opportunity, and the Difference Principle. These three egalitarian features are exactly the same ideas expressed in Rawls's two principles of JF, which are derived and justified by OP. If we accept that these three are the core features of egalitarianism, then Rawls's conception of international justice is essentially non-egalitarian. This is an important aspect of Rawls's general theory of justice. For this means that OP can be used or extended, according to Rawls, in ways that lead to non-egalitarian principles of justice. In this view, Rawls seems to suggest that those substantive conceptions typically associated with JF (like those egalitarian values and some Kantian conception of the person) are not necessarily connected to all justifiable interpretations of OP. If this is a correct view, as I believe it is, then one important consequence of such a view is that OP need not be interpreted or described in ways that incorporate into, or associate with, OP those substantive conceptions typically seen to be part of JF. Whether or not Rawls also anticipates such a consequence is a question I shall not address, because this exegetical work would take us far away from my current project. In any event, I shall argue that OP need not be characterized or described in ways that incorporate into, or associate with, OP those substantive conceptions typically seen to be part of JF. As we shall see later, if my
argument is more or less acceptable, then it would be conceivable that different conceptions of social justice can be derived from OP, which is an indication of how the suggested Critical Political Pluralism is possible for Rawls's general liberal theory of justice.

As mentioned earlier, Rawls accepts that there can be more than one justifiable conception of social justice (and JF is but one of them) in his general liberal theory of justice. According to Rawls, a society is either liberal or non-liberal. So a society can be just because it adopts the liberal or a non-liberal conception of social justice. We know that Rawls has argued for the liberal conception of social justice, JF. But it is quite difficult to conceive how this general liberal theory of justice can account for the derivation and justification of non-liberal conceptions of social justice. Although Rawls does not give any detailed explanation of how this derivation is possible, his intent is quite obvious: he wants to establish Critical Political Pluralism. Thus, if it is possible and justifiable to derive different conceptions of social justice, then it is possible to account for Critical Political Pluralism. As we shall see, this Critical Political Pluralism is an important element not only to Rawls's general liberal theory of justice, but also to Rawls's conception of international justice. What is essential in demonstrating this Critical Political Pluralism is to show that the liberal as well as non-liberal conceptions of social justice can be derived and justified by Rawls's general liberal theory of justice. If this can be done, then it should be fairly straightforward to derive different conceptions of political legitimacy. The question (and problem) is how this can be done.
Since my concern is with how a conception of international justice is possible within Rawls’s theoretical framework. I shall not pay as much attention to how Rawls articulates the content of JF and how it is practically feasible. But for the purpose of explaining how the proposed Critical Political Pluralism is justifiable, it is important for me, on behalf of Rawls, to explain the derivation and justification of both the liberal and non-liberal views of social justice. If we assume that Rawls can justify JF, then, on this assumption, the question faced by me is to explain how it is possible to derive and justify at least one non-liberal conception of social justice within his general liberal theory of justice.

Unfortunately, Rawls does not provide any indication of how a non-liberal conception of social justice can be derived and justified. Nor does he indicate how to conceive the possibility of deriving and justifying a non-liberal conception of social justice within his theory. He simply assumes that it is reasonable for us to accept the liberal as well as non-liberal conceptions of social justice.

This is not satisfactory. The justification for the intended Critical Political Pluralism is of such particular importance to Rawls’s conception of international justice, as we shall see, that without it Rawls’s theory of international justice would be significantly less plausible or even undermined. Nor would he be able to deal with the criticisms from the cosmopolitan and the statist. On this consideration, I shall try to explain how it is possible that different conceptions of social justice can be derived and justified by using Rawls’s theoretical conceptions, especially OP.

However, Rawls’s own account of OP as found in A Theory of Justice and other
works is not suitable for such a task, as we shall see. So my attempt to explain how it is possible to derive different conceptions of social justice from OP will suggest some modifications to OP. Thus, before explaining how various conceptions of social justice are derivable from OP, I shall explain Rawls's account of OP and briefly his idea of extending OP to the derivation of principles of international justice. I wish to show why Rawls's account is not satisfactory and why my account of OP is more appropriate than Rawls's own, not only in explaining the possibility of deriving different conceptions of social justice (Chapter 2) but also in explaining how Rawls's own conception of international justice can be derived from lOP (Chapter 3).

2.2 Rawls's Account of OP and Moral Justification

Following Rawls, I have said that there are various subjects of justice, that is, many kinds of things can be said to be just or unjust. Corresponding to different subjects of justice, there are different problems of justice. In *A Theory of Justice*, Rawls focuses on what he takes to be the primary subject of justice—the basic structure of society. By the basic structure of society Rawls means "the way in which the major social institutions distribute fundamental rights and duties and determine the division of the advantages from social cooperation." According to Rawls, there are some primary social goods that are distributed by the basic structure of society. A thing is a primary social good in the sense that it is a good that every rational person wants no matter what else s/he wants. Liberties and rights, powers and opportunities, income and wealth, and self-respect, are
the primary goods that Rawls thinks are at the disposition of society. Obviously, how a society distributes these goods will have significant influence on its members' life prospects, which is one major concern of a theory of social justice:

The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chance of life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of every society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system.

So the subject of social justice is the basic structure of society and the problem of social justice is to address the moral problems arising from the fact that the influences of the basic structure of society on people's life prospects are present at birth and continue throughout life. In this regard, the foremost task of a theory of social justice is to formulate and justify a set of principles which the basic structure of society must satisfy. In *A Theory of Justice*, Rawls proposes and defends two principles of justice as the (or the most favored) answer to the question of what should count as a just basic structure: the first principle is that "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." The second principle is that "Social and economic inequalities are to be arranged so that they
are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.** A lot needs to be said about these two principles in order to explain why and how they are applicable in both the ideal world and the real world. But I shall not try to say much, if anything, about these two principles in these regards. For, as I mentioned earlier, the question that interests me and is relevant to my current project is how these two principles are derived and justified. I do not doubt that in further articulating these two principles we can understand better the plausibility of these two principles. But I think, as Rawls also believes, that we can talk about the method of how these two principles of JF are derived and justified, independently of our assessment of the substantive content of JF. So one may agree that the two principles of JF are morally acceptable but reject Rawls’s method of deriving and justifying them. Or we can reject Rawls’s articulation of the two principles of JF but accept the method that Rawls uses to derive and justify them. For this and other reasons that I have indicated so far, I shall now turn to Rawls’s method of deriving and justifying the two principles of JF.

The key to the derivation and justification of JF is OP.** According to Rawls, OP can be understood in two ways. First, the idea of OP is to describe “the initial position of equality as defining the fundamental terms of association among members of society as a cooperative scheme.”** Rawls’s contract theory maintains that the principles of justice for the basic structure of society are the object of the original agreement. According to Rawls, his two principles of justice are the principles that free and rational persons situated fairly,
that is, in OP. would accept. Thus, the two principles of justice convey the idea of JF because they are the principles agreed to by rational parties situated in an initial situation that is fair. On the other hand, OP should not be seen as an actual contractual situation, since it is not. OP is only an imagined, purely hypothetical, contractual situation. According to Rawls's characterization, OP can be understood without being referred to as a contractual situation. OP is characterized by Rawls as consisting of a set of constraints that it is reasonable to impose them on arguments for principles of justice. To enter OP, we simply follow a certain procedure (which consists in a number of conditions and restrictions) to argue for principles of justice. So, "to say that a certain conception of justice would be chosen in the original position is equivalent to saying that rational deliberation satisfying certain conditions and restrictions would reach a certain conclusion." This characterization of OP as a procedure seems to emphasize more the procedural and thus more formal aspect than the first characterization of OP, which seems to suggest that OP expresses or is part of the idea of JF. Although it appears that Rawls regards these two ways of understanding OP as equivalent, they need not be, as I shall argue. I shall argue that Rawls, for the purpose of presenting the general liberal theory of justice, should adopt only the latter, procedural understanding of OP, and abandon the former.

The first understanding of OP involves some substantive conceptions, while the second understanding of OP can be understood in a way without involving any of those substantive conceptions, as I shall explain later. The substantive conceptions that the former understanding of OP contains are those that assert not only that the parties in OP
are free, equal and capable of a sense of justice, but also that these are fundamental values to which the chosen principles of justice must conform. These conceptions are not as universal and uncontroversial as Rawls believes. The procedural understanding need not assert any of these. I believe and shall try to show that it is the latter, not the former, understanding of OP. in accordance with which Rawls can explain how it is possible to derive different conceptions of social justice from OP. Before I explain how the latter works to account for different conceptions of social justice, it is necessary that I give a general exposition of Rawls's own account and explain why Rawls's account does not work for his general liberal theory of justice.

Rawls's account of how his two principles of justice are justified is commonly understood as consisting of two elements: a description of OP and the method of reflective equilibrium. The relation between these two elements will become clear as our discussion progresses. According to Rawls, his two principles of justice are the principles that would be chosen in OP, which means that his two principles would be accepted by rational persons situated under the conditions characterized by the notion of OP. According to Rawls, such an account of the derivation of his two principle is also an account of the justification of them, because the description of OP in this account accords with our considered judgments of justice, which are adopted by the method of reflective equilibrium. Since OP is carefully constructed in light of our considered judgments of justice, the principles chosen in OP will "match our considered convictions of justice or extend them in a certain way."
There are several elements in Rawls's account of OP, which are characterized as such that Rawls's two principles would be chosen in OP. These main elements are (1) the rational motivation of the parties in OP, (2) the veil of ignorance, (3) the formal constraints of the concept of right, and (4) a list of competing principles of justice. For my present concern, I think we need not discuss the details of Rawls's explanation of how these elements work to insure that Rawls's two principles of justice would be chosen in OP. Let us assume that the two principles indeed would be chosen in OP as intended by Rawls. Once the parties in OP have chosen the two principles, according to Rawls, they would match "our" considered judgments of justice.

Even though Rawls tries to construct OP in a way that the principle derived from there will match our considered judgments of justice, he thinks it is possible that the chosen principles may not always match "our" considered judgments of justice. In cases where the chosen principles do not match our considered judgments of justice, according to Rawls, we need to apply the method of reflective equilibrium to check our initial construction of OP and/or our considered judgments of justice. Rawls thinks that when we go through the process of checking either or both of our initial construction of OP and our considered judgments of justice, we eventually will reach a state of equilibrium between the principles chosen in the initially constructed OP or a reconstructed OP and our considered judgments of justice. Rawls is convinced that his two principles of justice would be the end-result of using the method of reflective equilibrium, though he does not actually go through the process to demonstrate this.

In the above brief characterization of Rawls's idea of how the principles chosen in
OP are justified, one thing seems obvious: our considered judgments of justice play an
important role in Rawls’s theory of justice. Our considered judgments of justice are
important in two respects. First, as mentioned earlier, our construction (or description) of
OP is guided by our considered judgments of justice such that if we are careful enough,
the principles that would be derived from OP would match our considered judgments of
justice. Secondly, when we are not so sure about the principles derived from OP, our
considered judgments of justice would provide guidance for us to verify whether our
construction of OP and derivation of principles of justice from there are properly done.

Given the important role of our considered judgments of justice played in Rawls’s
theory of justice, I have so far not discussed whether and how Rawls’s description of OP
accords with our considered judgments of justice. Nor have I discussed whether Rawls’s
two principles which are alleged to be derived from OP match our considered judgments
of justice. It seems possible that Rawls might fail in more than one of these regards.
However, Rawls does not provide us any significant explanation of why he is so sure that
his construction of OP and the derivation of his two principles of justice are guaranteed
(by the method of reflective equilibrium) to be compatible with our considered judgments
of justice. It is possible that our reflection may lead us to accept different sets of
considered judgments of justice. In this case, we might be in great dispute over what a
correct description of OP should be, or over what the derived principles should be. Even
if we grant Rawls that we would be able to reach an agreement in these two regards, this
still leaves us with an open question: why is it so important that our construction of OP
accords with our considered judgments of justice? If it turns out that Rawls has no
satisfactory answer to this question, his theory would be undermined in one important aspect.

It seems to me that Rawls does not provide any considered answer to this question. Rawls may be right in incorporating considered judgments into his theorization. However, his failure of providing a satisfactory account of why it is important to do this subjects his theory to many criticisms. In the following, I shall point out some problems with Rawls's theory in this regard. After that is done, I shall try to explain why to defend Rawls's Critical Political Pluralism it is important to reconstruct OP in a way that I shall suggest in the remainder of this chapter.

2.3 Problems with Rawls's Account of OP

The requirement of reaching a state of equilibrium between the chosen principles and our considered judgments of justice, as discussed earlier, gives our considered judgments of justice a very special place in Rawls's theory of justice. One plausible way of understanding the rationale of imposing such a requirement is that it is not reasonable to think that people would accept the chosen principles as principles of justice, if the chosen ones are seen by them as incompatible with their considered judgments of justice or other deep moral convictions. This seemingly plausible consideration, however, may be questionable. For one thing, it is not very convincing to say that it is necessary that justification of principles of justice be seen as compatible with what intuitive moral beliefs people happen to have. We know that people may be misled or brainwashed that
they may reject what is justified and right.

Rawls's notion of considered judgments of justice seems to suggest that it is not just any judgment or moral conviction that people happen to have that would qualify to serve as guidance in the method of reflective equilibrium. Rawls seems to suggest that some judgments of justice of ours are considered ones, because we have the greatest confidence in them. In this case, those judgments of justice in which we do not have such strong confidence would not qualify as considered ones. This seems to remove the above mentioned criticism. However, Rawls does not really explain how we can say to ourselves and perhaps others that this set, but not that set, of judgments of justice of ours are the ones in which we have the greatest confidence. Nor does he explain whether and/or why people would have similarly strong confidence in the same set of judgments of justice. What Rawls does is only giving two examples of such considered judgments of justice: racial discrimination is unjust and religious intolerance is unjust. Even if we do accept that these two judgments are indeed considered ones, the notion of considered judgments of justice is at best intuitively, but not theoretically, sensible. There is no explanation of why these judgments are better qualified than others in guiding our construction of OP and eventually the derivation of principles of justice.

One may argue on behalf of Rawls that we can distinguish the considered from the non-considered by the aid of some formal constraints or some relatively uncontroversial constraints, although it remains to be seen how an account of the uncontroversial is possible. If people indeed can agree on what these uncontroversial constraints are and agree with one another that these constraints can serve as criteria for distinguishing the
considered from the considered ones, then one might be able to say that some of our intuitive judgments or moral convictions are considered because they meet these relatively uncontroversial constraints. Formal constraints as often expressed in the notion of formal justice seem to be a good candidate for such uncontroversial constraints. However, as pointed out by Rawls, formal constraints do not really rule out all possible substantive injustice, that is, these formal constraints may be compatible with beliefs that are contradictory to Rawls's two principles of justice (Rawls believes that a racist can have beliefs compatible with such formal constraints). If our considered judgments of justice qualified by the suggested formal constraints may allow substantive injustices, then our construction of OP in accordance with such considered judgments of justice would run the risk of deriving substantive unjust principles, which would undermine significantly Rawls's whole theorization.

To block such possible substantive injustice from plaguing our considered judgments of justice, it seems that Rawls must have some substantive criterion for the purpose of distinguishing what is a considered judgment of justice from what is not. However, Rawls does not suggest such a criterion in his theory of justice.

The above discussions of Rawls's notion of our considered judgments of justice revealed serious questions about Rawls's construction of his theory of justice. In addition to these just mentioned questions, there is another serious problem with Rawls's appeal to our considered judgments of justice in his construction of OP and derivation of his two principles of justice. This serious problem for Rawls is that Rawls does not specify the
range of "us" mentioned in his notion of our considered judgments of justice. If "we" does not refer to all human beings in the world, then there would be different groups. In this case, it should be of no surprise to find that others may have a set of considered judgments of justice quite different from ours. People might have a set of considered judgments of justice quite different from or even incompatible with Rawls's. In this respect, according to the idea of reflective equilibrium, these other people may construct OP in somewhat different ways, since their considered judgments are different from Rawls's. Also, their construction of OP may end up deriving principles different from Rawls's two principles of JF. It seems that such a possibility is not ruled out by Rawls. For one thing, as we have seen earlier, the construction of OP needs to be done in light of the guidance of our considered judgments of justice. However, there is no theoretical device that would prevent other people from adopting different considered judgments of justice as their guidance for their construction of OP. Furthermore, there is no theoretical reason why people may not use different considered judgments of justice when they use the method of reflective equilibrium in order to reach a state of equilibrium between the principles derived from OP and their considered judgments of justice. If this is right, then there is a serious question: if people derive different principles of justice which match their considered judgments of justice, are these principles justified as well, according to Rawls? There seems to be no convincing reason for Rawls to say that they are not justified as well.

As far as Critical Political Pluralism is our concern, this seems to be welcome news. For to show that Critical Political Pluralism is possible within Rawls's theory, it is
important that we can show that different conceptions of social justice can derived by using Rawls's theoretical device, OP. The above consideration seems to suggest a promising direction of explaining Critical Political Pluralism. But there is a serious problem lying beneath the surface of the above consideration. The problem is that while different principles of social justice can be derived from OP, there does not seem to be any criterion in accordance with which some considered judgments will be deemed as unacceptable. If this is the case, then every group would be free to use Rawls's notion OP to derive just about any principle.

One might say that Rawls's description of OP is not arbitrary. There are constraints that must be followed. The following constraints must be incorporated into the description of OP: the veil of ignorance, the formal constraints of the concept of right, the rationality of the parties in OP, and a list of alternative moral principles. If these are necessary components of any proposed description of OP, then it would seem that the above mentioned problem would be solved. However, this suggestion is plausible only for Rawls's own description of OP. As we may recall, OP is not constructed in accordance with pre-existing constraints. OP is constructed in light of our considered judgments. This means that Rawls's description of OP, which contains those just mentioned constraints as necessary elements, is in fact guided by what he thinks to be our considered judgments of justice. Now, Rawls can be right about this, that is, his judgment about what our considered judgments are may be correct. But Rawls does not tell us why he thinks his judgment in this regard is correct. Assuming that he is correct, there is still a question about the scope of his judgment that needs to be determined. Who are the
persons mentioned by Rawls in his notion of "our" considered judgments of justice? Are these persons human beings in general? Or. are they 20th-century Americans? If Rawls thinks that "our considered judgments" refers to judgments of the contemporary Americans, then would Nazi advocates' considered judgments be allowed to serve as guidance to construct OP? Rawls does not think so. But why? There seems no theoretical reason for Rawls to say no. In this case. the result would be political pluralism, not Critical Political Pluralism. But if it refers to judgments of all human beings, then there is no room for even Critical Political Pluralism, since there is only one set of acceptable considered judgments of justice to guide our construction of OP and/or balancing between the derived principles of justice and the considered judgments of justice.

It seems to me Rawls's account of OP will give rise to either of the two problems, that is. the problem of allowing various descriptions or revisions of OP without restriction or the problem of leaving no room for Critical Political Pluralism. For this reason. Rawls's own account of OP is not suitable for his general liberal theory of justice which. among others. is purported to explain Critical Political Pluralism. In the following. I shall suggest a different account of OP which would serve Rawls's general theory of justice more suitably. Before I come to explain this somewhat different account of OP, I want to give an overview of Rawls's conception of international justice. In the present context, I shall not try to explain in detail every aspect of Rawls's conception of international justice. Nor will I discuss the problems that it may face. The purpose of giving such an overview is to put my account of OP in a larger picture such that it will give my reader a
sense of why my account of OP is indeed needed to discuss and defend a Rawlsian conception of international justice.

2.4 A Preview of Rawls's Conception of International Justice

Rawls claims that OP can be extended to derive principles of international justice. Rawls gives two accounts of how OP can be extended to address the subject of international justice. The subject of international justice, according to Rawls, is the law of peoples. As I will explain in Chapter 3, the subject of international justice can and should be extended to major international institutions which may have significant impacts on international relations and ultimately on people's rights and well-being. A theory of international justice is to explain when major international institutions would be just. Such a characterization of the subject of international justice naturally holds that a just world order obtains when major international institutions in general are structured and administered in accordance with principles of international justice suggested by Rawls's theory.

Given the characterization of the subject of international justice, the next task is to explain how Rawls is to derive principles of international justice. According to Rawls, the derivation of principles of international justice is to be done by extending OP to the subject of international justice. Rawls gives two versions of how this extension can be done. One version is given in *A Theory of Justice*[^7], the other in "The Law of Peoples."[^28]

In *A Theory of Justice*, Rawls maintains that the same parties enter into the international
Original Position (IOP) to deliberate on choosing principles (of international justice) for international society after they have finished their assigned task in, as we may call it, the domestic OP. In this view, IOP is subject to the same constraints as the domestic OP. The parties in IOP are rational, constrained by the veil of ignorance, and so on. There are two differences between OP and IOP. In IOP, the parties are no longer representing individuals; they are now "representatives of states." Also, the parties in IOP are not to make decisions to advance their own interest. Instead, they are to make decisions for the purpose of promoting or at least preserving the national interest of the states they represent. Given these, Rawls asserts without any argument that the parties in IOP will choose those familiar principles as described in J. L. Brierly's The Law of Nations. Rawls maintains that "the basic principle of the law of nations is the principle of equality." Let us call this "the principle of international equality." This principle of international equality asserts that "peoples organized as states have certain fundamental equal rights...analogous to the equal rights of citizens in a constitutional regime." Under this basic principle of international equality, familiar principles of the law of nations are viewed to be derivable: the principle of self-determination, the principle of political sovereignty of states, the principle of nonintervention, the right to self-defense, the principle of justice in and of war, the principle of fulfilling treaties in good faith, and so on.

In "The Law of Peoples," Rawls gives a somewhat different account of how the idea of OP is extended for the purpose of deriving principles of international justice. Here Rawls asserts that states can be justified in accepting different conceptions of justice and
can be justified in establishing different political systems. This is the claim of a certain version of political pluralism, which is not claimed in *A Theory of Justice*.

As envisioned by Rawls, there will be just liberal states as well as just non-liberal states in a well-ordered society of nations. In this view, the extension of the idea of OP to the international realm is described by Rawls to consist in two deliberation sessions. First, the representatives of just liberal states will deliberate to choose a set of principles (of international justice) for the society of just liberal states. After this is done, Rawls maintains that it can be shown that the representatives of the just non-liberal states will choose the same principles as their counterparts of the just liberal states have done. According to Rawls, the principles chosen by both the representatives of the liberal and the non-liberal states are similar to those principles derivable from the principle of international equality except the principle of human rights, which requires that each state honors some basic human rights like the right to life and security, the right to personal property, the right to some freedom of conscience, the right to the rule of law, and the right to emigration. Thus, in Rawls's second account of the international extension of OP, the principle of human rights as well as the principle of international equality would be chosen by the representatives of states in IOP.

From the point of view of Rawls's general theory of justice, I think that we can justifiably treat the second account of IOP as Rawls's considered choice, although Rawls thinks that both accounts are compatible or basically the same. Let me summarize some key elements of Rawls's account of IOP: First, IOP is subject to a set of constraints
similar to the constrains imposed on the domestic OP. But, secondly, the parties in IOP are representatives of states making decisions to protect and/or promote the national interest of the just states they represent. Thirdly, the notion of national interest of a just state “is defined by the principles of justice that have been acknowledged” by them in the domestic OP. Fourthly, different societies can be justified in accepting different conceptions of social justice and political legitimacy. Fifthly, the representatives of just states in IOP will choose the principle of international equality and the principle of human rights as two fundamental principles of international justice by which the major international institutions will be judged. Finally, Rawls also claims that the principles chosen in IOP are justified because “we can endorse those principles on due reflection.”

Each and every of these claims has to be explained, especially how these together can address the three issues of international justice more adequately than the cosmopolitan and the statist approaches that I mentioned in Chapter 1. In any event, it is obvious that Rawls’s conception of international justice depends heavily on the plausibility of some version of political pluralism, that is, Critical Political Pluralism. If the intended Critical Political Pluralism cannot be adequately accounted for, then Rawls’s effort in presenting his conception of international justice would be severely undermined. All of these will be discussed in the chapters that follow. In the remainder of this chapter, I shall try to give an account of OP in light of which we can understand how such a notion of Critical Political Pluralism is possible for Rawls’s general liberal theory of justice. In the remainder of this chapter, I shall explain in a general fashion how a revised account of OP is possible for the derivation and justification of different conceptions of social justice.
2.5 A Two-Stage Account of OP

The purpose of giving OP a new account is to explain how different conceptions of social justice can be derived by OP. That is, explain how Critical Political Pluralism is possible. I said earlier this is only a general account, because what I will do is to explain how different conceptions of social justice can be derived by this alleged new account of OP without discussing in detail the content of these different conceptions of social justice. However, these two are separable in the sense that people might accept my explanation of the method of deriving and justifying principles of justice but do not accept those principles, and vice versa. People might think that my new account of OP is more or less correct but think that I should not claim that my version of OP may derive Rawls’s two principles of justice. They may think that my version of OP would derive a different set of principles of social justice for liberal society. Although I believe that my account of OP may still derive Rawls’s two principles of justice for liberal society, I make no argument in this regard. What I will try to show is only how my account of OP is able to derive non-liberal as well as the liberal conceptions of social justice. The contents of the liberal and non-liberal conceptions of social justice are left without being settled in this study.

The first revision that my account makes to Rawls’s account of OP is that OP will be characterized as a two-stage procedure of deliberation for choosing principles of justice. According to this revision, OP is now seen as a procedure for deliberation of
social justice consisting of two sequential stages. The first stage of OP is characterized as being under a set of constraints similar to those constraints proposed by Rawls like the veil of ignorance, the formal constraints of the concept of right, the rationality of the parties. In addition to these constraints, the parties in the first stage of OP know that the circumstances of justice obtain in their society. The addition of the knowledge of the circumstances of justice to the description of the first stage of OP defines the scope of justice. Thus, the principles of justice derived from OP apply to societies that, among other conditions, are situated in the circumstances of justice. The second stage of OP will consist in some other constraints and conditions, in addition to most constraints of the first stage.

Though not explained, this two-stage account of OP differs from Rawls’s account because of, among other things, the addition of a second stage. Before I give a more detailed explanation of this two-stage of account of OP, I would like to make a preliminary remark on this two-stage account of OP in the hope that my reader may have a sense of what this two-stage account of OP is up to. In a somewhat related sense, the idea of adding the additional second stage of OP is inspired by Rawls’s notion of reflective equilibrium. As we may recall, in Rawls’s account, the function of the method of reflective equilibrium plays an important role in either adopting a certain description of OP, and/or in making changes with regard to our considered judgments of justice, in order to reach a justified and acceptable conception of JF. In Rawls’s account of OP and the derivation of his conception of JF, the role that the method of reflective equilibrium plays is to make some connection between his a-social approach to the theorization of
justice (that is, to construct a theory of justice via the device of OP) and some empirically rooted elements (that is, our considered judgments of justice). As explained earlier, such a view of how the empirically related elements function in deriving and justifying the conception of JF is problematic: it either makes some unsupported empirical assumption about our considered judgments of justice (that is, for example, it assumes that people in all or most societies share the same set of considered judgments of justice), or allows rather unrestricted changes to the description of OP that may result in deriving incompatible and unacceptable conceptions of justice from OP. Although the proposed two-stage account of OP will incorporate the empirical, or more specifically the socio-culturally related, elements into the procedure of deliberation of choosing principles of social justice, the proposed two-stage account of OP can avoid the problems plaguing Rawls's own account. It should be noted that even utilizing the method of reflective equilibrium and the notion of our considered judgments of justice, Rawls, in A Theory of Justice, does not think that socio-culturally related elements should play important role in the derivation and justification of principles of social justice. Though Rawls, in his more recent works, seems to accept a view that connects his JF to socio-culturally related elements, he does not seem to say that these elements should be incorporated into OP. In this respect, two important aspects of two-stage account of OP differs from Rawls's own account. First, my major departure from Rawls is that I make it explicit that some socio-culturally related elements will be part of my two-stage account of OP. By incorporating such socio-culturally elements into the characterization of the proposed two-stage account of OP, it is now explicit that a theory of social justice constructed in
light of this two-stage account of OP is not claimed to be entirely a-social. This move from an a-social approach to a more socio-culturally dependent approach indicates how Critical Political Pluralism is possible for Rawls's theory. Secondly, the proposed two-stage account of OP will maintain that the incorporation of relevant socio-culturally dependent elements into the procedure of OP is conditioned by some constraints of the procedure. The constraints of OP in accordance with my proposed two-stage account will include not just the veil of ignorance, the formal constraints of the concept of right, and so on, but also additional constraints. It should be noted here, however, that the constraints of the two-stage OP need not accept all the constraints proposed by Rawls. Some constraints proposed by Rawls will be left out, as I shall explain later.

I said that my account of OP maintains that there are two sequential stages. But what is the purpose of dividing the whole process of OP into two stages? The main purpose is twofold. First, it is designed to show that there is a single general principle of justice that will be chosen by the parties in the first stage of OP. Second, it is to show that different sets of principles will be chosen by the parties in the second stage of OP in accordance with respecting different sets of constraints and conditions, and that these different sets of principles chosen in the second stage will be compatible with the just mentioned general principle of justice. Apparently both of these two need further explanations. Nonetheless, it should be somewhat clear that the purpose of this two-stage account of OP is that if this two-stage account of OP can be successful, then it is possible to explain Critical Political Pluralism for Rawls's general theory of justice. The above preliminary remark about my proposed two-stage account of OP should prepare us to go
into more detailed discussions of my version of OP and how Critical Political Pluralism is possible.

2.5.1 The First Stage of OP and the General Principle of Social Justice

The characterization of the first stage of OP will reflect certain constrains similar to the constraints proposed by Rawls: the formal constraints of the concept of right, the veil of ignorance, and the rationality of the parties. Though, as Rawls acknowledges, the formal constraints of right are related to a certain view about what is right or morality, these are formal constraints and for this reason these constraints would be rather weak. It is natural and appropriate to impose these formal constraints because the principles that would be chosen by the parties are to regulate the basic structure of society. According to Rawls, these formal constraints of the concept of right are generality, universality, publicity, to impose an ordering on conflicting claims, and finality. Constrained by these formal requirements, the principle chosen in the first stage would be such that it does not include any intuitively recognized proper names; it applies to every human being; it is known to everyone if this principle is accepted as the result of the agreement in OP; it specifies a general formal way of weighing and settling conflicting claims; and it serves as the final standard and there are no higher standards to which arguments in support of claims can be addressed. I think these formal constraints are more or less uncontroversial. However, these formal constraints are meant to apply only to the procedure of choosing the principle of justice in the first stage of OP. Their application in other situations,
especially situations of the real world, may require further considerations and may have quite different consequences.

The purpose of imposing the veil of ignorance is to make sure that the parties in OP are fairly situated and the procedure is not biased by contingent factors such that the procedure itself is not inherently discriminatory against particular parties. According to Rawls, the parties behind the veil of ignorance will not know their identities, sexes, specific interests, their social positions, their talents, their race, and so on. Also they will not know anything specific about their society, the political system their society adopts, the level of economic development of their society, the class structure of their society, the distribution of power, wealth, and other social privileges, in their society, and so on. The parties even have no knowledge about their conceptions of the good and the right. They don’t know which moral or religious doctrine is popular or banned in their society. The purpose of imposing the veil of ignorance is to filter out all particular information of the procedure of deliberation in the first stage of OP, because such particular information would have the consequence of making the parties choose a discriminatory principle in the sense that this principle will pre-determine the outcome of applying the chosen principle.

I think it is rather uncontroversial that the parties in the first stage of OP should not make their choice by considering their social positions, their specific interests, and some other personal factors. But it is not immediately obvious that they should not consider factors like the political system their society adopts, the level of economic development of their society, the class structure of their society, the distribution of power,
wealth, and other social privileges, in their society, and so on. It would seem that these are the factors that will give rise to problems of justice, meaning, a principle of social justice is needed because these social and political factors tend to cause disputes about what is just and unjust in society. Rawls maintains that the parties in OP should not be influenced by such social and political factors, because these are contingencies of social circumstance and are thus "arbitrary from a moral point of view."^{43}

If we are to follow Rawls in this respect, then our characterization of the first stage of OP would adopt a certain conception of the right, which is inherently connected to "a moral point of view" embedded in Rawls's theory of Justice as Fairness. In this case, the parties in the first stage of OP would be required to adopt a certain conception of the right. But there is a difficulty in implementing such a requirement, because Rawls's veil of ignorance also functions to bar the parties from adopting any particular conception of the right. In maintaining these two views, Rawls is either contradicting himself, or is proposing that the moral point of view that he thinks ought to be adopted by the parties is different from those particular conceptions of the right and/or the good that are filtered out by the veil of ignorance.

It is reasonable to think that Rawls believes that the moral point of view he talks about is different from the particular conceptions of the right and the good that are barred from the OP. But what is the moral point of view in question? Why is it allowed in OP? It seems that Rawls does not make any explicit articulation of this moral point of view. However, as I explained earlier, Rawls's acknowledgment that he adopts a Kantian interpretation of OP suggests that this moral point of view is to express the Kantian
conception of persons, that is, to treat persons as autonomous rational beings and as ends in themselves.\textsuperscript{44} This, to use Dworkin's phrase, is Rawls's "deep theory behind the original position"\textsuperscript{45} which requires that every one have "a right to equal concern and respect"\textsuperscript{46} in the design and administration of the major institutions of the society that govern them. To understand Rawls's moral point of view as a deep theory of the right to equal concern and respect, there is good reason to say that contingent factors of social circumstance and institutions should be ruled out of OP as morally arbitrary, especially when we tend to think that existing social institutions and other factors do not always give equal concerns and respect to all.

Even so, there is a serious question about this deep theory behind OP. The question that Rawls has to address is whether this moral point of view is indeed different from all the particular conceptions of the right and/or the good that are barred from OP. Since this deep moral theory behind OP is a normative theory, it is not obvious that it is different from those barred from OP. Maybe Rawls believes that this deep moral theory is one of the alternative moral theories that are allowed as an element of Rawls's characterization of OP, as mentioned earlier. However, if this is the case, then Rawls would seem to beg a big question in implementing this deep moral theory in the veil of ignorance. Furthermore, many people have maintained that such a moral point of view is just one of the particular conceptions of the right, developed out of certain socio-political conditions of some Western societies. On these considerations, it appears questionable for Rawls to hold that those contingent factors should be filtered out of OP by the veil of ignorance because they are arbitrary from the moral point of view expressed by his deep
moral theory. It is questionable because such a deep moral theory is supposed to be ruled out by the veil of ignorance and thus is biased against other moral theories.

The above considerations also reveal a serious problem for Rawls. As mentioned earlier, Rawls claims that any particular conception of the right or the good ought to be filtered out by the veil of ignorance. The purpose of doing this is to ensure that OP is more or less a neutral procedure. Since Rawls's description of OP incorporates a particular moral theory, how can it be neutral? In a sense, the claim of neutrality of OP inevitably will have to face this or similar challenge, since the very notion of OP is to impose some constraints on what the parties are allowed to know, which assume a certain normative point of view, or even a certain moral point of view. In this respect, it is impossible to propose a procedure like OP and claim that OP is neutral and will not allow any moral point of view. So the fairness of OP characterized by Rawls should not be understood as morally neutral. Rather the fairness of OP characterized by Rawls is to be understood as based on the Kantian view of persons, or a deep moral theory giving all individuals equal concerns and respect. In this respect, Rawls's characterization of OP is not as uncontroversial as he claims it to be and the constraints of OP are not as weak as claimed. It is of no surprise that people who hold different moral theories would have serious problems with Rawls's characterization of OP.

To some extent, I think that it is inevitable that even my two-stage account of OP will have to incorporate some substantive conceptions into the procedure. However, I think and will try to explain that it is not necessary that such substantive conceptions
incorporated into the first stage of OP be characterized as something similar to Rawls's deep moral theory. Rather, I believe and shall explain that particular moral theories like Rawls's deep moral theory may be adopted only in the second stage of OP.

Since I accept that the parties in the first stage of OP are constrained by the veil of ignorance, in order to avoid the problem faced by Rawls the fairness of the first stage of OP would need to be understood in a different way. The veil of ignorance imposes constraints on the parties in the first stage of OP such that they have no knowledge of all those contingent factors and no knowledge of any particular conception of the good or the right. The question is how such a thick veil of ignorance can be imposed without appealing to some substantive conception like Rawls's deep moral theory. One way of getting around this difficulty is to adopt a different but normatively minimal criterion of filtering out these factors. One important part of articulating such a criterion is that this criterion is not based on any substantive doctrine. To do this, we can think of the purpose of filtering out all these factors from a more practical point of view. That is, we think that the parties in the first stage of OP should not know any of those factors listed above, because if any of those factors is allowed into the procedure, then it is likely that the parties would be affected by the factor in question that they may choose a principle inherently favoring some particular parties in the real world, when this chosen principle is carried out effectively in the real world. Such an outcome will not help resolve disputes about justice in the real world. For one thing, those disfavored by the principle may say that this principle is not justified because the procedure of choosing principles of justice is biased. These disfavored parties may say that if they would know that the procedure is
biased, they would not take part in the procedure.

The above discussion indicates an alternative way of explaining the imposition of the veil of ignorance. The constraints of the veil of ignorance in the above discussion are the same as those in Rawls's account. But Rawls's explanation invokes a moral point of view supported by his deep moral theory. My practical explanation need not invoke any similar theory: it is a fair procedure from a practical point of view. That is, it is a procedure that everyone agrees to follow, because it helps determine what is just and unjust without favoring anyone, not because it gives everyone equal concern and respect. We may say that my explanation of the fairness of OP in effect treats the parties the way Rawls's account of OP does. However, the reason for such a treatment, in my account, is practical, not moral as in Rawls's account. In this view, we may say that people have a practical reason to agree to follow the procedure of OP; they are not obliged by, for example, Rawls's deep moral theory to follow the procedure of OP. In this case, my characterization of the first stage of OP will not face similar problems discussed earlier. Such a practical explanation of the veil of ignorance thus will not be associated with the Kantian theory of persons or Rawls's deep moral theory. So the rationale for imposing the veil of ignorance in the first stage of OP is not based on a certain moral point of view; rather it is based on a practical consideration for suspending all the factors that often cause disputes about what is just and unjust.

Now such a practical explanation of the imposition of the veil of ignorance may be seen as less stringent, because not all the factors that Rawls treats as morally arbitrary do always cause disputes over justice in practice. It is imaginable that when people are
situated differently, they may have quarrels about social justice for different reasons. In this respect, my practical explanation of the veil of ignorance may be seen to lack a unitary criterion for imposing constraints on the parties in the first stage of OP. I think I am willing to admit that people under different socio-cultural conditions may have different views about social justice. But it is fairly observable that those factors seen as contingent and morally arbitrary by Rawls have the tendency to cause disputes over social justice in human history. To adopt and accommodate both of these two views, my two-stage account of OP maintains that it is reasonable to impose Rawls’s veil of ignorance in the first stage of OP and to take into consideration socio-political conditions in the second stage of OP. There is a general constraint throughout the two stages of OP, that is, our characterizations of the procedures in these two stages should try as far as possible to avoid proposing a biased procedure. I shall explain this in more detail later.

Though the veil of ignorance is very thick, the parties in the first stage of OP are allowed to have general knowledge about human activities. “They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology.” The parties in the first stage of OP are allowed to know something about the basic principles of market economy. However, they are not allowed to know any particular facts about the economic system, development, and so on. (Some of these general facts will be allowed in the second stage of OP under some conditions, as I shall explain later.) There is a general constraint on what the parties are allowed to know: general information is allowed insofar as such information is
compatible with the purpose of imposing the veil of ignorance. By this constraint, if a certain piece of general information proves to be controversial or biased, then it would not be allowed into OP.

Given the strict constraints of the veil of ignorance, the parties in the first stage of OP have little information that they can use to deliberate on choosing principles of social justice. Despite this, the parties have to come to an agreement on a set of principles of social justice. In Rawls’s account of OP, the parties are characterized as rational and are motivated to choose principles to promote their interests. However, the veil of ignorance bars them from knowing anything particular about their interests in the real world. For this reason, the parties can only make their choice based on a very general and abstract notion of self-interest without any concrete content. Although it is quite demanding for the parties under such strict conditions and constraints of OP to make a decision, I will try to show that the parties will choose a general principle of social justice (GSJ), which will be spelled out in a moment.

To understand why the parties as rational deliberators situated in the first stage of OP will choose a general principle of social justice, it is important that we put together all the requirements and conditions attributed to our characterization of the first stage of OP so far. First, the parties in the first stage of OP know that they are to choose a set of principles for regulating the basic structure of society; secondly, they know that they are constrained by a thick veil of ignorance; and thirdly, they want to choose a set of principles to promote their interests. There is an important piece of information that is
part of the information the parties have, that is, they know there are societies that have
developed diverse social and political conditions, but they don’t know to which society
they in fact belong. The parties also know that if they choose a principle that is alien to
their socio-historical conditions, then it is unlikely that this principle would be effectively
implemented in the society they live. On this consideration, they would choose a principle
that they think is rational and practical. It is practical in the sense that it will be
compatible with their social and historical conditions from the point of view of OP.

The above explanation of the conditions and constraints of the first stage of OP
does not seem enough to give the parties sufficient guidance for them to make any
meaningful decision. For one thing, there is nothing substantive enough to render the
parties’ decision a rational one. In seeing this, Rawls introduces the notion of primary
social goods (or primary goods, for short). According to Rawls, primary goods are things
“which it is supposed a rational man wants whatever else he wants.”48 According to
Rawls, rights and liberties, opportunities and powers, income and wealth, are the main
items of primary goods.49 With the aid of the notion of primary goods, Rawls thinks that
the parties in OP under the strict constraints of the veil of ignorance would be able to
make a rational decision. For one thing, the parties in OP would think that with more of
these goods, they can in general be assured of more success in pursuing their own
interests. In this regard, Rawls believes that the parties in OP have a rather general
conception of the good so that they will be able to make rational decisions.

However, there is a serious problem with this general conception of the good. The
problem arises from Rawls’s list of primary goods. According to Rawls, primary goods
are things that everyone wants regardless of whatever else s/he wants, (or things that s/he preferences more than less). Assuming that this definition is accepted. On this assumption, it is not clear that those things listed by Rawls as primary goods are indeed things that everyone wants or wants more than less, regardless of whatever else s/he wants. Such a list is problematic in two senses. First, at the individual level, some people may not see powers or wealth as things they want, no matter whatever they want for their life-plans. Some may think that power is irrelevant to the pursuit of their life-plans. Some may even think that the more powers they have they are more inclined to be distracted from their life-plans. Secondly, at the societal level, some societies may have their lists of primary goods that are quite different from Rawls's. The same society may have different lists of primary goods under different historical conditions. In a certain society, to have some access to the sacred place may be seen as a primary good. For a Buddhist society, for example, income and wealth, powers and opportunities, may not be seen as things that it is better to have more than less. These are very preliminary remarks. My point is that even if we accept Rawls's definition of primary goods, it is not clear that Rawls's list will hold for most people or most societies. If the parties in the first stage of OP are to base their decision on Rawls's list of primary goods, their decision would be biased. The above consideration indicates that the thick veil of ignorance will bar the parties in the first stage of OP from knowing primary goods proposed by Rawls.

Nevertheless, the parties in the first stage of OP can and will base their decision on the idea that the principle they would choose has to be able to protect and/or promote their interests. Since they don't know their conceptions of the good and even a general
conception of primary goods, how would they be able to make any rational decision? To answer this question, we have to examine the subject of justice. As I mentioned earlier, the subject of justice is the basic structure of society. The parties in OP know that the principle they would choose will regulate how the major institutions of their society distribute rights and duties and divide benefits and burdens of cooperation. Given the constraints of the veil of ignorance, each party is not able to choose a principle that is formulated to her/his advantage. Since the parties have no knowledge of what particular conceptions of the good and the right they in fact hold. Nor does she have any knowledge about what conception of the good or the rights would favor her. Given such a strict veil of ignorance, there seems to be no rational ground for the parties to choose a principle that is thought to be based on any of these conceptions. In other words, each of the parties in the first stage of OP has no sufficient ground to choose. say, a liberal principle which prescribes an egalitarian design of social institutions, or a non-liberal one. Of course, if the parties would be informed that people in liberal societies are in general more advantaged to pursue their interests, then the parties would have ground to choose a liberal principle of justice. However, this information is not allowed in OP, because this information already assumes a certain conception of the good and is based on some contingency of human experience.

Given the above considerations, it seems that the parties cannot choose any principle. However, I think that they can and they will choose a principle which is very general. This general principle will leave enough room for them to further consider and choose more specific principles when they would be given more information in the
relevant regards. What would this general principle be? Rawls actually provides us a helpful guide. Rawls makes a distinction between the concept of justice and various conceptions of justice. According to Rawls, people who hold various conceptions of justice may nonetheless agree on the role that justice plays. Rawls calls this agreement "the concept of justice." The concept of justice maintains that an institution is just when no arbitrary distinctions are made between persons in assigning rights and duties and in dividing burdens and benefits of social cooperation. In light of Rawls’s distinction, we can say that though the parties do not know what they will eventually choose in the second stage of OP, they agree on a principle similar to Rawls’s concept of justice. This principle, as mentioned earlier, is called the general principle of social justice (GSJ). Although GSJ is based Rawls’s concept of justice, GSJ will impose some further constraints. Roughly put, GSJ holds that a social institution is just when no arbitrary distinctions are made between persons in assigning rights and duties and in dividing burdens and benefits of social cooperation under further specifications of the meaning of arbitrariness. Later, I shall give a more formal characterization of GSJ.

So the most important aspect of GSJ that explains how it differs from Rawls’s concept of justice is the further specifications of the notion of arbitrariness. To say that a certain arrangement is arbitrary, we presuppose that there is a set of criteria in accordance with which the arrangement in question is judged as arbitrary or not. Thus, the requirement of GSJ that a just institution make no arbitrary distinction presupposes a set of criteria. Although the constraints of the veil of ignorance prevent the parties from specifying the notion of arbitrariness in terms of any particular conception of the good
and the right, the veil of ignorance does not rule out the possibility that the parties in the first stage of OP may adopt a certain criterion to define arbitrariness. There are two perspectives from which the parties in the first stage of OP can further specify such a criterion and thus more or less define the meaning of arbitrariness. One is a formal perspective, the other substantive.

From the formal perspective, the parties in the first stage of OP would think that an arrangement is arbitrary when this arrangement is made by violating relevant existing rules, other things equal. For example, if there is a rule that every citizen reaching a certain age must serve in the armed forces for a certain period of time, then if an arrangement is made to let a certain individual evade this mandatory service, then such an arrangement is arbitrary. Here, for simplicity, I assume that there is not any overriding reason that may justify such an arrangement. For example, this individual does not have any mental and/or physical abnormality; there are no unexpected things happening to his family; he has no firm moral or religious beliefs that prohibit service in the military; and so forth. Also I assume that there are no conflicting rules to which such an arrangement can appeal. This individual tries to evade this mandatory obligation, because he does not want to serve in the military. And he is able to have this arrangement made, because he is a son of, say, a high ranking state official. If any social institution allows an arrangement of this or a similar sort to occur, then this institution makes arbitrary distinctions between persons. From the point of view of the first stage of OP, an institution that allows such arbitrary arrangement is unjust. This notion of justice is similar to that of formal or legalist justice.
The above formal or legalist account of non-arbitrariness takes the existing rules as given. It does not raise any question about the content of the existing rules. It may happen that some rules are so "badly" made that it is difficult or impossible to administer them consistently. Vague rules often leave room for different or even conflicting interpretations. In this case, these rules may not be administered consistently and impartially. Here let us leave such vague rules aside. Apparently, clearly written rules can be administered consistently and impartially but make "arbitrary" distinctions. For example, there can be a rule which gives people with a particular last name some privileges over those with different last names. This kind of arbitrary distinction is not formal. Rather it is substantive.

To judge that a certain rule or institution makes substantive arbitrary distinction, the parties must have some substantive criterion. However, the parties in the first stage of OP are put behind the thick veil of ignorance. They are not allowed to have any particular substantive conception of the good and the rights. It seems that the parties can only understand the notion of non-arbitrariness in the formal sense. However, the notion of formal justice is not strong enough to base the intended Critical Political Pluralism. For one thing, it is a common view that a society that cannot be said to be just can still administer its rules and institutions consistently. In this regard, to prevent GSJ from qualifying such a substantively unjust society as a GSJ-just society, the non-arbitrariness prescribed by GSJ must be understood in accordance with a certain substantive criterion as well. The question is whether the parties in the first stage of OP under the veil of ignorance can agree on any substantive criterion as well as the above mentioned formal
The question may be put in a slightly different way: without having knowledge of any conception of the good and the right, can the parties in the first stage of OP agree on any substantive criterion in accordance with which the content of rules and institutions would be judged as arbitrary? Rawls’s notion of primary social goods seems able to provide an answer to this question. However, as explained earlier, Rawls’s list of primary goods is problematic. According to Rawls’s definition of primary goods, primary goods are things that people want regardless of whatever else they want for their life-plans. If we accept this notion of primary goods, then we can use this notion to explain what kind of substantive criteria the parties in the first stage of OP can agree on.

Rawls’s characterization of primary goods has an important feature. That is, the notion of primary goods is independent of people’s particular interests. So while it is appropriate to say that primary goods are things that people want no matter what else they want for their life-plans, it is also appropriate to say that primary goods are things that people, without knowing their particular interests, want. In this view, we can say that the parties in the first stage of OP, not knowing what their interests are and what their life-plans are, would still want certain things, that is, primary goods. So, we can say that if the parties in the first stage of OP can agree on a substantive criterion of non-arbitrariness, then we can say that they accept some primary goods. Since we have rejected Rawls’s list of primary goods as problematic, the question we have to address is: what are those suggested primary goods?

A list of primary goods can be found in Rawls’s notion of basic human rights.\(^{53}\)
According to Rawls, basic human rights include at least "such basic rights as the right to life and security, to personal property, and the elements of the rule of law, as well as the right to a certain liberty of conscience and freedom of association, and the right to emigration." I must note here that Rawls does not say in any way that basic human rights are primary goods. Rawls maintains that basic human rights are minimum requirements that a just society, liberal or non-liberal, must meet. But if the view that basic human rights are things that people want independent of their particular interests is accepted, then, from the point of the first stage of OP, we can say that basic human rights specify certain things that the parties in the first stage of OP want.

To treat basic human rights as primary goods, we are saying that people want the basic structure of their society to be designed and administered in ways that their lives are not constantly threatened within the state, that they feel secure in conducting their normal social life, that they may express in certain ways their political opinions, that they can form families, clubs, associations, and so on, and that they are allowed to leave the country. Although these basic human rights are quite intuitive, there is one question regarding the nature of basic human rights: how are these rights to be understood? Put it differently, how ought the basic structure of society to be designed in order to meet the requirements of these rights? I think this question can be addressed in light of Hohfeld’s notion of rights as claims. Hohfeld maintains that, in the strictest sense, for any actor S, S’s having a right to x is such that, for some other actor P, P is under a certain obligation toward S regarding S’s obtaining of x. So, for example, suppose that S owns a piece of land. We might think that S has a right against some other actor P that P stay off it. Now,
suppose that S does have this right. It is clear that S’s right is a right to the obtaining of the state of affairs that consists in P’s staying off it. According to Hohfeld’s notion of rights in the strictest sense, we may say that S’s right is a claim against P that P stay off it. This claim right of S against P is correlative with P being under an obligation (of staying off that piece of land) toward S.

On the other hand, S may have a right to y but P is not under any obligation toward S regarding S’s obtaining of y. For example, suppose that P owns a piece of cake and that P gives S permission to eat it. So by P’s own act, S acquires a right regarding P to eat the cake. However, S’s having the right to eat the cake does not thereby put P under an obligation that S obtain the state of affairs, that is, eating the cake. For S might simply have, for example, no interest in eating that piece of cake. This lack of interest on S’s part does not impair S’s having the right, even though the relevant state of affairs does not obtain. But P is not under an obligation to make the relevant state of affairs obtain, i.e., S’s eating the cake. So if the state of affairs described by the content of S’s right does not obtain, P would do no wrong, since P is not under any obligation of making that state of affairs obtain.

In light of this distinction, the moral force of S’s having a right in the first case is stronger than in the latter in exactly the sense that in the first case S’s having a right puts P under a certain obligation while in the latter S’s having a right does not put P under any obligation. Thus, we may say that S can have a right either in the strong sense or in the weak sense as described.

The above brief discussion of rights in light of Hohfeld’s distinction provides one
helpful way of understanding the moral force of basic human rights. We may say that since basic human rights are primary goods that rational people want, society is under an obligation to see to it that if they want to, for example, express political opinions, they have safe channels to do this. Different societies may have different ways of doing this, but it is clear that they are under an obligation to do it. These basic human rights are thus rights in the strong sense. Even so, the right to emigration may be seen as a right in the different sense. It seems more plausible to say that people want to have this option but they would not think that their government is under any obligation to make sure that those who want to leave their society be successful in doing this. In an ideal society, it is supposed that most people would not choose to leave their society. It is supposed that only a few members would think it is rational to leave their society. On this assumption, we don’t have to worry about the problems with over emigration. Even so, it is not plausible to think that the government is under any obligation to see to it that those who want to leave do leave. The right to emigration is correlative with an obligation of the government that it may not make law to prohibit emigration.

Given the above formal and substantive explanations of the notion of non-arbitrariness prescribed in GSJ, I now want to give a tentative formulation of GSJ as follows:

**GSJ**: an institution, in assigning rights and duties and in dividing benefits and burdens of social cooperation, ought not to make any arbitrary
distinction between persons in the sense that (1) the existing relevant rules are administered in accordance with the notion of formal justice, and (2) it and relevant rules do not violate basic human rights.

So far, what I have explained is only that the parties in the first stage of OP can agree on GSJ. Now I want to discuss whether they will agree on GSJ. To say that the parties in the first stage of OP can agree on GSJ, we assume that GSJ is one of the alternatives from which the parties can choose. To show that the parties will choose GSJ but not others, I will have to explain why GSJ is preferable to any other alternative. It seems that there can be many alternatives to GSJ. But, these alternatives, it seems to me, can be divided into two groups: one group consisting of principles that are compatible with GSJ, the other consisting of principles that are incompatible with GSJ. Given these two groups of possible alternative principles, we need to show that the parties in the first stage of OP will choose GSJ over other compatible principles and over those incompatible principles.

To determine whether the parties in the first stage of OP will choose GSJ over GSJ-compatible principles, we have to determine whether there are such GSJ-compatible principles available to the parties in the first stage of OP. A GSJ-compatible principle is one that honors the requirements of GSJ and something more. I think it is possible that there may be such GSJ-compatible principles available to the parties in the first stage of OP, since the requirements of GSJ are quite minimum. But such principles must be such
that they would not biased against liberal or non-liberal societies. However, given the strict constraints of the veil of ignorance, it is not obvious that the parties in the first stage of OP can choose principles that have more content than GSJ, as I tried to explain earlier. At any rate, even if there could be richer principles available to the parties in the first stage of OP, the parties would choose a principle of which GSJ is an essential part. We may say that whatever alternative GSJ-compatible principle that the parties might choose, they will choose GSJ.

Now let us turn our attention to the question of whether the parties in the first stage of OP will choose GSJ over GSJ-incompatible principles. Here let us characterize the GSJ-incompatible principles as those maintaining that society in its basic structure has no obligation to honor all or most basic human rights and to maintain formal justice. Between GSJ and a GSJ-incompatible principle, what would the parties choose? I shall show that the parties would choose GSJ.

According to Rawls, the parties in OP are rational (at least in the sense they are capable of reasoning from ends to means). They are to make decisions to advance their conceptions of the good. Since they are behind the veil of ignorance, they cannot make their decisions based on any social or natural factors. The constraint of the veil of ignorance, according to Rawls, also prevents them from reasonably assessing the probability of how in fact decisions based on considering such factors will benefit them. Still, they are required to make decisions. So they are to decide under the condition of uncertainty. But they want their decisions to protect and/or promote their interests when
the decision made in the first stage of OP is carried out in the real life. To say that the
parties would choose GSJ over any GSJ-incompatible principle is tantamount to saying
that they have reasonable ground to believe that GSJ, if carried out in the real world,
would better protect and/or promote their interests than any GSJ-incompatible principle.
But what is this reasonable ground?

Since the parties are put behind the veil of ignorance, according to Rawls, they
cannot claim that their decisions are made in light of their assessment of the probabilities
of how GSJ and the GSJ-incompatible would protect or promote their interests. What
they can do in reaching a reasonable decision is to make a conditional assessment of the
consequences of choosing GSJ or the GSJ-incompatible. That is, they have to assess and
compare the consequences of living in a society regulated by GSJ and the consequences
of living in a society regulated by the GSJ-incompatible. Given my characterization of
GSJ, to live in a society regulated by the GSJ-incompatible is to live in a society that does
not honor basic human rights and does not administer its law and institutions in
accordance with the notion of formal justice. In envisioning the consequences of choosing
GSJ and the GSJ-incompatible, the parties have to determine which of these two kinds of
society would give them protection for pursuing their interests. It seems that if one can be
assured that s/he is a member of the elite group, then s/he probably would have reason to
choose the GSJ-incompatible. This is because it is reasonable to think that members of
the ruling party of a society regulated by the GSJ-incompatible would have more power
and greater authority than their counter parts in a society regulated by GSJ, which would
in turn give the members of the ruling party in the GSJ-incompatible society greater
liberties to pursue their interests than their counterparts of the GSJ society. However, for those who do not belong to the ruling party, they would be guaranteed to enjoy basic human rights and to be governed by the rule of law in the GSJ society, while the ruled mass in the GSJ-incompatible society are not guaranteed to enjoy basic human rights and the rule of law. One consequence of living in the GSJ-incompatible society is that without the rule of law and the protection of basic human rights the ruled mass would have no social basis to make their long-term or even mid-range life-plans.

In envisioning the consequences of choosing between GSJ and the GSJ-incompatible, the parties in the first stage of OP would choose GSJ, because it is not reasonable to choose a principle that does not regulate the basic structure of society so that they would have a social basis to pursue their life-plans, given that they have no assurance that they are in fact members of the ruling party. Also given the knowledge about human history, the parties in the first stage of OP know that a GSJ-incompatible society tends to be authoritarian or even totalitarian. That means they also know that no one except the highest ruler or very few core members of the ruling party is not subject to the haphazard way of governing. In this light, the parties in the first stage of IOP have no reasonable ground to choose the GSJ-incompatible. GSJ is a more reasonable choice. Now some people are more willing to take risks and choose the GSJ-incompatible. But their risky decisions would be unreasonable, because they might have only very slim chances of being a member of the ruling party. For example, if these adventurous parties turn out to live in a highly populated country like China or India, their chances of being core members of the ruling party may be one in one hundred million or less. On these
considerations, the parties put behind the veil of ignorance have a reasonable ground to choose GSJ. They know that a society regulated by GSJ is sure to give them social basis to make and pursue their long-term or mid-range life-plans. Since it is not reasonable to choose the GSJ-incompatible (because a GSJ-incompatible society will not guarantee them such a social basis for making and pursuing their life-plans), they will choose GSJ.

The above discussion of how the parties in the first stage of OP will choose GSJ, in a sense, may be understood in light of Rawls's notion of maximin. But in the above, I have tried to avoid invoking the notion of maximin. One reason is that Rawls adopts the maximin rule to explain why the parties in OP adopting this maximin rule would choose his two principles of JF. Rawls is often criticized for making exceptionally strong assumptions in using the maximin rule, which in turn may undermine his intent of explaining why his two principles of JF are the maximin solution to the problem of social justice. Whether the notion of maximin provides the more favorable model of social justice, and whether or not Rawls's two principles of JF are indeed the maximin solution to the problem of social justice, are serious questions that cannot be adequately tackled here. Nevertheless, it seems clear that the parties in the first stage of OP, with only GSJ and the GSJ-incompatible to choose from, can be seen to follow a rule similar to the maximin rule in choosing GSJ.

In saying that the decision rule that parties in the first stage would follow is similar to the maximin rule, I do not imply that the parties care very little, if any, for what they might gain beyond the minimum goods insured by GSJ. How much they care in this regard is a question that cannot be determined in the first stage of OP. It is reasonable to
think that people have different views in this regard. Some might care very much. Others care less. There might be people who don’t care or care very little. It is reasonable to say that people’s views about the marginal values of the goods provided by GSJ are in important ways shaped by the family and society in which they grow, the conceptions of the good and the right that they accept, and so on. Since these are contingent factors, the parties in the first stage of OP are not supposed to know. For this reason, they also do not know how much they care about the marginal value of the goods guaranteed by GSJ. But they do know that if they choose the GSJ-incompatible, then there would be no social basis for them to pursue their views about the marginal values of the GSJ goods. In a sense, the decision rule that the parties will adopt in the first stage of OP is different from the maximin rule, because this rule tells the parties to choose a principle among alternatives that will guarantees them a minimum social basis for pursuing their life-plans. But the parties in OP following maximin rule, according to Rawls, would choose his two principles of JF, which requires society to provide more than what GSJ requires.

Now I have explained how GSJ will be chosen by the parties in the first stage of OP by explaining why the would choose GSJ (1) even if they would choose a GSJ-compatible principle and (2) they would choose GSJ over the GSJ-incompatible as characterized earlier. For the purpose of explaining how a Rawlsian conception of Critical Political Pluralism is possible, the next step is to explain how different conceptions of social justice can be derived in the second stage and be constrained by and thus compatible with GSJ.
2.5.2 The Second Stage and Different Conceptions of Social Justice

The parties in OP have to engage in the second stage of reasoning after they have chosen GSJ in the first stage of OP. One main reason they have to do this is because GSJ is too general to have any practical significance, because GSJ will be compatible with quite different conceptions of social justice. For this reason, the parties in OP need to further deliberate on choosing more specific principles to be practically suitable for the society of which they are members. If we compare Rawls's conception of JF expressed in terms of his two principles of JF mentioned earlier, we can immediately see this. Although JF and GSJ are compatible, Rawls's JF is more specific than GSJ. The difference between GSJ and JF should illustrate the point that GSJ is not practical because it is too general to be able to adequately guide and regulate the basic structure of a liberal society in ways similar to how Rawls's two principles of JF do.

As we have seen, according to Rawls's account, the conception of social justice that will be derived by OP is JF. But I have claimed that such an account is not suitable for Rawls's general liberal theory of justice, which maintains, among other things, that non-liberal conceptions of social justice can be derived and justified by OP. However, Rawls does not show how he is to account for any non-liberal conception of social justice. Rawls does not say whether certain non-liberal conceptions of justice can be derived by OP. Since Rawls's own account of OP assumes those substantive conceptions associated with JF, it does not seem possible to use Rawls's own account of OP to derive a non-
liberal conception of social justice, which presumably is not based on those substantive conceptions associated with JF. In this section, I want to explain how certain non-liberal conceptions of social justice can be derived in the second stage of OP.

Instead of directly discussing the procedure of choosing different sets of more specific principles in the second stage of OP, I want to indicate how it is possible for the parties to choose different sets of principles by way of making some remarks about the general features of the liberal conception of social justice. When this is done, then we may have a good base to discuss some general features of non-liberal conceptions of social justice. My hope is that my discussion of those general features of both liberal and non-liberal conceptions of social justice will lead us to see that the constraints and conditions of choosing principles in the second stage of OP are in important ways connected with some relevant social and cultural elements. Once we understand this aspect of the constraints and conditions of the second stage of OP, we can, at least in principle, understand that it is indeed possible to derive and justify different conceptions of social justice by OP within Rawls' general liberal theory of justice.

Let me begin my discussion of some general features of the liberal conception of social justice by assuming that Rawls' theory of JF provides an adequate account of the liberal conception of social justice. According to Rawls, one important aspect of the liberal conception of social justice is that it is to be understood as a political conception as well.61 The liberal conception of social justice as a political conception of justice has three features.62 First, its subject is the basic structure of society; second, it is presented as
freestanding; and third, the content of the liberal conception of social justice is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a liberal democratic society. The second and third features need further explanations.

What does it mean to say that Rawls’s JF is presented as a freestanding view? According to Rawls, to present JF as freestanding is to acknowledge that citizens of a liberal democratic society can have different opinions about how the liberal conception of social justice is justified. Some may see JF as justified because they believe it is derivable from the Kantian theory of morality; some may see it as justified because they believe it is derivable from a certain consequentialist theory; some may see it as justified because they believe it is compatible with the Christian doctrine, and so on. Rawls calls the Kantian theory, utilitarianism, the Christian doctrine, and so on, comprehensive doctrines. They are comprehensive because each of them “includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole.” Rawls’s idea is that to present JF as a political conception we are not to stress which comprehensive doctrine can actually provide justification for JF. Rawls believes that reasonable and rational people are not likely to reach any agreement on what is the correct comprehensive doctrine. Given this belief, Rawls maintains that to present JF as a political one is to explain how it can be compatible with various comprehensive doctrines that endure in the society regulated by JF. Although it is not clear how this can be done, it is clear what is intended to present JF as a political one: to secure some sort of pluralism within a liberal society. This kind of pluralism is
different from the kind of political pluralism and Critical Political Pluralism which I have so far mentioned repeatedly. The intended pluralism in a liberal society is a pluralism of comprehensive doctrines, not a pluralism of conceptions of social justice and political legitimacy. For a liberal society or any society, there is only one conception of social justice and political legitimacy accepted as justified and implemented in its basic structure. The same society may accept different conceptions of social justice implemented in its basic structure over a long period of time. But the same society is hardly well-ordered if there are different conceptions of social justice and/or political legitimacy seen as justified and are claimed to be implemented in its basic structure, because there may allow as equally justified competing or even conflicting views about what is just and unjust. We may recall that Rawls requires that the conception of justice adopted by a society have the feature of finality. If more than one conception of social justice is seen as accepted and implemented in its basic structure, these conceptions will lose finality. In this respect, even when we see the liberal conception of JF as political, we may not say that this political liberal conception of justice supports political pluralism. What we can say is that the political conception of JF is to secure some sort of value pluralism, but not political pluralism.

The third feature of JF as political is that JF is expressed in terms of some fundamental ideas implicit in the public political culture of a liberal democratic society. According to Rawls, this public political culture comprises of “the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historical texts and documents that are common knowledge.”
Comprehensive doctrines, according to Rawls, belong to the background culture of a liberal society. This is the culture of the social, not the political. This social culture is manifested mainly in other aspects of social life: churches and universities, learned and scientific societies, clubs and teams, and so forth. Rawls believes that in a liberal democratic society there is a tradition of liberal democratic thought, "the content of which is at least familiar and intelligible to the educated common sense of citizens generally." Thus, according to Rawls, the major institutions of a liberal democratic society and their accepted forms of interpretation are seen as a "fund of implicitly shared ideas and principles."  

Let us leave aside various possible questions concerning these three features of JF as political. I think it is more related to my present interest to ask: what is the purpose of presenting JF as political? As I see it, to present JF as political is to stress a fundamental liberal belief that citizens in a just liberal society will be allowed to accept different comprehensive doctrines on the condition that they all accept the same conception of social justice, whose subject is limited to the political, the basic structure of society. JF presented as political with the three features is to explain how this is possible. In other words, JF as political is to express the idea that in a just liberal society the political and the social (the non-political) aspects of social life are separated and people’s acceptance of JF is separated from their acceptance of comprehensive doctrines and conceptions of the good.

JF as a political conception is to regulate the basic structure of liberal society. Personal conduct, when having nothing to do with the basic structure of society, would be
beyond the scope of JF. For example, there is nothing just or unjust from the point of view of JF in a person choosing to paint his study in blue color. JF has nothing to do with one’s religious life. JF also does not regulate what moral theory we should adopt, as long as we accept the two principles of JF as the principles of justice for regulating the basic structure of society. But if JF is not shown to be supported by my moral belief or religious faith, why would I accept it? Rawls thinks that if we present JF without forcing people to accept his background moral theory, then people might not reject it. Rawls seems to suggest that people accept the liberal democratic way of life because it is an acceptable way of ordering our society and organizing our political affairs. They don’t have to adopt a certain comprehensive doctrine in order to accept the liberal conception of social justice and political legitimacy. Similarly, that JF does not force us to accept a certain moral or religious doctrine is an intuitively appealing reason for accepting JF. If we accept JF as the political conception of social justice, we are not thereby converted to a Rawlsian-Kantian comprehensive moral theory, if we don’t believe in that moral theory. Another reason why we would accept JF is that JF is rooted in our public political culture which we commonly share. It is typical that people living in a liberal democratic society hold diverse moral or religious comprehensive doctrines but share the same political culture and accept the same notion of social justice and political legitimacy. To present JF as political is to explain why people would accept JF, though they may have not have thought about the justification of JF or may have different opinions about how JF is justified.
By contrast, a non-liberal conception of social justice is significantly different from the liberal one. A non-liberal conception cannot be presented as political in terms of Rawls's three features. For a non-liberal conception of social justice is, to use Rawls's term, "a common good conception of justice." One important feature or meaning of a common good conception of justice is that a society regulated by it can be justified in endorsing a conception of the good that is reasonably judged to be commonly accepted in that society. This common conception of the good regulates not only the political culture, but also non-political aspects of people's life. It is a common view that the liberal conception of justice is right-based, as opposed to a non-liberal one which is good-based. Even if it can be said that there are some common goods like liberties and equality accepted in a liberal society, the common good conception used as a defining element of a non-liberal conception of justice would contain goods that are quite different from liberties and equality. In this view, a non-liberal conception of social justice can, according to this common good conception, be justified in promoting a particular conception of the good. A non-liberal society typically promotes a certain conception of the good and obliges its subjects to adopt the background comprehensive doctrine that supports this particular conception of the good.

There is another aspect of a non-liberal conception of social justice. Since a non-liberal conception of justice is not presented as political, a non-liberal conception of social justice does not typically separate the political from the social realms. In a just non-liberal society, there may be a certain conception of the good such that not only this conception of the good ought to pursued by the political and the non-political, but also the
political sector of that society can be allowed to act in the name of this conception of the
good. The liberal conception of social justice will not allow the political to act in the
name of a particular comprehensive doctrine. A common good conception of justice may
allow the state or the government to guide or regulate its citizens such that they would see
it as required by justice to adopt a certain type of conduct or a certain way of life. But the
liberal conception of social justice typically will prohibit the state or government from
doing such things. We may say that the difference between the liberal conception of
social justice and a non-liberal one is that the former can be presented as a political one,
while the latter will be publicly endorsed and justified as based on a certain
comprehensive doctrine. A non-liberal conception of social justice is thus comprehensive
in the sense that its subject is not limited to the basic structure of society; it includes
various areas of social life within its scope.

Although the liberal and non-liberal conceptions of social justice are different as
discussed, they are similar in one aspect. In a just liberal society, the content of the liberal
conception of justice is expressed in terms of fundamental ideas implicit in its public
political culture. In a just non-liberal society, the content of its conception of social
justice is expressed in terms of a certain comprehensive doctrine usually salient in its
culture. So while the liberal conception of justice is expressed in terms of equality and
liberty, a non-liberal conception of social justice is expressed in terms of, say, Confucian
values, which prescribes not just how the political be arranged but also how one should
act in many aspects of their life as well as how non-political communities should be
related to the government, and so on. The Confucian conception of social justice as an example of a non-liberal conception of social justice may prescribe how citizens be virtuous; how familial relations should be maintained; how the officials of the government do their duties; and so forth. Despite such differences, the liberal and non-liberal conceptions are both expressed in terms of some ideas rooted in their cultures. The liberal is expressed in terms of only what is implicit in the political culture. A non-liberal conception of justice is expressed in terms of what is salient in the, to use Rawls's terms, background as well as political cultures.

If my remarks about these general features of the liberal and non-liberal conceptions of social justice are accepted, then we are in a position to explain how it is possible that the parties in the second stage of OP may end up choosing the liberal and non-liberal conceptions of social justice.

As briefly explained earlier, the parties in OP will not be satisfied with choosing GSJ, though it is important to note that they will choose GSJ. To further deliberate on what more satisfactory principles (of social justice) would be, they must be given more information. According to my previous remarks about some general features of the liberal and non-liberal conceptions of social justice, the information that the parties need is (1) that they will know whether they are choosing principles (of social justice) for a liberal or for a non-liberal society and (2) that they will be able to know what fundamental ideas are commonly shared in the political culture of a liberal society or the comprehensive doctrine salient in the culture of a non-liberal society. I think there should be no problem
with (1). Straightforward instructions can be given to the parties when they enter the second stage of OP regarding (1). But it is not entirely straightforward about how instructions can be given to the parties to make decisions based on (2).

There is one method by which the parties would be able to make their decisions based on (2). This is, as I shall call it, "the method of critical reflection." Let me illustrate this method by considering the case of choosing principles for a liberal society. Take the case where the parties are instructed to determine principles (of justice) for a liberal society, for example. The method of critical reflection is such that the parties are first to examine a list of fundamental ideas that have been present in that society. Presumably these are all seen as implicit in the political culture of that society, which includes equality, freedom, and so on. But some of them may not be compatible with others. The parties need to decide which of these ideas are appropriate to help them choose the final principles of justice for that society. To guide the parties to make such a decision, GSJ will play an important role. The parties need to further examine all these ideas to see whether each of them is compatible with GSJ. If the parties, on due reflection, find out that a certain idea is not compatible with GSJ, then this particular idea would be dropped out of the process of deliberation in the second stage of OP. At this point, I should note that the parties in the second stage of OP are still subject to the constraints of the veil of ignorance. So they don't know which ideas they in fact accept and they do not know which ideas are privileged in that society. The purpose of not entirely lifting the veil of ignorance is to ensure that the process in the second stage is still fair and not biased by other contingent factors. The only difference is that the parties in the second stage are
given more relevant information. But none of such information takes into consideration any particular person's social position, personal beliefs, and so on. Given that the parties in the second stage are still behind the veil of ignorance, their examination of various publicly proposed ideas will not be biased.

After they have examined those ideas and chosen a list of ideas compatible with GSJ, they then have to make their decision, based on those critically accepted ideas, in choosing principles. One further piece of information needs to be given to the parties in this regard. According to Rawls, this decision can be rightly made by looking into the constitution and the public interpretation (including the judiciary interpretations) of it, as well as historic texts and documents that are common knowledge, as I mentioned earlier. The parties can find in this political culture some shared fundamental ideas to make their decision. At this point, they have to choose a set of principles of social justice which express these shared fundamental ideas more adequately than other competing sets. We know that Rawls thinks that the parties would choose JF for liberal society because JF, according to Rawls, is the most favorable conception of social justice expressing these shared fundamental ideas of liberal society. This brief explanation illustrates in a very general fashion the constraints and conditions of the procedure of deliberation in the second stage of OP for liberal society. This explanation takes the advantage of the fact that Rawls has done a lot in explaining the procedure of choosing OP. So, I need not repeat them. What is added is the role that the public political culture of a liberal society would play in the process.

One might challenge my account by saying that this incorporation of the public
political culture into the second stage of OP seems to violate the constrain of the veil of ignorance, for the public political culture is only contingent. But it seems to me that there is no way of avoiding all contingent factors. The question is whether we can incorporate only relevant factors and do this without committing the fallacy of justification by popularity. The method of critical reflection is designed to insure that that fallacy is avoided. Furthermore, it is reasonable to think that our description of OP must somehow be related to the culture and society which provide values, ideas, and many other things for people to live with, think, and make decisions. Also, without some socio-cultural elements, it is simply unimaginable the parties would be able to choose any principle that is practically meaningful, though they would be able to choose GSJ which is quite general and practically insignificant. Since there are constraints on incorporating cultural elements into OP, the incorporation of socio-cultural elements will be carried out critically: the constraints of GSJ and the method of critical reflection make the process a critical one. From another perspective, this incorporation is similar in some ways to Rawls's idea of appealing to considered judgments of justice in his account of how his two principles of JF are justified. The main difference is that Rawls has no independent criterion for choosing appropriate considered judgments of justice. But my account has GSJ serving as an independent criterion.

Similar considerations and constraints apply to the parties, if they are instructed to choose principles (of social justice) for a non-liberal society. The parties will use the method of critical reflection by means of which they will first examine a set of
interpretations of a certain comprehensive doctrine salient in the culture of that non-liberal society. After the examination, they will come up with a list of interpretations of that comprehensive doctrine that are both compatible with GSJ and publicly proposed in that society. Here I assume that it is possible to find a non-liberal society which embraces a certain comprehensive doctrine compatible with GSJ. I think we can imagine a non-liberal conception of social justice based on, say, Christian doctrine, that is compatible with GSJ. Also we can think of a certain interpretation of the Confucian doctrine presented as compatible with GSJ. The parties then will have to reach a set of principles of social justice which, according to the parties’ judgment, expresses this interpretation of that comprehensive doctrine more adequately than other competing principles. For example, the parties provided with relevant information may choose a Confucian conception of social justice for a non-liberal society, where Confucianism is salient in the background and political cultures of that society.

If all these are accepted, then we can see at least in a very general way how different conceptions of justice can be derived in the second stage of OP. Since OP, as explained earlier, has justificatory force, the derived conceptions of social justice are also justified. The derivation and justification of various conceptions of social justice by OP explain how it is possible to justify Critical Political Pluralism within Rawls’s general liberal theory of justice. One important point deserves re-emphasis: Critical Political Pluralism accounted for by my two-stage view of OP is critical in the sense that not every possible social practice and political system will be seen as just and legitimate. Social practices and political systems would be judged as just and legitimate only when they are
allowed or justified by conceptions of social justice that can be shown to be derivable by OP. If my explanation of how different conceptions of social justice can be derived and justified by OP is accepted, then we are in a position to explain and examine Rawls's conception of international justice. This is the topic of Chapter 3.

Notes:

1 In “The Law of Peoples” (hereafter this work will be referred to as LP) p. 51, Rawls maintains that the liberal ideas can be extended to develop a conception of international justice. However, he does not use “the general liberal theory of justice” to characterize such an attempt. He sometimes refers to such a conception of international justice as the more general conception of justice. PL, p. 51. In A Theory of Justice (Hereafter this work will be referred to as TJ) p. 62, Rawls characterizes that his two principles of JF are a special case of a more general conception of justice. Here, to fix the usage of the term, I shall not use “Rawls’s general liberal theory of justice” to refer to either of the above two senses. Instead, “Rawls’s general liberal theory of justice” is used as characterized in this dissertation.

2 PL, pp. 51-52 and 61-63.

3 TJ, p. 378.

4 LP, pp. 44, 51.

5 LP, p. 51.

6 LP, p. 51. It seems that Rawls sometimes uses “general theory of justice” to refer to the conception of international justice he envisions. But sometimes he uses it to refer to a theory of justice that deals with various subjects of justice. To avoid unnecessary confusions, I distinguish the general liberal theory of justice in the latter sense and treat Rawls’s conception of international justice as one sub-conception of the general theory of justice.

7 TJ, p. 302.

8 LP, p. 52. Two remarks are in order here. First, although Rawls sometimes uses “hierarchical” and “non-liberal” interchangeably, it is important to note that a non-liberal society need not be hierarchical. I think Rawls does not mean to equate the two. A non-liberal society, by definition, is one that does not embrace the liberal conception of justice. A non-liberal society does not have to organize its political affairs in any hierarchical way like, for example, a caste society or an authoritarian state. Secondly, I think it is more appropriate to say that the notion of the non-liberal conception should be understood as a group—that is, it contains various conceptions of social justice. So under the general label “non-liberal,” there are the libertarian, the Confucian, the socialist, and other, conceptions of social justice. Sometimes Rawls even understands the notion of the liberal in a quite loose manner. He seems to use this notion to characterize most Western societies. However, it is not clear at all that Canada, France, Germany, Italy, the United States, Sweden, Scandinavian states, and even Japan, are more or less equally liberal in Rawls’s sense. However, it is a common view that those just mentioned societies are liberal societies. There seems to be some looseness in the use of “liberal” on Rawls’s part. Whether and/or how much this would affect Rawls’s liberal theory of JF is a question that cannot be addressed here. At any rate, from the point of view of Rawls’s general theory of justice, such a looseness seems to be harmless, since this general theory of justice is intended to explain how different conceptions of justice can be derived and justified. For the sake of
convenience, let us fix the meanings of the terms. "The liberal conception of justice" refers to Rawls's liberal theory of JF and "non-liberal conceptions of justice" refers to other theories or conceptions of justice.

9 There are various challenges to this assumption. See, for example, various articles collected in Norman Daniels (ed.), Reading Rawls.

10 TJ, p. 7.

11 TJ, pp. 62 and 92. Rawls seems to think that this characterization of primary social goods implies that rational persons want more of primary goods rather than less. TJ, pp. 92 and 93. But it seems that to define primary goods as some things rational persons want for their long-term plans of life is different from characterizing them as things rational persons want more than less. Let me illustrate this by an example. Water and air are good we all want, no matter what else we want. But it is quite different to say that we want more of water and air. We need some water and air to sustain our lives. But, in many cases, to obtain more water and air does not contribute to our effort to fulfill our life-plans. Of course, primary social goods are in some important sense unlike water and air in many cases. But Rawls seems to make two different characterizations of primary social goods. How much the difference, if any, between Rawls's characterizations of primary goods would have on his liberal theory of JF is a question I have no intent to address here.

12 TJ, pp. 62 and 92.

13 TJ, p. 7.

14 TJ, p. 302.

15 I think there is no doubt about the importance of OP in Rawls's theory of justice. But it is not entirely obvious that all commentators of Rawls agree that OP is the device by means of which the two principles of justice are justified. According to Allen Buchanan, for example, the justification of these two principles lies in either (1) the obtaining of a reflective equilibrium between them and our intuitive but considered judgments of justice, or (2) Rawls's Kantian interpretation of OP. See "A Critical Introduction to Rawls's Theory of Justice," pp. 13-16. According to (1), the two principles are derived from OP but not justified by OP. (2) can be seen as saying that the principles are justified because they are derived from OP. In my view, (1) is inadequate for various reasons as I shall discuss them later. But (2) involves a more substantive theory that makes OP not suitable for deriving different conceptions of justice. At any rate, Buchanan's view of OP may correctly explain the function of OP specified in TJ. My own account of OP is rather different.

16 TJ, p. 11.

17 TJ, p. 18.

18 TJ, p. 138.

19 TJ, p. 19.

20 LP, footnote 46, pp. 227-228.

21 TJ, pp. 19-20.

22 TJ, p. 19.

23 TJ, Chapter III, The Original Position.

24 Some people seem to think that there is a theoretical reason for imposing this requirement of reaching a state of equilibrium between the chosen principles and our considered judgments of justice. It is suggested that this requirement signifies a major difference between Kant and Rawls's Kantian theory, because this requirement connect Rawls's theory of justice to some real-world elements, which is absent in Kant's theorization. See, for example, Margaret Moore, Foundations of Liberalism, pp. 41-44. In a sense, this suggestion seems to be in line with Rawls's proposal of a political conception of justice in Political Liberalism, where Rawls argues that a political conception of justice must incorporate some of what is commonly accepted in the political culture of a democratic society. I shall return to this issue later.


26 Rawls is convinced that his characterization of OP is based on some weak and uncontroversial assumptions; TJ, p. 14. It is now clear that each of the constraints of OP is more or less disputed or qualified by others.

27 TJ, pp. 377-379.

28 LP, pp. 51-68.
Donald Hubin argues that to define the scope of justice by the notion of the circumstances of justice can be problematic. Hubin argues that such a definition can be understood in several senses: the logical, the ontological, the epistemic, and the practical senses. See Hubin, "The Scope of Justice." I think but will not further explain why Rawls can agree with what Hubin says.

In Political Liberalism, pp. 13-14, Rawls maintains that in presenting his conception of JF as a political conception it is important that JF is understood as, among other things, an expression of what is implicit in the public political culture of a liberal democratic society.

Many believe that Rawls's contract theory of justice is essentially a-social. See, for example, Michael Sandel, Liberalism and Limits of Justice, pp. 47-65, 147-54, and 173-74.

Here I do not imply that Rawls does not further specify the meaning of arbitrariness. It seems to me that Rawls's theory of Justice as Fairness tries to articulate the meaning of arbitrariness mentioned in the concept of justice. However, my account is different from Rawls's in two main respects. First, the meaning of arbitrariness, in my account, receives first specifications in the notion of GSJ, that is, in the first stage of OP. Second, the meaning of arbitrariness will receive further specifications in various principles of justice derived in the second stage of OP.

Although it is conceptually possible that a society may honor the right to life and security but discard the right to some freedom of conscience or the right to some freedom of association. But, in practice, such a society tends to rule by terror and violent means. In this regard, we may say this society does not really honor the right to life and security. From the practical point of view, it is also quite implausible to say that a society can honor the right to some freedom of conscience without honoring the right to life and security.

The division of the social culture and political culture seems to be related to the distinction between the civil society and the political sector of a liberal state. For a discussion of the distinction between the civil and the political, see PL, p. 14.

For example, Jean Hampton questions Rawls whether this way of presenting JF is the right approach to do political philosophy. See Hampton, "Should Political Philosophy be done without Metaphysics?"


The most important document about Confucian social and political theory is *Li Ji* written during the period of the Han Dynasty (206 BC to 220 AD). According to *Li Ji*, a just society has to, to use our terms, secure the right to life and security, and the right to personal property, the right to informal justice, and the right to association. According to *Lun Yu* (the Analects of Confucius), Confucius also asserted the rights to some freedom of conscience and the right to emigration. So the Confucian doctrine can be and is compatible with GSJ.
CHAPTER 3

JUSTICE IN A PLURALIST WORLD—ATTEMPTING A RAWLSIAN
CONCEPTION OF INTERNATIONAL JUSTICE

3.1 Introduction

In the previous chapter, I explained how a pluralist view of social justice can be accounted for in Rawls's general liberal theory of justice. In this chapter, I want to explain and examine Rawls's claim that the representatives of states (which are justified in accepting different conceptions of social justice and political legitimacy) will accept a proposed Rawlsian conception of international justice proposed, when these representatives are situated in the International Original Position (IOP). I will explain why Rawls's own account is not satisfactory. As I see it, many of the problems facing Rawls arise because Rawls does not give us a clear explanation of the constraints and the procedures of IOP. I shall suggest that my two-stage account of the Original Position (OP) can be naturally extended into IOP. Such an extension will result in a two-stage view of IOP. I shall argue that my view of IOP is clearer and more plausible than Rawls's own view about the constraints and procedures of IOP. In addition, I shall explain why
Rawls's conception of international justice, as well as the two principles of international justice, with some revisions, can be better accounted for by my two-stage view of IOP.

3.2 Rawls's Account of IOP

Rawls gives two versions of how the extension from OP to IOP can be accomplished. One version is given in *A Theory of Justice*\(^1\), the other in "The Law of Peoples."\(^2\) In *A Theory of Justice*, Rawls maintains that the same parties who deliberate in OP enter into the international Original Position to deliberate on what is just and unjust in international society after they have finished their assigned task in OP. In this view, IOP is more or less subject to the same constraints and procedures as the domestic OP. The parties in IOP are rational, constrained by the veil of ignorance, and so on. There are, however, two differences. In IOP, the parties are no longer representing themselves and their own interests; they are now "representatives of states."\(^3\) Also the parties in IOP are not to make decisions to advance their own interests;\(^4\) instead, they are to make decisions for the purpose of promoting or at least preserving the national interests of the states they represent.\(^5\) Rawls then asserts, without argument, that the parties in IOP will choose principles of international justice equivalent to those as described in J. L. Brierly's *The Law of Nations*.\(^6\) Rawls maintains that "the basic principle of the law of nations is the principle of equality."\(^7\) Let us call this, as suggested in Chapter 1, "the principle of international equality." This principle of international equality asserts that "peoples organized as states have certain fundamental equal rights...analogous to the equal rights
of citizens in a constitutional regime. Under this basic principle of international equality, familiar principles of the law of nations are viewed to be derivable: the principle of self-determination, the principle of political sovereignty of states, the principle of nonintervention, the right to self-defense, the principle of justice in and of war, the principle of fulfilling treaties in good faith, and so on.

In "The Law of Peoples," Rawls gives what seems to be a rather different account of how the idea of OP is to be extended to decide on principles of international justice. Here Rawls asserts that states can be justified in accepting different conceptions of justice and can be justified in establishing different political systems. This is the claim of political pluralism, as I explained in Chapter 2. As envisioned by Rawls, there can be just liberal states as well as just non-liberal states in a well-ordered society of nations. In this view, the extension of the idea of OP to the international realm is described by Rawls as consisting of two separate deliberation sessions. (Notice that this is not a two-stage account of IOP that I shall propose here.) In the first session, representatives of just liberal states in IOP would decide what the appropriate principles of international justice are for liberal states. After this is done, the second deliberation session would be held, for representatives of just non-liberal states, for the purpose of deliberation on choosing principles of international justice for non-liberal states. Rawls maintains that the representatives of just non-liberal states will choose the same principles as the representatives of just liberal states have chosen. According to Rawls, the principles chosen by the representatives of both liberal and non-liberal states are similar to those principles derivable from the principle of international equality, except for the principle
of human rights, which requires that basic human rights be respected by each state and which Rawls says would also be chosen by those representatives of both liberal and non-liberal states. Basic human rights, according to Rawls, are the right to life and security, the right to personal property, the right to formal justice, the right to some freedom of conscience, the right to association, and the right to emigration. Thus, in Rawls's second account of the international extension of OP, the principle of international equality as well as the principle of human rights would be chosen by the representatives of states in IOP. Given such a brief and general exposition of Rawls's accounts of IOP, we are now ready to explore some relevant aspects of these accounts and the derivation of the two principles of international justice they suggest. Since Rawls's second account is more detailed and recent, I shall treat the second as Rawls's considered account of IOP.

3.2.1 One General Feature of IOP

Before we assess Rawls's account of IOP, it is necessary that we get some general understanding of Rawls's claim that OP can be extended to derive principles of international justice. There is one important aspect of Rawls's account of OP that attracts our attention. That is, the idea of OP, according to Rawls, expresses or is part of the idea of Justice as Fairness (JF), as discussed in Chapter 2. In seeing this, we would naturally think that IOP as the international extension of OP still expresses or is part of JF or an international extension of JF. Since JF is essentially an egalitarian notion, it seems that the principles of international justice derived by IOP should also be egalitarian in
character. And in a sense, the principle of international equality does seem to indicate that IOP as an international extension of OP also embodies the egalitarian feature of JF to the realm of international justice. But this is rejected by Rawls. Rawls as well as some other liberals understand the egalitarian features of JF to be expressed only by Rawls’s two principles of social justice derived by OP or something similar. The principle of international equality is no egalitarian principle in the sense that the principle of international equality has nothing to do with Rawls’s two principles of JF: it is neither designed to secure the implementation of these two principles in every state, nor based on or derived from these two principles. In this case, we should not understand IOP as an expression or a part of JF or an international extension of JF.

The above consideration is intended to reveal how Rawls wants us to understand his claim that OP can be extended to the international realm. Rawls does not want us to understand IOP as an expression of or as part of JF or a certain international version of JF. What this seems to suggest is that IOP should not be connected to the fundamental liberal values embodied in JF. If this is correct, we can reasonably infer that Rawls also rejects any idea of connecting IOP to non-liberal values. On these considerations, Rawls seems to suggest that IOP should be a value-neutral device for the derivation of principles of international justice. It is value-neutral in the sense that it is not inherently connected to the liberal and non-liberal doctrines of value. It is fairly understandable why Rawls wants IOP to be a value-neutral device. For one thing, it seems natural to think that a value-neutral device allows the derivation of the principles of international justice without making any substantive presupposition or bias. Value neutrality is often seen to be
associated with the liberal belief in value pluralism. Rawls's conception of international
justice is value neutral, precisely because Rawls thinks that it allows just states to accept
and practice different comprehensive moral and religious doctrines. However, the kind of
value neutrality intended by Rawls with regard to the principles of international justice is
not just value pluralism. More importantly, it is intended to express the kind of political
neutrality or political pluralism, discussed in Chapter 2. Whether Rawls's account of IOP
is able to achieve such neutrality is still an open question. But it is at least clear that
Rawls intends to have a neutral IOP. In my view, this is an important aspect of Rawls's
idea of IOP as an international extension of OP.

There is one feature of OP which can help us understand IOP as value-neutral. As
explained in Chapter 2, OP can be understood as a fair procedure that consists of some
conditions and constraints. What this means is that the procedural fairness of OP allows
the parties in OP to deliberate on choosing principles of social justice without
presupposing any moral theory favoring some particular societies but disfavoring others
and that the chosen principles of social justice are justified without appealing to any
independent moral principle. I argued in Chapter 2 that to understand the procedural
fairness of OP without invoking Rawls's deep moral theory allows the derivation of
different sets of principles of social justice. On this understanding of OP, the neutrality of
OP itself and Critical Political Pluralism expressed by the derivations of different
conceptions of social justice can be accounted for. If IOP as an international extension of
OP is seen to inherit this feature of procedural fairness of OP, then it seems that IOP can
be neutral and the principles of international justice derived by IOP can be politically
neutral, that is, the derived principles of international justice would be accepted by states that accept different conceptions of social justice and political legitimacy. Given what Rawls intends, I think this feature of procedural fairness is an important aspect of IOP.

3.2.2 Three Questions about Rawls's Account of IOP

Given the above discussion of a general feature of IOP, I want to examine some aspects of Rawls's second account of IOP. The core question is why we should suppose the parties in IOP would choose the principle of international equality and the principle of human rights. Earlier I said that Rawls stages two deliberation sessions in IOP. In one session, representatives of just liberal states assemble to choose principles of international justice. In the other, representatives of just non-liberal states gather to decide on principles of international justice. According to Rawls, the principles of international justice chosen in these two sessions in IOP would be the same, that is, Rawls's two principles of international justice. One is the principle of international equality which asserts that just states will have equal rights, like the right to political sovereignty, the right to territorial integrity, the right to non-intervention, and so forth. The second one is the principle of human rights which prescribes that states ought to honor and respect basic human rights: the right to life and security, the right to personal property, and the element of the rule of law, as well as the right to a certain liberty of conscience and freedom of association, along with the right to emigration. Let us leave aside questions about how these two principles should be understood, how they are to be applied, and so on. Three
questions about the derivation of these two principles arise. First, why is it important to have two deliberation sessions in IOP as described by Rawls? Second, why should we suppose that the parties in IOP would choose these two but not other principles? And, finally, if it can be shown that these two principles would be chosen by the parties in IOP, in what sense does this mean that they are justified? This is a serious question because, according to Rawls's view of OP and justification, the principles chosen by the parties in OP are not justified simply because they are derived from OP. Rather, they are justified only when it can be shown that there is a state of equilibrium between the chosen principles and considered judgments of justice. According to Rawls's view of justification, the two principles derived by IOP are yet to be justified. How would Rawls explain the relevance of the idea of reflective equilibrium in this case? Let us see how Rawls addresses each of these three questions. If Rawls's account of IOP does not provide adequate answers to these three questions, then his account of IOP would be significantly undermined. What I want to show in the following is that Rawls's account of IOP does not have adequate answers to these three questions. After this is done, I shall explain why my account of IOP can not only provide more satisfactory answers to these questions, but also answer some other questions that are not mentioned by Rawls.

First, why do we need two sessions of deliberation in IOP? Rawls seems to think that two sessions of deliberation in IOP can have one advantage, that is, if the parties in both sessions end up choosing his two principles of international justice, then these two principles do not "depend on aspects peculiar to the Western tradition." Although I have
explained that basic human rights would be chosen in OP, it is obvious that Rawls's
design of two deliberation sessions in IOP is to address this particular concern of cultural
bias. Rawls thinks that if he can show that his conception of international justice (of
which the principle of basic human rights is an important element) would be chosen by
representatives in both deliberation sessions, then he can avoid the danger of presenting
only a Western conception, for this might be charged with being culturally biased.

In discussing matters of international justice, Rawls believes that it is important to
make sure that no society is particularly favored or disfavored simply because of its
cultural peculiarity. I think no reasonable person would have any problem with this view.
But we may still wonder whether it is true that such a goal of treating different cultures
fairly during the process of deliberating on principles of international justice can only be
achieved by Rawls's two-session design, even if we accept Rawls's notion of IOP. I think
that it is unnecessary and, more importantly, problematic, for Rawls to propose this two-
session design. For one thing, the parties are all put behind the veil of ignorance. One of
the things that they are not supposed to know is their citizenship. That is, they don't know
to which societies they in fact belong. As I explained in Chapter 2, the veil of ignorance is
designed to exclude all contingent factors like natural distribution of goods, cultural
differences, relative political strengths and positions, and so on, from the process of
deliberation. Thus, the fact that the veil of ignorance is already imposed on the parties in
IOP should show that any bias against or favoring any society for cultural factors is or
should be ruled out. In this view, while Rawls's worry about cultural bias is well-taken, it
is not necessary to give different deliberation sessions for different types of society.
Moreover, there can be problems with the idea of having two deliberation sessions in IOP as characterized by Rawls. The first problem is that this idea seems to violate the constraint of the veil of ignorance. For if IOP is designed to have one deliberation session for representatives of liberal states and another for representatives of non-liberal states, it would seem that the parties must be allowed to have some information such that they know to which types of society they belong, liberal or non-liberal. If they know this, then it seems possible that the parties would make decisions quite different from the decisions they might have made under the condition that they did not have knowledge in this respect. This would seem possible because the parties are allowed to have general knowledge about how these two types of societies have fared so far in human history. For example, their knowledge of human history may reveal to them that liberal societies collectively have been dominant in various aspects of international relations. Given this, some of the parties, knowing that they belong to liberal societies, might make decisions to enhance such a privileged situation that liberal states in general have in fact enjoyed. And the parties, knowing that they in fact belong to non-liberal societies, might make decisions aiming to "correct" such an unequal international relations and to favor non-liberal states. On such considerations, the parties in two deliberation sessions might not reach the same conclusion about international justice, contrary to what Rawls predicts.

One might try to defend Rawls by saying that the parties in both deliberation sessions need not be allowed to know to which type of society they in fact belong. It can be arranged that the parties are randomly picked out to participate in one of the two deliberation sessions, as it might be argued. According to this defense of Rawls, the
parties in IOP are to choose a set of principles of international justice as if they were “real” representatives of liberal or non-liberal states. However, they are further told that their being assigned as representatives of, say, liberal states, does not necessarily mean that they in fact belong to liberal societies. The parties are not given such information about their citizenship.

Such an account seems able to avoid the above mentioned consequence. For there would be no ground on which the parties in the liberal deliberation session will be able to choose a set of principles that favor liberal states or on which the parties in the non-liberal session will be able to choose principles favoring non-liberal states. In that case, however, it seems that this defense of Rawls would render Rawls’s two-session design of IOP unnecessary. It seems that there is no difference between these two deliberation sessions. The participants of each session are randomly picked out from the parties in IOP and they are subject to the same constraints. So what is the point of holding two sessions?

There is one important reason that may explain why Rawls thinks it is necessary to have two deliberation sessions in IOP. According to Rawls, the representatives of states in IOP are to choose a set of principles of international justice that they judge will protect and promote the national interests of the states they represent. In Rawls’s view, the national interest (or, better, one important national interest) of a just state is defined by the principles of social justice that have been derived by OP. In light of this definition, a just state “will aim above all to maintain and preserve its just institutions and the conditions that make them possible.” If this is correct, then the national interest of a just liberal state will be different from that of a just non-liberal state, since their
conceptions of social justice are different. For this reason, there need to be two deliberation sessions in IOP, one for just liberal states, one for just non-liberal states. This seems reasonable, but there is one serious problem with this account. Since the nature of this problem can be better exposed in the context of the second of the three questions with Rawls’s account of IOP and his conception of international justice that I mentioned earlier, I will come back to discuss this problem in the appropriate context. I think and will show Rawls’s two-session design of IOP is unable to solve this problem. On the assumption that I am right about this. Rawls’s two-session design of IOP is flawed.

Let us now turn to the second question: would the parties in IOP choose Rawls’s two principles of international justice? Rawls’s answer is given by considering whether the representatives of liberal states would choose them and then by considering whether the representatives of non-liberal states would choose them. For the sake of argument, let us follow Rawls with regard to his two-session account of IOP, even though I indicated earlier that Rawls’s two-session account is flawed. Rawls claims that the parties in both deliberation sessions in IOP would choose his two principles of international justice. But why? According to Rawls, the parties who are assigned as representatives of just liberal states will deliberate on choosing a conception of international justice to protect and promote the national interests of just liberal states. As explained earlier, according to Rawls, the national interests of just liberal states are defined by the liberal conception of social justice, that is, to maintain and preserve their just institutions and the conditions that make them possible. The principle of international equality, as characterized earlier,
would allegedly be chosen, because this principle of international equality, when properly followed, would achieve the goal of protecting the national interests of just liberal societies. For it appears that the principle of international equality requires that just states have some equal rights, like the right to political sovereignty, the right to non-intervention, and so on, and that these rights be respected in a well-ordered society of liberal states. Apparently the exact meaning of these rights needs further explanation and articulation. For example, is the right to political sovereignty absolute? In light of Rawls's general theory of justice, this right cannot be absolute, since there can be situations where people's well-being and rights cannot be adequately protected without some form of foreign intervention. Also, does the right to self-determination have limits? May this right be exercised at the expense of the subjugation of another community? Questions like these need to be answered in order to make full sense of these principles. Nevertheless, I shall assume that there can be appropriate accounts of the meaning and application of these principles. On such an assumption, I will examine whether Rawls can provide an adequate account of the derivation and justification of these principles.

Let us begin with the liberal session in IOP. It is understandable why Rawls thinks that the parties in the liberal session of IOP would choose the principle of international equality, given that Rawls's conception of the national interest of a just state is defined by the principles of social justice derived by OP. Such a definition of the national interest implies that the representatives will consider how the national interests of the states they represent may be protected. The parties in IOP will not consider how the national
interests of the states can be advanced by some, say, expansionist policy or by aggression, because Rawls assumes that each state is situated under the circumstances of justice.\textsuperscript{17} Also, these representatives, according to Rawls's characterization, will not consider how global resources and all available goods ought to be redistributed in order to promote the national interest, since the states thus situated are already assumed to be self-contained in the sense that they are situated in the circumstances of justice.\textsuperscript{18} Whether such a characterization of the national interests of the states in Rawls's ideal world is plausible is a serious question. The cosmopolitan often criticizes Rawls in this matter. So I shall not discuss this question until Chapter 5. Nevertheless, we may think about the rationality of this choice by considering the irrationality of not choosing this principle. If the parties in IOP did not choose the principle of international equality, then it means that some states would not enjoy equally some or all of those rights. In this case, it would be permissible, even in a just international society, that some states are privileged by principles of international justice to pursue their own national interest, while some others are disadvantaged in this regard. Presumably each representative would want the state she represents to be favored while other disfavored. But given the constraints of the veil of ignorance, each party in IOP would have no rational ground to predict that if she would choose a principle that does not guarantee international equality, her own state in the real world would really be favored but not disfavored. In envisioning this, the representatives would have some reason not to choose a conception of international justice which does not guarantee their states equal rights to pursue their own national interests. Similar considerations apply to the representatives of non-liberal states. For the representatives of
states in IOP, it is rational to choose the principle of international equality, because this principle guarantees their states equal rights to pursue their own national interests. So it seems that Rawls's two-session account of IOP can explain why the parties in both deliberation sessions would choose the principle of international equality.

The general idea of the rationality of choosing the principle of international equality is that the principle would provide equal moral protection for each just state to pursue its own national interest. If this is accepted, then the next question is whether the parties would choose the principle of human rights, which requires that each state respect those basic human rights, as explained earlier. There is a significant difference between the principle of international equality and the principle of human rights. The former provides a moral basis on which a just state can make legitimate claims against other states. The principle of international equality is to provide equal moral protection to all just states with regard to the pursuit of their national interests. The principle of human rights, however, does not seem to do this. It seems that this principle is to impose requirements on each and every state such that they have to adopt certain domestic policies. So the principle of human rights is primarily not a principle for regulating the external relations between states, although it is possible to derive some secondary principles with regard to what states ought to do in cases where those basic human rights are violated or cases where the conditions of a particular state are such that this state is not able to meet the requirements of the principle of human rights. Given such a general understanding of the difference between these two principles, we want know why the parties in IOP, knowing that they are to choose principles for regulating the external
relations between states, would be interested in the principle of human rights.

To answer this question, it seems that we have to have an understanding of Rawls' notion of human rights. Rawls' notion of human rights is a minimal one, as I have discussed in the previous chapter. For the rights listed and protected by this principle are very limited. The content of Rawls' notion of basic human rights are the right to life and security, the right to personal property, the right to have the rule of law (or formal justice), the right to some liberty of conscience, the right to association, and the right to emigration. Compared to the rights specified by the first principle of Rawls' conception of JF, or the rights listed in the UN Declaration of Human Rights, these are very minimal. Rawls' JF guarantees citizens of a just liberal state the most extensive but equal right to free speech, the right to equal political participation, the right to liberty of conscience, and so on. Given Rawls' characterization of the content of the principle of human rights (though how it can be applied still needs to be discussed), two questions arise. First, why would the representatives of just liberal states (knowing that liberal states accept a more extensive conception of rights) choose such a minimum conception of human rights? Second, why would the representatives in IOP even consider to choose a principle of human rights?

Why would the representatives in IOP choose the principle of human rights whose content is quite limited as characterized by Rawls? According to Rawls, just liberal societies accept his first principle of JF which guarantees a more extensive notion of rights. If the representatives of just liberal states think that it is appropriate to adopt a
certain principle of human rights as part of the conception of international justice they would eventually choose, then why would not they choose a principle of human rights that contains those rights guaranteed by the first principle of JF? It seems that for the purpose of promoting the national interests of liberal states the representatives of liberal states have a better reason to choose a principle of extensive human rights, instead of Rawls's minimal ones. This is because, according to Rawls's definition of the national interest of states, a principle of extensive human rights accords with the liberal conception of JF better than Rawls's principle of basic human rights does. For this reason, it does not seem convincing to say that the representatives of liberal states would not choose a principle of more extensive human rights. We can say that it is rational for the representatives of liberal states to choose a principle of extensive human rights, if they indeed think it is appropriate to choose a certain principle of human rights. In this case, there arises a serious problem, that is, the principle of extensive human rights chosen by the representatives of liberal states would not be chosen by the representatives of non-liberal states. This is because this principle of extensive human rights would not protect and promote the national interests of non-liberal states. The reason is that this liberal principle of extensive human rights is not a defining element of the national interests of non-liberal states. The non-liberal conceptions of social justice (by which their national interests are defined) do not contain the requirement of respecting extensive human rights as the liberal conception of JF does. So, even if we agree with Rawls that the parties in both deliberation sessions in IOP would choose the principle of international equality, they would not choose the same principle of human rights.
Given the above consideration, we have some reason to say that Rawls’s two-session account of IOP would have a serious problem in explaining the derivation of his principle of human rights. That is, the parties in both sessions will not unanimously choose his principles of human rights. Here we can turn to the second question: would the parties in IOP have any interest in choosing any principle of human rights as part of the chosen conception of international justice? It is doubtful. The main reason is that Rawls’s characterization of the role of principles of international justice does not warrant such a choice. According to Rawls, the subject of international justice is how the major international institutions should regulate the external relations between states. The parties in IOP are to choose a set of principles for regulating international relations such that the national interests of the states they represent would be protected and/or promoted. But the principle of human rights is not primarily designed to regulate international relations. The principle of human rights justifies certain claims that people may legitimately make against their governments and/or other political institutions. But, from the perspectives of states, the principle of human rights does not grant states any legitimate claim in virtue of which they can receive moral protection for the purpose of protecting and/or promoting their national interests. On this view, the parties in IOP would have no rational basis to choose Rawls’s principle of human rights.

According to the preceding discussion, Rawls’s account of IOP and the derivation of the two principles of international justice is not entirely satisfactory. Rawls’s account shows only that the representatives of both types of just states would choose the principle of international equality, if we agree with Rawls in this regard; it fails to show that they
would choose the principle of basic human rights. I think that the cause of this failure is
his account of IOP. But since the principle of human rights is seen by Rawls as such an
important element in his conception of international justice, I think it is appropriate to
give Rawls the best chance of explaining how his principle of human rights would be
derived. If it turns out that even such a charitable interpretation fails, this would suggest
that Rawls's account of his two principles of international justice in terms of his two-
session account of IOP is flawed. So, I would like to grant Rawls the following. Let us
suppose, for the sake of argument, that it can somehow be shown that the representatives
in IOP would consider it rational to choose a certain principle of human rights. Let us
further assume, for the sake of argument, that the representatives of just liberal states
would choose Rawls's principle of basic human rights. In that case, the remaining
question is whether it can be shown that the representatives of just non-liberal states
would choose Rawls's principle of human rights.

According to Rawls, the representatives of non-liberal states would choose the
principle of basic human rights proposed by him, because this is not a principle peculiar
to liberal societies. In this sense, the principle of basic human rights is "politically
neutral,"21 according to Rawls. The idea that this principle of basic human rights is
politically neutral is meant to suggest that this is a principle that every just state, liberal or
not, will and must accept. But, while the notion of political neutrality may help explain
some features of Rawls's principle of human rights, assuming that it is already accepted
by different types of just societies, it does not help explain why this principle of human
rights would be chosen by representatives of non-liberal states. Rawls asserts that for a
non-liberal state to be seen as legitimate, it is necessary that its legal system guided by a common good conception of justice.\textsuperscript{22} As I explained in the previous chapter, a common good conception of justice maintains that to pursue a certain conception of the good is part of the definition of social justice. This is quite different from the liberal conception of social justice, which does not take any particular conception of the good as part of the definition of social justice. Rawls does not suggest or argue that a common good conception of social justice requires that the basic human rights as described by Rawls be respected. But, Rawls does maintain that a common good conception of social justice will secure the basic human rights.\textsuperscript{23} What Rawls seems to say is the following: although a common good conception of justice does not require respect for basic human rights, a state regulated by such a conception of justice needs to honor these rights in order to be seen as legitimate even by its people.

Although I am sympathetic with this view, it does not seem to help explain why the principle of human rights would be chosen by the representatives of non-liberal states as part of the conception of international justice. For if the major social and political institutions of a non-liberal state are properly regulated by the principles of a common good conception of social justice, then this is a just state. A just state is ipso facto politically legitimate. Since, according to Rawls, basic human rights need not be part of the definition of a non-liberal conception of social justice, a non-liberal state can be just without respecting basic human rights, at least by his definition. Such a state, for this very reason, can have political legitimacy without honoring basic human rights. This consequence cannot be accepted by Rawls, of course. But his view seems to warrant it. So
it's quite confusing for Rawls to claim that a common good conception of justice need not include basic human rights, and then to claim as well that a state regulated by this conception of justice needs to honor basic human rights. On the other hand, if the non-liberal conception of social justice need not contain basic human rights, then the representatives of non-liberal states in IOP would not choose the principle of human rights. For these representatives consider only the national interests of the states they represent, which are defined by the conception of social justice these states justifiably accept. In this case, Rawls has to admit that it is not the case that the representatives of just non-liberal states would choose the principle of human rights as part of the conception of international justice. Thus, even if we grant Rawls that the representatives of liberal states would choose his principle of human rights, Rawls still has no convincing argument to show that the representatives of non-liberal states would choose his principle of human rights. So he fails to show that his principle of human rights would be chosen by the parties in IOP.

At this point, one might ask: does Rawls need the principle of basic human rights for his conception of international justice? This question can be understood as: how important is the principle of human rights? According to Rawls, basic human rights are important in three respects: (1) they are a necessary condition of political legitimacy; (2) a state honoring human rights has the political right to non-intervention; and (3) human rights set a limit on pluralism. (1) is important because it is not acceptable to Rawls that a state can be just and legitimate without honoring human rights. But, as I just explained, his account of the necessity of human rights is not satisfactory. The importance of human
rights characterized in (2) is not very straightforward. Rawls's intention is to express the idea that human rights set limits on the sovereignty of the state as well as prohibit states to use war as a means of state policy.\textsuperscript{25} According to the context where Rawls explains (2), I believe the idea is that a state cannot be justified in adopting any domestic or foreign policy that will violate its people's (and others') human rights. The importance of human rights described in (3) is to convey the idea that it is human rights that set limits on political pluralism. Given Rawls's brief statement, this can be understood as a view similar to my view of Critical Political Pluralism, as explained in Chapter 2. For these three reasons, Rawls's conception of international justice must contain the principle of human rights. But, unfortunately, he fails to convince us that the principle of human rights would be chosen by the parties in IOP.

One way of incorporating the principle of basic human rights into the Rawlsian conception of international justice is, as I shall argue, to abandon Rawls's two-session account of IOP and adopt my account of IOP which is a natural extension of my two-stage account of OP and Critical Political Pluralism. In Chapter 2, I explained how the principle of basic human rights will and must be accepted by societies that accept different but equally justified conceptions of social justice. But my account there was not done directly for the derivation and justification of Rawls's conception of international justice. And more importantly, the ideal theory of international justice like Rawls's does not seem to need any principle of human rights, since, as explained earlier, the principle of human rights is not meant to regulate external relations between states. Later I shall say
something more about how the principle of human rights can be incorporated into the Rawlsian theory of international justice in my account of IOP. Now I want to turn to the third of my three questions: how does Rawls justify his two principles of international justice?

How are Rawls's two principles of international justice justified, assuming that they can be derived by IOP? According to Rawls's view, the justification of principles of justice consists in two parts. First, they are derived from a correct description of OP; secondly, there exists a state of equilibrium between these principles and our considered judgments of justice. The second part can be trivial when we are careful enough to give a correct description of OP, because principles derived from a correctly constructed OP will match our considered judgments of justice. According to this view of justification, the principles of justice chosen in OP are not justified unless there exists a state of equilibrium between the chosen principles and considered judgments of justice, as I explained in the previous chapter. Rawls uses this view to explain the justification of his two principles of international justice. That is, when the principles of international justice chosen in IOP are justified, then it must be the case that "we can endorse those principles on due reflection." This way of explaining how the chosen principles of international justice are justified will face problems similar to those faced by Rawls's view of how the chosen principles of social justice are justified. As I discussed in the previous chapter, Rawls's account of justification cannot cope with these problems adequately. Here I don't want to repeat myself. I simply want to point out that to appeal to our reflection will not
guarantee that people will always accept Rawls's two principles of international justice, because people may have a quite limited or even biased view about what is just. Since people can have quite different considered judgments of justice, such a view of justification is likely to result in justifying various or even conflicting sets of principles of international justice. It can even justify a certain principle which allows the stronger to exploit the weaker as long as the stronger is able to adopt this view on due reflection. Such a consequence comes from Rawls's view that people can always change the description of IOP in order to reach an equilibrium state between the chosen principles and their considered view of international justice.

Given the above explanation of the three problems faced by Rawls’s account of his principles of international justice via his two-session account of IOP, we can confidently say that Rawls's own account is not satisfactory. In the remainder of this chapter, I shall try to explain why my two-stage account of IOP is more satisfactory and a more plausible conception of international justice can be derived accordingly.

3.3 A Two-Stage Account of IOP

Within Rawls's general theory of justice, how principles of international justice are derived is similar to how principles of social justice are derived. The similarity between them is that they all are derived from fair procedures. One of the main differences is that the subjects are different. In the case of deriving principles of social justice, the subject is the basic structure of society. In the case of deriving principles of
international justice, the subject is the law of peoples, or more broadly, the major international institutions. In the derivation of principles of social justice, I used a two-stage procedure to explain how principles of social justice would be derived and justified. In the case of deriving principles of international justice, there will also be a two-stage account of IOP. This two-stage account of IOP can explain more adequately Rawls's insistence on regarding the principle of human rights as part of his conception of international justice. However, this two-stage account of IOP does not treat the principle of human rights as a principle of international justice. Rather, it is seen as part of a more fundamental and general principle of international justice. In this respect, this two-stage account of IOP can be seen as a critical interpretation of Rawls's conception of international justice. That is, while this two-stage account of IOP accepts many of the ideas of Rawls's account of IOP, it will not entirely accept Rawls's two principles of international justice. Also, this two-stage account departs from Rawls in one important aspect, that is, it will allow derivation of a certain principle of international distributive justice, which is rejected by Rawls's conception of international justice.

This two-stage account of IOP maintains that the parties in the first stage of IOP will be subject to the same constraints as the parties in the first stage of OP. They are put behind the veil of ignorance, they are rational, and so on. The constraints of the veil of ignorance will bar any contingent factors from entering the process of deliberation on choosing principles of international justice. Here one pressing question we need to answer is what perspective the parties in IOP will adopt to make their decisions. In the case of
determining principles of social justice, the parties in OP are seen as representing themselves. In the case of determining principles of international justice, Rawls thinks that it is appropriate to see the parties as representatives of states. This view of the parties in IOP as representatives of states may seem to presuppose the moral significance of states, which would be challenged by many people as a controversial assumption. For example, anarchists may argue that since the institution of the state is never morally justifiable, Rawls’s view of seeing the parties in IOP as representatives of states begs an important question against the anarchist who may think that international or global justice obtains only in a stateless world. Regarding this anarchist challenge, Rawls can say that his view of the parties in IOP as representatives of states is conditional, that is, the parties can be legitimately seen as representatives of states only on the condition that it is possible to justify the institution of the state. Rawls does not and need not say that the parties in IOP must be seen as representatives of states under every possible condition. I think Rawls is willing to say that when it can be demonstrated that no state is ever justifiable, there is no reason to see the parties in IOP as representatives of states. But, given our discussion in Chapter 2, states can be just and legitimate. For this reason, it is justifiable to see the parties in IOP as representatives of states.

Some may challenge this view by pointing out that the justification of states must appeal to some moral reasons or principles different from the political legitimacy of states. In this case, these challengers may argue, it is more fundamental that Rawls base his discussion of matters of international justice on those moral reasons or principles used to explain the political legitimacy of states. But Rawls does not do this. One main reason
that explains Rawls's choice seems to be that the subjects are different. The subject of social justice is different from the subject of international justice, as explained earlier in this and previous chapters. Also, Rawls thinks that since we have reached important conclusions about social justice and political legitimacy by using those moral considerations or principles, it is reasonable and justifiable that we base our discussion of international justice on those conclusions.

Although I agree with Rawls that it is reasonable and justifiable to see the parties in IOP as representatives of states, it is not always the case that the parties in IOP are representatives of states. It is important to note that Rawls's view is dependent on Critical Political Pluralism. In cases where Critical Political Pluralism does not hold, it seems that Rawls's view of seeing the parties in IOP as representatives of states may lose an important supporting reason. One may say that even if Critical Political Pluralism does not hold in a certain world, it may still be reasonable to see the parties in IOP as representatives of states. For one thing, states in that world may accept the same or similar conception of social justice and political legitimacy, but their citizens may think that the issue of justice at the global level should be separated from the issue of social justice, as it may be argued. It is imaginable that citizens of this politically monistic world may think that the scope of the principles of social justice is bound within national boundaries, and that principles of international justice apply to situations beyond national borders. In this case, it would be appropriate to see the parties of IOP as representatives of states, even though Critical Political Pluralism actually does not hold.

The above discussions of some challenges to Rawls's view of seeing the parties as
representatives of states should suggest that Rawls's view is not always reasonable and justifiable. On considering the views of the anarchist and the political monist, Rawls's assumption of seeing the parties in the first stage of IOP as representatives of states would not be as uncontroversial and weak as Rawls claims. I think it is more appropriate to treat the parties in the first stage of IOP just like the parties in the first stage of OP, except that the parties in the first stage of IOP are to choose principles of justice for the purpose of regulating relevant global affairs. To say that the parties in the first stage of IOP are to be treated just like the parties in the first stage of OP is tantamount to saying that the parties in the first stage of IOP would be subject to exactly the same constraints as the parties in the first stage of OP. In this view, the principle that would be chosen by parties in the first stage of IOP would be similar to the one chosen in the first stage of OP, because the parties in the first stage of OP and IOP are subject to the same constraints and are given exactly the same information, except that their subjects of justice are different.

The above explanation of the similarity between the first stage of IOP and that of OP implies that we do not characterize the parties in the first stage of IOP as representatives of states. The reason I want to avoid adopting Rawls's view of seeing the parties in IOP as representatives of states into my description of the first stage of IOP is that Rawls's view is not always true. Rawls's view, no matter how restricted its scope is, does not seem able to convince the anarchists and others that he does not beg an important question against them. Since Rawls has to justify his view of seeing the parties in IOP as representatives of states by Critical Political Pluralism, this seems to suggest that we must have a theory of social justice and political legitimacy first and then we can
talk about international justice. Although this is not incorrect, it can be misleading. Rawls's intention is to confine the scope of his conception of international justice within the scope of an ideal theory, which prescribes principles of international justice among just states that comply strictly with these principles. However, his view of seeing the parties in IOP as representatives of just states may mislead us to think that international justice obtains only among just states. Some may challenge this by saying that without knowing what principles of social justice would be adopted for our society, we may still know that foreign states cannot be justified, as a matter of justice, in taking certain actions toward our society. I think this is a plausible view. By not characterizing the parties in the first stage of IOP as representatives of states, we can avoid this potential problem.

There are some more important reasons why the parties in the first stage of IOP should not be characterized as representatives of states, but characterized as similar to the parties in the first stage of OP. First, as I shall explain immediately, such a change will allow Rawls to explain why the principle of basic human rights is a fundamental part of principles of international justice that are supposed to be chosen in IOP. However, this should not be taken to suggest that I reject entirely Rawls's view of seeing the parties in IOP as representatives of states. I shall suggest that the parties in IOP can be appropriately seen as representatives of states only when they enter the second stage of IOP under certain conditions, as I shall explain later. It is important to note here that the parties in the second stage of IOP need not always be characterized as representatives of states. One important condition that can justify the characterization of the parties as representatives
of states when they are in the second stage of IOP is that states can be just and legitimate. When it is no longer true that states can be just and legitimate or when states no longer play significant roles in shaping domestic and international politics as they do under the current and similar conditions, then Rawls has no justification for characterizing the parties as representatives of states. Furthermore, there is one advantage of my two-stage account of IOP. The first stage of IOP will be described in a very general and abstract fashion just like my description of the first stage of OP. As explained in Chapter 2, the second stage of OP will allow derivation of different conceptions of social justice, because different but morally relevant factors will be adopted as part of the constraints and conditions of the procedure of deliberation therein. Now, regarding the second stage of IOP, analogous considerations seem also in place. There are two important factors that not only significantly shape global affairs, but also have significant influence on the choosing of principles of international or global justice. The first factor is the existence of the state system (at the global level) like the current one, the second the character of global politics. By "the state system (at the global level)" I mean simply that modern states are major actors in shaping international relations. To say that a world order is maintained within the state system, I do not imply that international institutions like the United Nations or international law have no place there. I think but will not argue that under certain conditions international institutions will play an important role in shaping international relations under the state system. A world order without the state system would be very different from the world order constructed on the state system. The existence of the state system is an empirical but important factor. The parties in the
second stage would have some knowledge in this regard. By the "character" of the global affairs I mean whether the global affairs are conducted under a global cooperative scheme similar to the cooperative scheme within domestic society. Global society may or may not institute a cooperative scheme. There does seem to be evidence suggesting that states cannot pursue their national interests without a global cooperative scheme, while it is a common view that individuals are not likely to have the same level of success in pursuing their interests without a social cooperative scheme. With the knowledge that there is a global cooperative scheme similar to the domestic one (on the assumption that it is indeed the case that there exists a global cooperative scheme), the parties in the second stage of IOP would choose principles of international justice quite different from the ones they would choose if they are informed that there is no such a cooperative scheme at the global level.

Although a world order can be such that some societies are organized in the form of the state but others are not, and international relations can be more or less cooperative, I shall focus on clear-cut cases, that is, whether the world order is established within the state system, and/or whether there is an identifiable global cooperative scheme. There are four possible combinations of the presence or absence of the states system and the presence or absence of a global cooperative scheme: (W1) a non-cooperative global society within the state system, (W2) a non-cooperative global society without the state system, (W3) a cooperative global society within the state system, and (W4) a cooperative global society without the state system. There is prima facie reason to believe that the parties may choose different principles for these four possible worlds, if they would be
There is one aspect of the Rawlsian theory of international justice that needs to be pointed out here before I go on to discuss how the proposed two-stage account of IOP would work. The Rawlsian theory is an ideal theory. Two important assumptions are made by this ideal theory of international justice. First, it assumes that all relevant parties at the global level would comply with principles of international or global justice. This is a strict compliance theory. Second, it assumes that the circumstances of justice obtain at the global level as well as at the social (domestic) level. There is an implicit assumption made in the first assumption, that is, when (W1) or (W3) obtains, states in this ideal world are supposed to be just and legitimate. By contrast, a non-ideal theory would deal with problems of international (or global) justice under the conditions where not all relevant parties comply with requirements of international justice, global society and/or some domestic societies are not situated in the circumstances of justice, and/or some states are not just and legitimate. Rawls believes that it is necessary to construct the ideal theory first in accordance with which a non-ideal theory can be constructed. A non-ideal theory is supposed to provide answers and solutions to problems of international justice in the non-ideal world. Although my reconstruction of Rawls's theory of international justice focuses on the ideal part, I shall use this reconstructed ideal theory to address one important question of international justice in the real (non-ideal) world, namely, is violation of basic human rights by any state an issue of international justice?

Given the above general expositions of some aspects of the idea of the two-stage account of IOP, I shall now turn to the question about what the parties would choose in
each of the two stages of IOP.

3.3.1 The First Stage of IOP and the General Principle of International Justice

The purpose of designing a two-stage IOP is, among other things, to give the Rawlsian theory of international justice the possibility of coping with problems of international justice under various conditions, for example, those possible worlds of W1 through W4. In this view, it is reasonable to think that a Rawlsian theory of international justice may suggest different sets of principles of international justice for different worlds (W1 through W4). Analogous to the case of constructing a Rawlsian pluralistic view of social justice (which maintains that all justifiable conceptions of social justice are constrained by the general principle of social justice (GSJ)), this Rawlsian theory of international justice would hold that no matter what principles of international justice are derived for the corresponding worlds, these principles would be constrained by a common but highly general principle of international justice. This common general principle of international justice, with no surprise, should be the same as GSJ except that this general principle of international justice is chosen to address the subject of international justice.

The reason that GSJ and the just mentioned general principle of international justice are substantively the same is that the conditions and constraints of the first stage of IOP are exactly the same as those of OP, except that the parties are told to choose principles for different subjects of justice. Just like the parties in the first stage of OP, the
parties in the first stage of IOP are put behind the veil of ignorance: they don’t know all the contingent factors that might influence their deliberation in the first stage of IOP. They are even not allowed to know anything related to the state system: citizenship, national boundaries, relative strength of their states, distribution of natural resources within national borders, and so forth. The parties in this stage of IOP have no knowledge about the current world: they don’t know whether international relations are built on the state system, nor do they know whether there is a cooperative scheme in global society. This is because the state system and international cooperation are contingent factors that should be ruled out of the first stage of IOP. It is important to note here that the exclusion of these two factors from the first stage of IOP does not imply that they are irrelevant to the choosing of principles of international justice. How they would be relevant in this regard is a question that will be addressed later when we come to discuss some important aspects of the second stage of IOP. Also, the parties in the first stage of IOP do not know what conceptions of the right and the good they actually hold. The exclusion of these moral conceptions is based on the consideration that they are typically formed under the influences of those contingent factors. To prevent the process of deliberation in IOP from being biased by those contingent factors, the parties are not allowed to know what moral conceptions they actually hold. Although the veil of ignorance in the first stage is thick, the parties in the first stage of IOP are given general knowledge of human history and human experiences: the parties in this stage have general knowledge of sociology, political science, psychology, and so on, insofar as such information does not itself favor or disfavor certain parties.
Being put behind the thick veil of ignorance, the parties have to choose a principle of international justice. Assuming that the parties would agree to a principle in the first stage of IOP, this principle, it seems, would be very general and abstract. This is because the choice of this principle is not dependent on any particular contingent factor or moral conception. There is no element of particularity inherent to this would-be chosen principle of international justice. I said earlier that the parties in the first stage of IOP are subject to the same constraints and conditions as the parties in the first stage of OP are. This means that the parties in the first stage of IOP are motivated and rational in the same ways as the parties in the first stage of OP. Also, the parties in the first stage of IOP would follow the same decision rule as the parties in the first stage of OP. Given all these similarities, it is reasonable to think that the parties in the first stage of IOP would choose a principle of international justice very similar to GSJ. Let us call the principle of international justice that would be chosen by the parties in the first stage of IOP the general principle of international justice (GIJ, for short). The only difference between the two choices is that GIJ is chosen to address the subject of international justice, while GSJ is chosen to address the subject of social justice. Here I shall not repeat myself regarding why the parties would choose GIJ, since the reason was already stated in Chapter 2. I shall simply copy GSJ here for reference and then give a formulation of GIJ as follows:

GSJ: a social institution, in assigning rights and duties and in dividing benefits and burdens of social cooperation, ought not to make any arbitrary distinction between persons in the sense that (1) this
inclusion and relevant rules are administered in accordance with the notion of formal justice, and (2) this institution and relevant rules do not violate basic human rights.

GIJ: an international arrangement and/or international institution (which is designed to assign rights and duties, and/or to divide benefits and burdens of international cooperation) ought to be constructed in non-arbitrary ways in the sense that (1) this arrangement and/or institution and other existing relevant rules of international relations are administered in accordance with the notion of formal justice, and (2) this arrangement and/or institution does not violate basic human rights.

As I mentioned earlier, the purpose of setting up a two-stage IOP is twofold. On the one hand, we want our theory of international justice to be flexible enough that under significantly different but relevant conditions, different principles of international justice may be derived and justified. On the other hand, we also want to have a fixed point in terms of which we can criticize international institutions as unjust when they are not compatible with the requirements of basic human rights and/or the requirement of formal justice. Now if a certain theory proposes a conception of international justice that regards violations of human rights as irrelevant or tolerable, then this theory of international justice would be criticized as wrong and unjustifiable. GIJ provides such a fixed point, no
matter how general or minimum it is. This function of GIJ is similar to that of GSJ. Just as GSJ sets a limit on political pluralism, GIJ sets a limit on international politics. We can say that GIJ serves as a constraint on the process of deliberation in the second stage of IOP, just as GSJ serves as a constraint on the process of deliberation in the second stage of OP. More about this later.

At this point, we can now turn back to Rawls's attempt to derive the principle of human rights as part of his theory of international justice. Rawls wants to show that the parties in (his account of) IOP would choose the principle of human rights. As discussed earlier, Rawls's argument fails to explain why the parties as representatives of states would be interested in choosing the principle of human rights. Indeed it is not clear why the parties in IOP characterized by Rawls as representatives of states would have any interest in choosing the principle of human rights at all, since, as I explained earlier, the principle of human rights does not seem to have anything to do with international relations, especially from the point of view of Rawls's ideal theory of international justice. I think Rawls is right in pointing out that basic human rights set a limit on political pluralism and principles of international politics. But he fails to explain how the constraint of human rights can be implemented in these two regards. My explanations of GSJ and GIJ can provide such an account of how human rights would serve as constraints on political pluralism and principles of international politics. That is, just as GSJ constrains the choice of principles of social justice in the second stage of OP, GIJ imposes the requirement of respecting human rights as a constraint on the choosing of principles of international justice in the second stage of IOP. Thus, while it is not
incorrect to say that the parties in IOP would not choose any principle of human rights as part of the conception of international justice that the parties would eventually choose, it is appropriate to say that the parties in (my account of) IOP would choose a conception of international justice which is constrained by human rights.

The importance of deriving GIJ is not just that GIJ will serve as a constraint on the process of deliberation in the second stage of IOP. The importance of deriving GIJ will be further revealed when we come to discuss how this Rawlsian ideal theory of international justice can provide guidance for us to address problems of international justice in the real world. I shall come back to this issue later. Right now let me turn to the second stage of IOP and the derivation of principles of international justice.

3.3.2 The Second Stage of IOP and the Choosing of Principles of International Justice

The parties in the second stage of IOP will be given more knowledge about the world in relevant regards. The most important information they will receive is twofold. First, they will know whether the current and long-term world order is structured in accordance with the state system. Second, they will also know whether there is or will be in the near future a cooperative scheme at the global level. The first piece of information is important and relevant because this information will affect our characterization of the parties in one important regard, that is, whether or not we can reasonably characterize them as representatives of states just as Rawls does in his account of IOP. The second
piece of information is important because it will affect how the parties think about the issue of international distributive justice. Combining the presence or absence of these two factors, four possible ideal worlds can be perceived: (W1) a non-cooperative global society with the states system, (W2) a non-cooperative global society without the states system, (W3) a cooperative global society with the states system, and (W4) a cooperative global society without the states system. The parties in the second stage of IOP will be informed such that they know for which of the possible four worlds they are to choose a set of principles of international justice. Of course, the parties can be told to choose principles for each of these possible worlds. But if the parties would know that W2 or W4 is only a remotely possible scenario and W1 or W3 is more like the world they live, they would not think that it makes much sense to choose principles that they think are likely to be implemented only in W2 or W4, but not in W1 or W3, when they can and will agree on some principles for either W1 or W3. It is appropriate, from the practical point of view, to inform the parties which of the possible worlds is more like the real world they live. In this view, this two-stage account of IOP depends to a significant extent on the empirical conditions of the world. The second stage of IOP is situation-sensitive and the principles chosen in the second stage of IOP are likewise sensitive to the empirical conditions. When the world is changing, say, toward W2 or W4 from W1 or W3, then we may enter once again IOP to decide on principles of international justice, if we think it is necessary to do so.

One big question arises in this regard: how are we to decide which of W1 through W4 is relevant and should be known to the parties in the second stage of IOP? It seems
that the world order, as it is now and will be in the foreseeable future, is maintained within the state system. In the state system, states are major actors in shaping international relations. Whether or not this would change in the remote future seems to be a question relatively irrelevant. On the other hand, if the world is changing toward W2 or W4, then we can enter IOP to decide on principles of international justice again.

While it seems fairly obvious that the world order in the foreseeable future will be maintained within the state system, it is not as clear whether the world order in the foreseeable future will be maintained within a global cooperative scheme, similar to a social (domestic) cooperative scheme. We can observe that there have been frequent and widespread international cooperative projects among states. Even so, it is still an open question whether these international cooperative projects are conducted under a global cooperative scheme similar to the cooperative scheme within domestic society. If nations of the world have already established a global cooperative scheme, then the parties in the second stage of IOP would be informed in this regard. And our Rawlsian theory of international justice will and should address problems of international distributive justice. Charles Beitz and Thomas Pogge maintain that such a global cooperative scheme is already established in this world. Beitz tries to convince his readers that it is evident that states in this world are situated in interdependent relations. He also tries to show that such international interdependence produces benefits and burdens. For these two reasons, if valid, Beitz argues that we need a principle of international distributive justice in accordance with which we can judge whether the current or any distribution of benefits and burdens of international interdependence is fair. The validity of Beitz's argument
depends on one important premise, that is, international interdependence as described by Beitz presupposes a global cooperative scheme. Without this premise, Beitz’s two premises would not support his conclusion that there needs to be a principle of international distributive justice that he thinks is needed. Beitz is aware of this. Beitz tries to show that there is a global cooperative scheme, because international society is very much like domestic society in important and relevant respects. I shall not discuss Beitz’s argument until Chapter 5. Nonetheless, it is important to note that it is a common view that issues of international distributive justice arise only when there is a global cooperative scheme similar to the domestic one.

Beitz, Pogge, and others have argued that Rawls can and should extend his Difference Principle to global society. But Rawls, being aware of these suggestions and criticisms, remains unconvinced that his Difference Principle should be extended to apply globally. Rawls provides two reasons for rejecting these suggestions and criticisms. First, Rawls believes that international society under current conditions does not establish a global cooperative scheme similar to the cooperative scheme within domestic society. Second, Rawls believes that his Difference Principle or any principle of distributive justice is essentially a liberal one. Since states can be justified in accepting non-liberal conceptions of social justice, it is not reasonable and unfair to impose any liberal principle of distributive justice on non-liberal societies. If what I have said about Critical Political Pluralism is right, then Rawls’s second reason for rejecting the suggestion of a globalized version of the Difference Principle can be defended. In this
respect, we can agree with Rawls that it is not reasonable and justifiable to impose his Difference Principle globally. Even so, does this imply that we cannot talk about international distributive justice without referring to the Difference Principle? It does not seem obvious. However, before we can talk about any alternative conception of international distributive justice, we need to determine whether there is a global cooperative scheme. If there is in fact no such cooperative scheme at the global level and it is unlikely to be one in the foreseeable future, then there is no need to talk about international distributive justice. Before I come to discuss this and other related questions about international distributive justice, I want to examine whether Rawls’s principle of international equality would be chosen by the parties in the second stage of IOP.

3.3.3 The Principle of International Equality

One question we need to address here is what the parties are told regarding global society. As discussed earlier, it is quite clear that the parties would be informed that global society is ordered or structured within the state system. This information is allowed not just because the state system is salient in global society currently and in the foreseeable future, but also because states can be just and legitimate, which make the existence and interests of just and legitimate states a morally relevant factor that the parties ought to take into consideration when they are to choose principles of international justice. However, it is not clear whether this global society implements a global cooperative scheme. Even so, the principle of international equality seems insensitive to
the question whether there exists a global cooperative scheme. As long as the existence and interests of states are morally relevant in the sense that the parties would be required to make decisions on behalf of states, the principle of international equality would be a principle that the parties would choose, regardless of whether there exists a global cooperative scheme. Here is why.

To say that the interests of just states are a morally relevant factor is tantamount to saying that the interests of those just states need to be taken into consideration. However, since the interests of these states are contingent factors and the parties in the second stage of IOP are still behind the veil of ignorance, the parties are not allowed to know what the national interests of these states are. But the parties are required to choose principles of international justice, on behalf of these states, to preserve and/or promote the national interests of these states. So there is a challenge to the parties in choosing principles for the purpose of preserve and/or promoting the national interests of the states they represent. This challenge mainly comes from the constraint of the veil of ignorance.

The veil of ignorance put on the parties is only slightly lifted even in the second stage of IOP. The parties have no particular knowledge about the states they represent: they don’t know the level of economic development of these states, they don’t know what kind of political system these states adopt, they don’t know the natural resources within their national boundaries, they don’t even know what conception of social justice is practiced in their states. But they do have some general knowledge about human history, international relations, and so on. They know that international relations are structured within the states system. More importantly, they know that states are justified in adopting
different conceptions of social justice and political legitimacy. Given the constraints of
the veil of ignorance and the general knowledge allowed in IOP, the parties are to choose
a set of principles of international justice based on the consideration of protecting and/or
promoting the national interests of the states they represent. Under such conditions, what
would the parties in the second stage of IOP choose?

The parties in the second stage of IOP have to choose under the condition of
uncertainty. The reason is similar to the one that explains why the parties in OP have to
choose under the condition of uncertainty. The parties in the second stage of IOP don't
know what state they actually belong to, they don't know the specific interests of their
states, they don't know how powerful or rich their states are, and so on. According to
Rawls, there is no basis for probabilistic reasoning here: probabilities of outcomes of
choosing alternative conceptions cannot be reasonably estimated, since there is no
sufficient information on which to base such estimates.\(^{35}\)

Given that the parties have to make their decisions under uncertainty, the parties
would think that the proper principle to choose must at least be such that it gives moral
protection for their states to pursue their national interests. In other words, these
representatives in the second stage of IOP would choose a conception of international
justice which gives their states moral protection to pursue their own national interests.
And each representative will want his state to receive such moral protection as much as
possible, at least no less than any other state. Assuming that the parties in IOP, like their
counterparts in OP, would follow a decision rule somewhat similar to the maximin rule.\(^{36}\)
it will be rational for the parties to choose a principle of international justice that would
give them the best moral protection in the worst situation. Such an assumption is a reasonable one. Given the tremendous inequalities among states (this is known to the parties in IOP) and the likely consequences of such international inequalities, it is reasonable that the parties (not knowing whether their states are advantaged or disadvantaged by international equalities) would want their states to fare as well as possible. They would want that if their states are in fact situated in the worst situation, their states would be better protected by a principle of international justice than any other alternatives. If their state turns out to be one of the weak states, they want their states to be morally protected by the chosen principle of international justice no less than the more powerful states are. Such an attitude is rather conservative. However, it does not seem rational for the parties to be "aggressive" in this context. For the consequence of being aggressive might put the states they represent in an even worse situation. An aggressive strategy may end up choosing a certain principle of international justice which may favor the few powerful states but make the weak states more miserable than they would otherwise be. In seeing such a consequence of adopting the aggressive strategy, the parties in the second stage of IOP would think it is not rational to be aggressive, when they perceive alternative options. Also, the parties would not think that it is not rational to choose a principle of international justice that would put powerful and rich states in a drastically disadvantaged situation. Their general knowledge about the history of international relations would convince them that such a principle of international justice would not be honored by the powerful.

According to the above considerations, the principle of international justice that
rational parties in IOP would choose will guarantee each state equal moral protection. Rawls's principle of international equality is designed to do this. For this reason, the parties in the second stage of IOP would choose the principle of international equality. The principle of international equality requires not just that states be treated equally by other states and other international agents, but also that states' rights to sovereignty, non-intervention, territorial integrity, and so on, be respected.

I said earlier that the decision of the second stage of IOP will be constrained by GIJ, which is chosen in the first stage of IOP. In this respect, the principle of international equality is chosen on the condition that it is compatible with GIJ. Although what we have discussed so far is within the scope of the ideal theory, it is important to note that the principle of international equality is constrained by GIJ, which requires states and international institutions to honor basic human rights and formal justice.

There is one important aspect of the choosing of the principle of international equality that deserves some further remarks. The above explanation of the derivation of the principle of international equality from IOP is in an important sense based on the notion of Critical Political Pluralism that I explained in Chapter 2. The parties in IOP are told that the states they represent can be justified in accepting different conceptions of social justice and political legitimacy. It is reasonable to think that to preserve just institutions defined by these conceptions of social justice is an important part of the national interests of these states. There may be some objections that deserve some discussion. First, some may say that states typically are more interested in things like
power, glory, resources, and territory. This seems to suggest that these may be called "primary international goods." Each state wants more of these primary international goods than less. However, since states are situated quite differently and have quite different cultural and historical traditions, it is not entirely clear that power, glory, and territory, are things that every society wants more than less. For example, it is not clear that any state is better off by getting more power, when such an increase of power may cause some neighboring state's uneasiness and may motivate that state to take preventive preemptive action. A Buddhist state may have no interest in international glory. Even if states do have interests in getting more of these, given the fact of international inequalities, most states are likely to run the risk of losing them if they receive no equal protection and treatment in international relations. Secondly, the knowledge of Critical Political Pluralism would lead the parties to think that it is not in the interest of the states they represent to choose a conception of international justice that endorses or contains a certain comprehensive religious or moral doctrine as part of the conception of international justice. If Critical Political Pluralism were not established and there were a universally conception of social justice based on, say, Christian religious beliefs, then it would have been reasonable for the parties in IOP to choose the general realization of Christian beliefs as part of the conception of international justice, because the definition of the national interests of all just states in this case would have contained the realization of Christian beliefs. Another example: many liberals believe that a certain liberal conception of social justice is universally valid. That is, for these liberals a society can be just only when it follows the liberal principles of social justice like a principle of most
extensive but equal liberties. Such a liberal conception of social justice typically contains a very extensive list of rights, like the right to free speech, the right to equal political participation, and so on. For these liberals, even Critical Political Pluralism, as I described it in Chapter 2, is a mistaken view. In the mind of these liberals, a conception of international justice would contain some principle that requires international institutions to promote these rights and to intervene into states which violate these rights. If there would indeed be universal principles of social justice like those proposed by Christians and those liberals and the parties in IOP would know this, then the parties in IOP might have chosen quite different principles of international justice. On this consideration, Critical Political Pluralism plays an important role in shaping the construction of the Rawlsian theory of international justice.

3.3.4 A Rawlsian Principle of International Distributive Justice

Rawls is convinced that it is not reasonable to impose any version of the Difference Principle globally. Assuming that Rawls is right about this, does this imply that it is not reasonable to impose any principle of international distributive justice globally? Rawls seems to think that any principle of international distributive justice is in some important sense similar to his Difference Principle, which states that social and economic inequalities are allowed only when these are arranged to the greatest benefit of the least advantaged. If we are to adopt a global version of the Difference Principle, then we would have to determine who are the least advantaged: are they persons or states?
Many have maintained that the subjects of the Difference Principle, social or global, are persons not states. Rawls seems to hold this view. If this is the case, then the implementation of the global Difference Principle would be in conflict with some states' social and political arrangements regarding social and economic inequalities, when states are justified in holding non-liberal conceptions of social justice. Since Rawls accepts Critical Political Pluralism, he cannot accept the global Difference Principle. For one thing, to enforce the global Difference Principle would result in the following situation: a society that is justified in not accepting the Difference Principle to arrange its domestic institutions may be forced to re-arrange its institutions to meet the requirement of the global Difference Principle.

But can we be justified in holding that the subjects of a certain principle of international distributive justice are states, not persons? Is it possible that our ideal theory has a principle of international justice compatible with the principle of international equality and Critical Political Pluralism? I want to further explore the possibility of holding this view.

There is one important question we need to answer, before we can further explore the possibility of holding the just mentioned alternative view of international distributive justice. The question is whether there is already, or will be in the foreseeable future, a global cooperative scheme. It is important to answer this question, because, as indicated earlier, many believe that issues of international distributive justice would not arise if the world order is not maintained within a global cooperative scheme. This is a difficult and complicated question. Rawls does not seem to think that there is or will be in the
foreseeable future a global cooperative scheme that gives rise to moral concern of international distributive justice.

Before we answer the question whether there is or will be in the foreseeable future a global cooperative scheme, we may want to re-consider the common view that the existence of a global cooperative scheme is necessary for us to discuss any principle of international distributive justice. Some people think that it is not reasonable to hold the above mentioned common view. For example, in the case of social distributive justice, many people in society are not able to participate social cooperation for reason beyond their control and for this reason they are put in a rather disadvantaged situation. In this case, as it is argued, it does not seem plausible to hold that justice concerns only those who are able to and/or do cooperate and contribute within a cooperative scheme. According to this view, a theory of justice is supposed to address moral issues related to the situation of these disadvantaged people. According to this view, it is an obligation of justice to help the disadvantaged and, for this and other reasons, the scope of distributive justice ranges over cases where people are not able to participate cooperation or beyond the cooperative scheme. It seems to me that Rawls does not take this alternative view. Rawls seems to think that questions of distributive justice arise only when there is a cooperative scheme.

There is an important issue implicitly raised by the above alternative view about the relation between distributive justice and a cooperative scheme. The issue is related to the scope of justice: how far reaching is the scope of justice? The alternative view seems to hold a conception of justice that has a more far-reaching scope than a conception of
justice like Rawls's. If it is more reasonable to accept the more far-reaching view about the scope of justice, then it seems relatively unimportant to determine whether there is a global cooperative scheme. However, if we follow Rawls, then it is important to determine whether there is or will be in the foreseeable future a global cooperative scheme. The question is which of these two views we should adopt. I believe there is no a priori reason for saying that one should adopt the non-Rawlsian or Rawls's view in this regard.

From a moral point of view, if there are distributional inequalities and these inequalities bring about issues of moral concern like suffering and illness, then it would seem that we need to address these moral issues caused by distributional inequalities. Now such distributional inequalities can happen in a cooperative world and a non-cooperative world. It seems that moral issues arising from such distributional inequalities need to be addressed regardless of the existence of a global cooperative scheme.

However, Rawls believes that a theory of justice is but one branch of moral theory. It is fairly obvious that not all moral issues are issues of justice. Other parts of moral theory may address such issues better than a theory of justice. Furthermore, there can be various subjects of justice. Rawls's theory of social justice focuses only on one subject of justice: the basic structure of society. There are other subjects of justice. The subject of international justice is the major global institutions or the law of peoples. Also we can have a theory of justice dealing with justice between generations, another theory of justice with justice between persons, and so on. In this regard, Rawls's conception of justice, social and international, is primarily institutional. For Rawls, a principle of international
distributive justice presupposes the existence of a global cooperative scheme.

But one may still ask: is such a Rawlsian theory of international justice going to ignore the moral issues like hunger and illness arising from international distributional inequalities in an non-cooperative world? Cosmopolitans like Beitz and Pogge may challenge the Rawlsian theory by asking this question. I think that the Rawlsian theory presented here does not ignore such moral issues. However, the Rawlsian theory will address such issues in a way different from the cosmopolitan one. I shall come to discuss this in Chapter 5.

Rawls does not think that it is appropriate to hold any principle of international distributive justice. I do not agree with Rawls in this regard. I shall try to argue that though we adopt the view that the units (or subjects) of international distributive justice are states, but not persons, and accept Critical Political Pluralism, the Rawlsian theory of international justice can and should address questions of international distributive justice by suggesting a certain principle of international distributive justice. Given this, what we want to determine is what the parties, on behalf of states, would choose in this regard in the second stage of IOP. What principle of international distributive justice would it be rational for them to choose? Given the condition that the parties in the second stage of IOP are representatives of states, the parties are supposed to choose to preserve and/or further the national interests of the states they represent. One interest that each state has is to preserve its just social order defined, among other things, by the conception of social justice derived from OP. On this consideration, the parties would think that the principle
of international distributive justice they might choose should be compatible with this interest. States of course have other interests. But from the point of view of IOP, the parties are not allowed to be informed about states' actual interests. However, the parties in the second stage of IOP can base their deliberation only on the interest of preserving the just social order of the states they represent. Given the fact that states accept different conceptions of social justice and different comprehensive doctrines of value, there seems no homogeneous ground for the parties to specify a set of primary goods such that they can say that these are the goods all states want, that they more or less want, or that they think it is no harm to want more of these goods, except that they all have a common interest in preserving their just social orders and legitimate political systems. For example, a Buddhist state may not see as primary goods power, wealth, international positions, and so on. On the other hand, many states are disadvantaged in international relations because of the natural and/or historical limits imposed on them. Such an international disadvantage may in turn put these states in a more difficult situation with regard to maintaining a just order within their states. On these considerations, the principle of international distributive justice that would be chosen by the parties in the second stage of IOP would be such that (1) this principle would serve the interest of all states in preserving the just order of these states, (2) this principle would address the problem of international distributional inequalities in a way compatible with (1) and in ways that would help the disadvantaged states to lay the foundation of building, maintaining, or restoring, the just order of their states. The parties in the second stage of IOP as representatives of states would thus choose a principle of international distributive justice
that can be formulated as follows:

The (Rawlsian state-centric) principle of international distributive justice:
international redistribution of goods and resources is allowed only to
the extent that (1) such redistribution does not harm any state
regarding the preservation and promotion of its just social order, and
(2) it helps the disadvantaged states to get on the track of building,
maintaining, or restoring, their just social order.

This Rawlsian state-centric principle of international distributive justice is very
different from the Difference Principle or any extended (or global) version of the
Difference Principle. This is because, the global version of the Difference Principle is
supposed to maintain that international distributional inequalities are allowed only when
such inequalities are to the greatest benefit of the least advantaged persons in the world. I
shall discuss why the parties in the second stage of IOP as representatives of states would
not choose any global version of the Difference Principle in Chapter 5. which, according
to the cosmopolitan, is the only justifiable principle of international justice.

The state-centric principle prescribes only whether states are able to maintain a
just order. This does not mean that the Rawlsian state-centric principle does not care
about people's sufferings caused by international distributional inequalities. The basic
assumption of this state-centric principle is that moral concern about people rights and
well-being is first addressed by helping states establish a just social order and legitimate
political system. When a states is just and legitimate, moral issues about people’s rights and well-being within that state are presumably been adequately addressed. When states are not able to establish and/or maintain a just order because of some unfortunate factors, then the Rawlsian state-centric principle will require other more affluent states to help these unfortunate states by, saying, relocating some of their goods to this unfortunate state.

Now I have explained why the parties in the second stage of IOP as representatives of states will choose the Rawlsian state-centric principle of international distributive justice. This and the principle of international equality are the two principles of international justice that will be chosen by the parties in the second stage of IOP as representatives of states, when they are informed that there exists and will exist in the foreseeable future the state system and know that states have a common interest in preserving their just social order and legitimate political system. The principle of international equality maintains that every state is to enjoy equal and compatible rights to sovereignty, territorial integrity, non-intervention, and self-determination.

It may happen that the application of the second principle (of international distributive justice) is in conflict with the requirement of the first principle (of international equality). I tend to think that there is no fixed formula for determining which principle is more appropriate or weighs more in each and every situation. I think the conflict of applying these principles can only be solved on a case-by-case base. There is no need to set a strict lexical ordering between these two principles.
I have explained how the principle of international equality and the Rawlsian state-centric principle of international distributive justice can be derived from my version of IOP. I have to note here that my explanation makes no claim about the existence of a global cooperative scheme. The derivation of the Rawlsian state-centric principle of international distributive justice is insensitive to the question whether there exists a global cooperative scheme. If the above explanations of the two principles are derived are accepted, the next question I have to answer is whether the two principles derived from IOP are also justified. I believe that they are also justified, because these two principles are chosen by the parties in IOP. Since IOP is itself a fair and reasonable procedure, the resulting outcome of following this procedure is also fair. The fairness and reasonableness of IOP consist in those constraints imposed by the veil of ignorance, GSJ and the notion of Critical Political Pluralism. Thus, since the derivation of these two principles is such that they are the result of the fair procedures of IOP and they are constrained by GIJ and compatible with different conceptions of social justice derived by OP, these two principles of international justice derived by IOP are justified. Such an account of IOP and how the two principles of international justice are derived and justified is more plausible than Rawls’s own, because my account is not troubled by those problems and difficulties that make Rawls’s account unable to derive and justify both of his two principles of international justice, especially the principle of human rights, as I discussed earlier.
I said earlier that I focus on discussing an ideal Rawlsian theory of international justice. It is ideal in two senses. First, it does not discuss situations where his two principles are not complied with. This part of the Rawlsian theory of international justice, just like Rawls’s theory of social justice, is a strict compliance theory. This means that the relevant conceptions and principles are fully complied with by all parties and that states are situated in favorable conditions to establish and maintain their just social order. Secondly, this is an ideal theory because it is constructed on the condition that the parties are representatives of just states. Unjust states are not represented in the theory. This may give rise to a particular concern, that is, how relevant is this ideal theory to our highly non-ideal world which is filled with injustices? Rawls believes that we need a non-ideal theory to deal with these injustices. But this non-ideal theory needs the guidance of the ideal theory. Without the ideal being identified, at least in outline, the non-ideal lacks an objective by reference to which questions faced by the non-ideal can be answered.

Such a view of the relationship between the ideal and the non-ideal reveals that if the ideal theory cannot provide guidance to the non-ideal theory of international justice for the purpose of coping with the problems of justice in this real world, the relevance of the ideal theory would be more or less undermined. In this view, in order to show that the Rawlsian theory of international justice that I have reconstructed in this chapter is more or less relevant, we have to test this theory against the real world problems. One recent problem of international justice in this world is the issue concerning violations of basic
human rights. In the following, I want to briefly consider why my reconstructed Rawlsian theory of international justice is more or less relevant by examining the issue of human rights violation and the issue of intervention.

In this world, many states violate gravely even Rawls’s principle of basic human rights. Since our ideal theory prescribes the principle of international equality, which guarantees states some equal rights, the question many people have, and try to answer, is whether those states that violate basic human rights should enjoy the same states’ rights as states that honor basic human rights. Here it is important that we be clear about which of the states’ rights guaranteed by the principle of international equality is disputed. It is a common view that a state gravely violating basic human rights will not have the right to non-intervention. It is also a common view that intervention into state A constitutes in some important sense a serious challenge to state A’s sovereignty. In this view, when a state does not have the right to non-intervention, its right to sovereignty is not secured. Nevertheless, let us say that when a state gravely violates basic human rights, if this state would be deprived of any of those states’ rights, it will mainly be the right to non-intervention. Some people argue that a state violating gravely basic human rights should be deprived of the right to non-intervention. However, other people argue that states should enjoy the right to non-intervention nonetheless in international relations, no matter whether they violate basic human rights. With this ongoing debate over human rights and states’ rights in sight, if our theory can provide no more or less reasonable solution to the issue of human rights violation, our theory would lose significantly its relevance.

This human rights vs. states’ rights issue seems to be a hard problem for our
theory, because this Rawlsian theory of international justice prescribes only two state-centric principles of international justice and no principle of human rights. So it seems that the Rawlsian theory of international justice can only either be silent on the human rights issue, or simply say that the human rights issue is not a proper issue of international justice. However, neither of these options are acceptable to Rawls and many of us. But my criticism that Rawls does not give a successful explanation of why the parties in IOP would choose the principle of human rights and my above presentation of the Rawlsian theory of international justice seem to force me to either be silent or saying that the human rights issue is not a proper issue of international justice.

From the point of view of the ideal theory, there will be no issue of human rights vs. states’ rights in the ideal world, since the constraints of both GSJ and GIJ rule out the possibility that such an issue would arise. That is one of the reasons why the parties in the second stage of IOP find no reason to choose the principle of human rights as a principle of international justice. If the parties in the second stage of IOP would choose, in addition to the principle of international equality, the principle of human rights, then our theory would be equipped adequately to provide guidance to the non-ideal theory to address the issue of states’ rights vs. human rights in this world. Nevertheless, our ideal theory is not entirely poorly-equipped to tackle the issue of states’ rights vs. human rights.

The most important principle that we can use to address the above mentioned real world issue properly is GIJ. Recall that GIJ is the principle chosen by the parties in the first stage of IOP. GIJ serves to constrain the deliberation process in the second stage of IOP. No principle would be chosen by the parties in the second stage of IOP, if the parties
do not agree that this principle is compatible with GIJ. In this regard, GIJ is part of our Rawlsian ideal theory of international justice. even though the two principles chosen by the parties in the second stage of IOP are not formulated to express such a constraint of GIJ. This constraint of GIJ on the principle of international equality would justify us in saying that when a state violates gravely basic human rights, it would be deprived of the right to non-intervention. Other states’ rights guaranteed by the principle of international equality may also be more or less affected or restricted because of the loss of the right to non-intervention. For example, a state with no right to non-intervention would be likely to be restricted in exercising the right to sovereignty in some significant aspects. The right to self-determination may also be limited. But it does not seem reasonable to think that the loss of the right to non-intervention implies a loss of the right to territorial integrity, the right to self-defense against aggression, and perhaps some other rights, that are guaranteed by the principle of international equality. Nevertheless, it seems quite obvious that a state violating gravely basic human rights ought to be corrected as a matter of international justice, which is possible only when this state loses the right to non-intervention.

The above explanation of how our ideal Rawlsian theory of international justice addresses the issue of human rights vs. states’ rights seems to impose some sort of lexical ordering between the requirements of basic human rights and those of states’ rights. According to Rawls, if we say that there is a lexical ordering between the requirements of human rights and the requirements of states’ rights, and that the requirements of human rights come first, we imply that the requirements of human rights must be satisfied before
any relevant requirement of states' rights will be considered. This seems to be an unreasonable requirement. For a state may respect most of the human rights required by the principle of human rights but fail to honor one or two of them, because of its unique socio-historical and/or international conditions. In this case, it seems unreasonable to say that the principle of international equality (which requires respect of states' rights) does not apply. It seems unreasonable to say that this particular state has no right whatsoever in international politics. I think we have to examine the question about whether a state complies with the principle of human rights by looking at the basic structure of the society. We have to see whether the violation comes from the basic structure of the society or whether it is an accidental event. If it turns out that the violation is connected with the character of the regime, like being tyrannical, then this state cannot be awarded without restriction those states' rights. However, the issue can be rather complicated because the complex structure of society may result in situations where the constitution and the law of a particular state require respect for human rights but some historical or cultural factors of this state are such that this particular society in some of its institutions or practices violates systematically some of the human rights. In this case, it is not easy to decide whether this particular state should enjoy states' rights in the same way as those just states (that is, states that respect more systematically basic human rights) do in international politics. To have justice well served in such gray-area cases, we need not only the principle of international equality and GIJ, but also other information about international politics, particular information about this society's history, politics, and so on. In any case, it should be clear that if it can be correctly judged that a certain state
seriously violates the principle of human rights as in the case of a tyrannical state, then this state will not be given those states' rights without restriction.

The above solution to the issue of human rights vs. states’ rights seems to have some implications for another real world issue—intervention. This implication can be illustrated through a question: if a certain state violates systematically basic human rights to a great extent, is it permissible as a matter of international justice that other states or some international institutions (like the United Nations) intervene into this particular state in the name of human rights? It seems fairly clear that a state that violates human rights to such a great extent will be significantly restricted in exercising many of those rights expressed in the principle of international equality. It will be restricted in exercising the right to political sovereignty, for example. More importantly, as explained earlier, other states or international agents can be justified in intervening in the name of human rights into this state. So, intervention in this or similar cases is permitted as a matter of international justice. In some cases, it should even be allowed that such intervention take the form of military intervention. when it is judged on reasonable ground that only military action can remove the oppressive regime quickly and effectively, so that people in that society can have a better chance to restore social order and normal life. Here I should note that intervention can take place in various forms of action. Military action is the most extreme. Sometimes intervention is justified but military intervention is not. So, as we may say, that intervention in a certain case is permissible in the name of human rights does not imply that intervention in different forms of action is equally justifiable. It
may happen that intervention in the form of, say, economic embargo is permitted but military intervention is unjustifiable, because the latter is perceived to cause unnecessary and excessive loss of lives, properties, and so on, and is perceived to have negative long-term impact of establishing a peaceful world order.

The justification of the permissibility of intervention in the name of human rights can be seen from another perspective. We may look at such a justification as addressing the fundamental concern of political philosophy—the concern of people's rights and well-being. The justification of intervention comes from the idea that GIJ constrains on the principle of international equality. Such a justification of intervention asserts the idea that any political or social institution is subject to criticism, correction, and/or reform, even by means of intervention, if it violates those basic human rights. Intervention in the name of human rights is permissible when it is carried out to address this ultimate concern of political philosophy, especially when there is no better alternative to do so.

The above remark about intervention focuses only on cases where states violate gravely basic human rights. Intervention may be permitted or even required in other cases as well. For example, some states may be unfavorably situated such that they even have difficulties in meeting the requirements of basic human rights, even though the governments have tried to meet the requirements. In these cases, GIJ and our second principle of international justice would require other states to provide aid to these states to help them satisfy fundamental human needs as well as get on track to build just societies. Such a requirement of international justice involves some type of redistribution
of goods across national boundaries. But the kind of international distributive justice proposed by the Rawlsian theory is different from, say, a global version of Rawls's Difference Principle. According to my reconstructed Rawlsian theory of international justice, the principle of international distributive justice justifies some redistribution of goods at the global level only for the purpose of helping unfortunate states to get on track to build a just society and only to the extent that such a redistribution will not require well-order societies to make unreasonable sacrifice—that is, societies that are required to contribute would not thereby be deprived of resources necessary for maintaining their current just social order and legitimate political system. When the aided state is in good shape to build a just social order, then the principle of international distributive justice is "relaxed," meaning that other states are no longer under the obligation to provide aid to this state. It may happen that if a significant portion of the population of the aided state is far worse off than the least advantaged in those affluent states, our principle of international distributive justice does not impose on people in the affluent states any obligation to help those people in that poor state. This does not imply that people in the affluent states have no other moral obligation whatsoever to help the more disadvantaged foreigners. But, from the point of view of IOP, it is not within the scope of international justice to impose such obligations on people. A theory of international justice has a unique subject: it concerns how major international institutions can fairly regulate the external relations between just states and what they should do toward unjust states. The notion of international distributive justice applies only to cases within such a scope.
Notes:

1. *A Theory of Justice*, pp. 377-379. This work will be referred to as TJ hereafter.
2. "The Law of People," pp. 51-68. Hereafter this article will be referred to LP.
3. TJ, p. 378.
4. Rawls thinks that it is not necessary that the parties in OP be seen as representing themselves. In discussing justice between generations, Rawls says that the parties of OP can be seen as heads of families; see TJ, p. 128. However, Rawls does not explain whether this view (that is, of seeing the parties in OP as representatives of families) can only be adopted in matters of justice between generations. Rawls does not explain whether it is suitable to extend this view to discuss social justice and international (or global) justice. For a discussion of this view, see Susan Okin, *Justice, Gender, and Family*, chapter 2. Here I shall not discuss this view. We can say that justice between generations is another issue for Rawls's general theory of justice and that it may need another characterization of OP such that appropriate principles of justice between generations can be explained.
5. TJ, p. 379.
7. TJ, p. 378.
8. TJ, p. 378.
9. LP, p. 55.
10. LP, p. 68.
11. LP, p. 51.
12. LP, pp. 67-68.
13. LP, p. 48.
15. TJ, p. 379.
16. LP, pp. 55-57.
17. For Rawls's account of the circumstances, see TJ, pp. 126-130. The assumption that each state in Rawls's ideal world is situated under the circumstances of justice is closed connected to his another assumption that each state in this ideal world is basically self-sufficient (see, TJ, pp. 4, 8, and LP, p. 44). That means each state in this ideal world need not and would not adopt any expansionist policy in order to maintain itself as a well-ordered society.
18. See note 16.
19. LP, p. 68.
20. TJ, pp. 210-211.
21. LP, p. 69.
22. LP, p. 61.
23. LP, p. 62.
24. LP, p. 71.
25. LP, p. 70.
26. LP, p. 67. Here Rawls also adds that a set of principles of justice, domestic or international, are justified when, in addition to the requirement of reflective endorsement, the domestic society or the society of states regulated by the corresponding principles of justice is also stable, with respect to justice. For my purpose here, I think I need not complicate the issue by introducing this new condition of justification.
27. There is a possible third factor that can affect the parties' decision in the second stage of IOP: the existence of a world state. Many think that the existence of a world state is only remotely possible. So I shall leave aside this factor.
28. TJ, pp. 8-9 and LP, p. 52.

I think this depends on what the parties know. If they would know that the general configuration of power in international relations: how many are super-power states, how many are powerful but not as powerful as super powers, and so on, the parties may be able to calculate some approximate probabilities of their citizenship. In this case, their decision may be quite different. Since the configuration of power in international politics is a contingent factor, the parties are not allowed to know this. The veil of ignorance is designed to prevent the parties in IOP from knowing any of such contingent factors. For a discussion about making decisions under uncertainty and other questions, see Gail Corrado, “Rawls, Games and Economic Theory.”

There are other rules of decision-making under uncertainty, the maximax rule, the minimax regret rule, the Bayes criterion, and so on. See Gail Corrado, op. cit., for a general discussion.

The notion of a lexical ordering is proposed by Rawls. See, TJ, pp. 42-43.

TJ, pp. 8-9, and LP, p. 52.

LP, pp. 71-72 and TJ, p. 9.
CHAPTER 4
THE MORAL STANDING OF STATES—CRITICISMS
FROM THE STATIST

4.1 Introduction

As explained in Chapters 2 and 3, one important implication of the Rawlsian theory of international justice is that it is both reasonable and justifiable for a theory of international justice to consider some of the interests of states under relevant conditions. Two important and relevant conditions were discussed: when Critical Political Pluralism is true and when the principle of basic human rights is honored by states, some of the interests of these states should be considered. Let be briefly re-capture the moral reasons for requiring these two conditions. The intuitive way of understanding the moral reason for accepting Critical Political Pluralism is the following: given that states, in their internal policies and external relations, affect people’s rights and well-being significantly in positive and/or negative ways, when states accept and practice conceptions of social justice (derived from OP), a theory of international justice cannot reasonably and justifiably impose requirements on these states without at the same time considering
these states' interest in maintaining a just social order and legitimate political system. The moral reason for imposing the principle of basic human rights is to prevent this state-centric consideration from sliding into the extreme end of ignoring people's rights and well-being. The constraint of the principle of human rights on a theory of international justice expresses the idea that it is acceptable because this theory requires that basic human rights be honored by states. The constraint of the principle of human rights forces an acceptable theory of international justice to say that no state's interest deserves moral respect unless, among other things, this state has met the requirement of the principle of human rights. Although I tried to show that the Rawlsian theory, according to my reconstruction, does not maintain that state-centric principles of international justice are justifiable under all circumstances, I did explain how under some conditions (which I specified in Chapters 2 and 3) certain state-centric principles of international justice will be chosen in IOP.

One can easily have the impression from my discussion of Chapters 2 and 3 that my Rawlsian theory tries to balance the rights and well-being of people, on the one hand, and states' legitimate interests, on the other, especially under the condition that the state system does make a difference in our moral reflections on political affairs. Such a view, however, is criticized by many. The statist and the cosmopolitan are two main critics. The statist and the cosmopolitan, though opposing each other, seem to agree that the Rawlsian project of balancing people's rights and well-being and states' interest is not tenable. In this and the following chapters, I shall discuss and try to refute this critique of the Rawlsian project. I shall try to show that the Rawlsian theory of international justice
is more plausible than either of these alternative accounts, because the Rawlsian theory addresses issues of international justice and ultimately the concern of people's rights and well-being in a more reasonable way. In this chapter, I shall discuss the statist criticism and explain why it fails; in Chapter 5, I shall discuss the cosmopolitan critique and try to explain why the cosmopolitan view, if plausible at all, does not undermine the Rawlsian theory of international justice.

Before I discuss the statist view, I have to make one remark. I have said the Rawlsian theory is more plausible than the statist, because, among other things, it addresses our concern with people's rights and well-being more effectively than the statist view. This may seem to beg the question against the statist, for it may seem that, even without any definition at this moment, the core doctrine of statism would seem to have no concern for people's rights and well-being. This is, as we may call it, an absolutist view of statism. In this respect, my claim does seem to beg the question against the absolutist statist. However, I believe that this absolutist view is not plausible, though I shall not try to prove this here. Very briefly, it seems to me that there is no moral ground on which we can plausibly defend a theory which disregards people's rights and well-being, which is the ultimate concern of political philosophy. If this is accepted, then the problem of begging the question against the absolutist statist should not be my concern. In fact, the most recent statist argument, mainly presented by Michael Walzer, does not hold such an absolutist view. Walzer believes that states' moral status is ultimately founded on people's rights. In this view, it seems justifiable to say that states' rights can be rightfully overridden by the consideration of people's rights to life and
liberty in many cases. This is confirmed by Walzer’s view that there are a few special cases—genocide, massacre, and enslavement—in which states’ rights can be rightfully challenged by our concern for people’s rights to life and liberty. Even so, however, Walzer wants to argue that in all other cases it is not justifiable for a theory of international justice to impose constraints on states’ rights by the principle of human rights or any other moral principle. This is, as I shall call it, the statist claim for the primacy of states’ rights. Because of this statist claim for the primacy of states’ rights, it seems that Walzer’s statist position can be characterized as quasi-absolutist, since Walzer admits that states’ rights can be challenged in a few special situations. If Walzer’s quasi-absolutist statist position would be accepted, then the Rawlsian theory presented in the previous chapter will be significantly undermined, since the Rawlsian theory holds that when a state does not honor human rights, this particular state’s claim to states’ rights will be rightfully challenged and restricted. In this chapter, I want to show that Walzer’s quasi-absolutist version of statism cannot be coherently established.

Before I further characterize the statist position, I want to briefly make a distinction which will be further explained as our discussion progresses. It seems to me there is a difference between showing that states can have rights of some sort and showing that states’ rights cannot be challenged except in those three special cases of Walzer’s mentioned earlier. Very briefly, showing states can have rights is tantamount to showing that states, for example, can do and/or have certain things (specified by these rights). But this does not imply that such rights cannot be rightfully challenged or overridden by considering, say, people’s rights and well-being. The statist claim for the
primacy of states' rights is a claim of the latter kind. The core of the statist position is not the claim that states can have rights, since our Rawlsian theory and perhaps other theories can accept that states can have rights. Rather, the core of the statist position is the claim for the primacy of states' rights. The claim for the primacy of states' rights is that a state should enjoy fully states' rights, if not committing any of the three crimes—genocide, massacre, and enslavement—regardless of the internal moral qualities of this regime. According to this statist claim for the primacy of states' rights, a highly oppressive state (a state that violated basic human rights gravely but falls short of committing any of three crimes) should have and enjoy the same states' rights as a just state does, nonetheless.

Although we can make such a distinction between the claim for states' rights and the statist claim for the primacy of states' rights, it should be fairly obvious that how the statist is to prove the former is closely related to how he is to show the latter. It seems to me that the statist must first show that states have rights, on which he can base his argument for the claim for the primacy of states' rights. It seems impossible that a statist can be successful in proving the latter while he fails to show that the former can support the latter. If we can show that the statist's arguments for states' rights are not strong enough to give all (except those committing any of three crimes) states the kind of rights his arguments are intended to do, we would then show that the statist's arguments for the claim for the primacy of states' rights are significantly undermined. On the other hand, if we can show that the statist's arguments for the primacy of states' rights would make his arguments for states' rights invalid, then we would therefore show that the statist
position is not sustainable. My discussion of the statist position will be twofold.

Based on the assumption that statists would accept only the quasi-absolutist position of statism, I shall first discuss and show that the statists cannot establish a notion of states' rights on which they can base their claim for the primacy of states' rights; second, I shall try to show that they cannot coherently establish the claim for the primacy of states' rights. If my criticisms are accepted, then Walzer and other statists have no reasonable and justifiable ground to criticize and reject the Rawlsian theory.

Let me explain a bit further what I shall do in this chapter. First, my discussion will examine three lines of argument in the statist attempt to establish the claim that states, if not committing any of the three crimes mentioned earlier, have rights: the traditional line of argument by the analogy between persons and states, the "internalist" line of argument and the "externalist" line of argument. The core of the traditional line of argument for states' rights is that the statist intends to show that the establishment of states' rights is not based on any moral principle. Here I want to make this statist intent more or less obvious by contrasting it with the Rawlsian view of states' rights.

Recall that my Rawlsian theory established states rights because states' rights are supported by the principle of international equality, which, as explained earlier, will be chosen by the parties in the international Original Position (IOP). I explained that the choosing of the principle of international equality is constrained by the principle of human rights. In this respect, we can say that my Rawlsian theory established that states can have rights of some sort only when, among other things, they have met the
requirement of the principle of human rights.

The Rawlsian view of states’ rights cannot be accepted by the statist. The statist wants to establish states’ rights without the constraint of human rights or any other moral principle. I shall try to show that this attempt by the statist fails. If I would be right about this, it is then straightforward to say that there is no moral ground for the statist claim for the primacy of states’ rights, that is, there is no moral ground to argue that states’ rights can be established without being constrained (or trumped) by the principle of human rights (or any other moral principle).

The internalist and externalist lines of arguments for states’ rights are more or less different from the traditional line of argument. Very briefly, the internalist argument tries to establish states’ rights on certain moral consideration. So, my discussion will not try to refute the internalist argument per se. Rather, I want to show that even if we could accept the internalist argument for states’ rights, the statist cannot thereby be justified in holding the claim for the primacy of states’ rights.

The externalist line of argument is quite different from the previous ones. According to it, states have rights because they are members of international society. I believe this claim is not convincing. Nevertheless, the statist wants to convince us that if we are to see states’ rights within the context of international society, then those states’ rights cannot be rightfully challenged in the name of people’s rights and well-being or any other moral principle except in the three special situations mentioned above. I shall try to show this externalist line of argument for the statist claim for the primacy of states’ rights is not acceptable.
In this chapter, I shall focus mainly on Michael Walzer's statist arguments, except for a brief discussion of the so-called traditional line of argument. I do this because Walzer's argument not only provides a strong case for the statist position but also illuminates various debates between him and the cosmopolitans. A discussion of Walzer's view serves not only to further elucidate the Rawlsian conception of international justice, but also to advance our understanding of international justice more generally.

There is another reason, though, for discussing Walzer's version of the statist view. One implication of Walzer's view seems to be that the proper units of primary moral consideration in matters of international justice are states, not individuals. This seems a natural implication of Walzer's statist position, despite Walzer's claim that the rights of states derive ultimately from the rights of individuals. Another aspect of Walzer's view, as we shall see, is a certain normative view of political pluralism. In identifying these claims made by Walzer (that is, the denial of the principle of basic human rights as a fundamental part of a correct theory of international justice, the assertion that states are the proper units of moral consideration, and a normative view of political pluralism), we can see that Walzer's view is interesting precisely because he also, explicitly or implicitly, attempts to address the three issues of international justice identified in Chapter 1.
4.2 The Traditional Statist Argument: States as Persons

It is a common view that a state must meet certain moral requirements if it is to be regarded as legitimate. As I briefly indicated in Chapter 1, such a view arises from the concern that the institutions of the state can significantly affect people’s well-being and rights and from the desire that the basic structure of the state be regulated by morally acceptable rules. Although this view of political legitimacy emphasizes moral constraints on the state, it also suggests a notion of the moral standing of the state. That is, it suggests that a state, because it has satisfied certain moral requirements, has thereby acquired some moral standing. An intuitive way of understanding the moral standing of states is to see that legitimate states have rights of some sort. Let us say that the moral standing of a state is understood in the sense that it satisfies certain moral requirements, which in turn gives this state certain rights.

But what kinds of rights do states have? Walzer and some statists do not give a clear specification of the notion of states’ rights they have in mind. I think my brief and general discussion of some aspects of rights given in Chapter 2 may help us understand the statist notion of states’ rights. According to my discussion in Chapter 2, rights can be understood in a strong sense or in a weak sense. When an actor A has a right to x in the strong sense, then other actors are under some obligation regarding A’s right to x. By contrast, when A has a right to x only in the weak sense, then other actors are not similarly obligated in this regard. Here I will not repeat myself by explaining this distinction. Instead, I want to use this distinction to make sense of how the statist must
understand states' rights. If we apply this distinction to the notion of states' rights, when state A has strong rights to, say, political sovereignty and territorial integrity, then other states have an obligation not to interfere with state A in these two regards. When state A has only weak rights to these, then other states do not have the same or similar obligation and may not do wrong if they violate state A's rights in these two regards.

It is important to make explicit what kinds of rights a given state has. For if state A, say, has only weak rights, then although state A is morally justified in defending its territory and independence, other states, it can be argued, may sometimes do no wrong in annexing state A's territory or subduing state A. Or it can be argued that it is justifiable for other states to challenge state A's rights in the name of the rights of individuals. In seeing this distinction, the statists must therefore argue that states have rights in the strong sense. Only when states have rights in the strong sense can the statist maintain that these rights be respected in international affairs as fundamental values of international relations and that these rights of states may not be violated in most cases. Here we should be careful, though. Even if the statist can show that states have rights in the strong sense, this is not equivalent to proving the statist claim for the primacy of states' rights. For example, the Rawlsian can accept that states can have strong rights. But the Rawlsian will not accept the statist claim for the primacy of states' rights. This is because the notion of strong rights requires that state A's having a strong right to x imposes obligations of some sort on state B. This does not show that state A's right to x cannot be rightfully challenged. For example, it is a common belief that people are seen to have a strong right to familial life. But it is also a common belief that this right can be rightfully
challenged when a certain member is abusing some other members of the family. It is believed that state officials are justified (or even required) to interfere with this family in the name of the abused. Seeing the distinction between strong rights and weak rights and the difference between the claim that states have strong rights and the statist claim for the primacy of states’ rights. I now turn to the so-called traditional statist argument for states’ rights.

The traditional statist argument for the rights of states depends on an analogy between states and persons. According to this traditional view, states are thought to have rights in the same way and on the same basis as persons have rights. Christian Wolff, who is seen as an important thinker in the development of Western international theory, maintains that "Nations are regarded as individual free persons living in the state of nature." Following this line of analogy, Wolff argues that nations, like persons, are moral equals. "Since by nature all nations are equal, since moreover all men are equal in a moral sense whose rights and obligations are the same; the rights and obligations of all nations are by nature the same." The rights and obligations of a nation are defined by its "sovereignty," which is originally "absolute" but can be limited by the laws of nations which impose restrictions equally on every state. "Since by nature no nation has a right to any act which pertains to the exercise of the sovereignty in another nation, no ruler of a state has the right to interfere in the government of another, consequently cannot establish anything in its state or do anything, and the government or the ruler of one state is not subject to the decision of the ruler of another state."
The above reasoning from the analogy between persons and states is supposed to achieve two things. First, this analogy is supposed to show that states in the state of nature have equal rights, just as persons in the state of nature have equal rights. Second, it is supposed to show that these states' rights are rights in the strong sense. However, neither of these two goals seems to be achieved by this traditional account. Regarding the first goal, it seems difficult to see how the analogy between persons and states holds with regard to how the latter come to have rights. Second, it is not clear that states' rights in the state of nature entail that they are rights in the strong sense. Let me explain the second point first.

To assess the claim that states have strong rights in the state of nature, we have to understand what it is for states to situate themselves in the state of nature. For this purpose, let us begin with the case of human beings in the state of nature. When we talk about human beings in the state of nature, the standard view is that we are talking about a certain situation before the establishment of the state. But, since there has been so far no world state, the talk about states in the state of nature seems to suggest that states have so far been situated in the state of nature. According to Wolff's analogy, since human beings situated in the state of nature have equal rights, the fact that states are situated in the state of nature would indicate that states have equal rights. Suppose, for the sake of argument, this analogy would hold. So, states in the state of nature have equal rights. This line of reasoning seems valid. But, we want to know, does this line of reasoning establish the claim that they are rights in the strong sense? It seems that the conclusion of the reasoning establishes only that states have equal rights. It does not establish the latter
claim. At least, according to Hobbes, rights in the state of nature do not impose any obligations on others. If we accept Hobbes's view, then Wolff's argument does not succeed in demonstrating that it is morally wrong, as a matter of international justice, for any state to intervene with the domestic affairs of other states. Now, Wolff or his followers may say that they do not understand the state of nature in the Hobbesian sense. If this is the case, then my criticism of Wolff seems groundless. However, I believe Wolff's statist position forces him to accept the Hobbes's view about the state of nature. Let me consider this possible reply by Wolff.

It seems to me the problem for Wolff, however, is that this reply is not available to him. Here is why. One important aspect of Hobbes's view about the state of nature is that there is nothing just or unjust in the state of nature. But does Wolff have to accept this Hobbesian view about the state of nature? If he accepts this view, then even if he can plausibly argue from the analogy between persons and states for states' rights, he cannot plausibly argue that these states' rights are rights in the strong sense. For it would be nothing unjust for a state to violate another states' rights, which is an important part of Wolff's statist argument. I claim that he has to accept the Hobbes's view. To show this, let us consider a non-Hobbesian view.

Let us say that a non-Hobbesian view would maintain that we can talk about justice and injustice in the state of nature. In adopting such a non-Hobbsian view, I think we can plausibly say that there are certain moral principles of justice in the state of nature in terms of which the rights that state-of-nature actors, A and B, have are defined. The rights that A and B have can be strong rights because, according to the principles in
question, A is under some obligation of not violating B’s rights and it would be unjust for A to violate B’s rights, and vice versa, in some regards. In this view, that A and B have strong rights has nothing to do with the fact that A and B are situated in the state of nature. In other words, we cannot say that A and B have strong rights because they are situated in the state of nature. Instead, we have to say that it is because of these moral principles that A and B, who happen to be situated in the state of nature, have rights. But this view of how state-of-nature actors have rights is not what Wolff holds. He holds that state-of-nature actors have rights because they are situated in the state of nature. So, Wolff does not adopt a non-Hobbesian view of the state of nature. But cannot he adopt the view that we can talk about justice and injustice in the state of nature? I claim he cannot. Let me explain.

If Wolff were to talk about justice and injustice in the state of nature, Wolff would have to say that it is not the moral principles of justice that define the rights that A and B have. Rather, it is the rights that A and B have that define the principle of justice in the state of nature. Wolff would have to say that there are requirements of justice in the state of nature precisely because of the rights A and B have. But what justifies this? Wolff would have to say that A and B have rights because they are situated in the state of nature, not because there is any moral principle prior to and independent of the rights that state-of-nature actors have. If this line of argument would hold, then, Wolff can reject Hobbes’s view that there is nothing just and unjust in the state of nature without giving up the view that A and B have rights because they are situated in the state of nature. This seems a fair rebuttal by Wolff. However, I still believe this rebuttal by Wolff is not
successful. To see this, recall in the introductory section above, I noted that the statist’s argument for states’ strong rights and/or for the claim of the primacy of states’ rights is closely related to his argument for how states have rights. In this regard, to assess whether Wolff’s rebuttal is successful, we have to consider the first of the two questions about Wolff’s argument raised earlier: how can the analogy between persons and states justify Wolff’s view about how states have rights? If I can show that the analogy cannot support Wolff’s claim that states have rights in the same way as persons do, then Wolff’s rebuttal to my challenge as well as his whole argument would be groundless.

One important aspect of Wolff’s argument by analogy rests on the following reasoning about the similarity between persons and states. When persons are situated in the state of nature, they have rights. States are situated in the state of nature. So, by the same token, states have rights. It seems that for this reasoning to hold, it must be shown that the possession of rights by persons in the state of nature depends on the situation (that is, the state of nature) and does not depend, in any significant sense, on some unique properties that persons have but states cannot have. If the possession of rights by persons in the state of nature depends, in some significant sense, on some unique properties that only persons can have, then Wolff’s analogy would be severely undermined. I think Wolff’s analogy does not hold and hence does support the claim of states’ rights because I think there is a significant dissimilarity between persons and states regarding their rights.

It is a common view that persons have rights because they are moral beings: they have the capacity to choose, revise, and pursue their interests. Can states have a similar
capacity? That is, can states have the capacity to choose, revise, and pursue policies of their national interest?

It seems that states do make, change, and pursue policies of their national interest. So, it seems that states are also moral beings. However, there seems to be a significant difference between persons as moral beings and states as moral beings. Persons themselves have the capacity of thinking, reasoning, acting, being happy, and suffering. But, states as political institutions do not seem to have such a capacity. It is more appropriate to say that some persons or groups of persons think, reason, and act in the name of their states, than to say that states qua states can think, reason, and act. It seems, that is, that we can make a distinction between the moral status of persons and the moral status of states. The moral status of persons as moral beings is understood in the primary sense, meaning persons themselves have the above mentioned capacity. The moral status of states as moral beings is understood in a secondary sense, meaning states can have a similar capacity only via some persons who make, revise, and act on national policies in the name of their states.

The distinction between the primary sense and a secondary sense of moral status in an important way explains the dissimilarity between persons and states. So, Wolff's argument by the analogy can be challenged, in light of this distinction, by pointing out the significant dissimilarity between persons and states. There are other fatal implications of this dissimilarity for Wolff's argument.

The distinction between the primary moral status of persons and the secondary moral status of states helps us further understand how the kind of rights that persons (in
the state of nature) have is different from the kind of rights that state-of-nature states may have. Let me explain. Persons, because of their primary moral status, naturally impose some obligations on other actors. People (and states) are under moral obligations of some sorts not to do certain things toward other people. We use the notion of rights to capture such a moral property of persons' moral status. We can say persons qua persons have rights of some sort and we normally do not require that such an attribution of rights to persons need moral justification, if we accept the notion of rights. Thus, in this view, the reason that persons in the state of nature have rights is not because they are situated in the state of nature. Rather, it is the moral status of persons that grounds our claim about the rights persons have. According to this view, Wolff is wrong in saying that persons have rights because they are situated in the state of nature. Thus, the fact that persons and states are all situated in the state of nature is an irrelevant factor. Wolff cannot be justified in saying that because states, just like persons, are situated in the state of nature, states in the state of nature have rights just as persons in the state of nature have rights. Wolff's argument fails because Wolff appeals to something irrelevant to reach his conclusion.

But can Wolff insist that persons have rights because they are situated in the state of nature, not because of the moral status of persons? If Wolff still wants to do so, we ask, what is the ground for this view? That is, why should we believe that persons have rights simply because they are situated in the state of nature, not because of some properties they have? I don't see any plausible reason. For if this view were to hold, then we can say that, by the same token, rocks, for example, would have rights just as persons
have rights, since rocks just like persons are situated in the state of nature. This is neither justifiable nor acceptable. Thus, Wolff's argument by the analogy between persons and states cannot hold and, for this reason, cannot be used to establish his claim about how states have rights.

We can further see the failure of Wolff's argument from a different angle. I said that there is no prima facie reason to question the plausibility of attributing such rights to persons. By contrast, we have at least prima facie reasons to question the attribution of rights to states. In this regard, we may make another distinction between the rights of persons and the rights of states similar to the previous distinction between the moral status of persons and the moral status of states. We can make a distinction between rights in the primary sense and rights in the secondary sense. A has the right to x in the primary sense when there is no prima facie reason to question A's right. By contrast, B's right to y is in the secondary sense when it needs to be shown morally that B can have that right.

If the above distinctions are accepted, then we can say that the rights of persons are primary, while the rights of states are secondary. The rights of persons are primary because the primary moral status of persons grounds the belief that there is prima facie no need to justify the attribution of these rights to persons. The rights of states are secondary because the secondary moral status of states does not provide as strong a reason to attribute rights to states as the primary moral status of persons does. For this reason, it needs to be shown that it is both reasonable and justifiable to attribute states such rights.

In light of the distinction between the primary sense of moral status that persons
have and the secondary sense of moral status that states have, and the distinction between
the primary sense of rights in terms of which we understand the rights of persons and the
secondary sense of rights in terms of which we understand the rights of states, we can
now see the failure of Wolff's argument for states' rights by the analogy between persons
and states. And what we see is that Wolff is not warranted in claiming that states can
have rights in the same way and on the same basis as persons have rights.

I hope the above discussion of Wolff's argument for states' rights by the analogy
between persons and states has shown that Wolff's argument fails to establish the claim
that states can have rights because they are situated in the state of nature. The secondary
moral status of states does not justify Wolff's attempt to establish states' rights by the
analogy. Wolff's argument by analogy fails because persons and states are drastically
dissimilar regarding their moral status and the kinds of rights they have. Furthermore, the
view that states' rights are only secondary illustrates an important point in my argument
against Wolff's statist claim, that is, even if we could have accepted Wolff's argument
for states' rights, his argument fails to support the statist claim that states' rights can be
established independently of any moral consideration. Since the last point is especially
important to my rejection of the statist view, I shall make one further remark about it at
this point.

The claim that a state can have rights only in the secondary sense implies that the
possession of these rights by this state needs to be justified. It should be straightforward
to see that the very task of justifying states' rights will involve some moral consideration
independently of states' rights. Although such a justification of states' rights may be able to support a certain claim for strong states' rights, this is quite different from Wolff's statist argument by analogy. Since Wolff's statist argument fails to show that states can have rights independently of any moral consideration, its attempt to support the statist claim for the primacy of states' rights is in vain. The reason should be obvious. For the essence of the statist claim for the primacy of states' rights is that states' rights cannot be rightfully challenged by any consideration other than that of states' rights, except in very few special cases. If states' rights cannot be established without appealing to some independent moral consideration, then it is natural and reasonable for us to think that states' rights can be challenged by some moral consideration in many cases other than those few special situations. Oddly enough, although Walzer thinks that states' rights cannot be established without appealing to some independent moral consideration—that is, people's rights to life and liberty—he still believes in the statist claim for the primacy of states' rights. I shall consider Walzer's belief in later sections. Right now, I want to consider another traditional line of argument proposed by Walzer.

Walzer also embraces the preceding analogy, though in a different way. Walzer tries to articulate his argument for strong states' rights, and eventually for the statist claim for the primacy of strong states' rights, by means of what he calls the "legalist paradigm." The legalist paradigm postulates a moral order among independent states by an analogy with the domestic case of the civil order among citizens within a state. This way of describing the analogy between persons and states and the analogy between
individual rights and states' rights seems to avoid the difficulties faced by Wolff's analogy. For Walzer, states have rights just as citizens do within a well-ordered state. By this analogy, states have rights and duties, and they can suffer or commit crimes such as murder or armed robbery in their relations to one another, in much the same way as citizens within a society do. Indeed, in Walzer's "domestic analogy," the society of states is just like a society of persons in the sense that the moral order within a domestic society and the moral order within the society of states both derive from fundamental claims to rights of independence and autonomy. But this analogy, if valid at all, seems insufficient to show that states' rights cannot be challenged in the name of the rights of individuals. That is, it is not strong enough to support the statist claim that a highly oppressive state still has states' rights, which cannot be rightfully overridden or challenged by the principle of human rights or any other moral principle. Let me reiterate Walzer's claim here. According to Walzer, the rights of a highly oppressive state—that is, a state violates gravely people's rights to life and liberty but falls short of committing genocide, massacre, or enslavement—cannot rightfully be challenged in the name of people's rights, though he admits that states' rights can rightfully be challenged in case where genocide, massacre, or enslavement, are taking place. This is Walzer's quasi-absolutist statism, as characterized earlier, which is the claim I shall try to reject in the remainder of this chapter.

Walzer's version of argument by analogy also fails. If Walzer's argument by analogy would hold, then this analogy also justifies a rejection of Walzer's (quasi-
absolutist) statist claim for states’ rights. For one thing, we think it is appropriate for state officials, for example, to intervene in the domestic affairs of a particular family for the sake of protecting some members of the family. I don’t think Walzer can have any plausible reason to reject this view about intervention in the name of people’s rights within domestic society. In this regard, we have a good reason to say that Walzer’s domestic analogy, for the same reason, should allow intervention in the name of people’s rights, when the government of a certain state violates gravely human rights. So, even if we accepted Walzer’s domestic analogy, the argument by this analogy itself does not warrant the validity of the claim that states have rights which may not be challenged or overridden by the principle of human rights in most “non-special” cases. Thus, the analogy between persons and states, regardless of whether it is modeled on the idea of the state of nature or on the legalist paradigm, fails to show that states’ rights cannot be violated in the name of the rights of individuals in cases other than genocide, massacre, and enslavement.

One more remark about Walzer. It seems that Walzer’s theory of states’ rights is actually modeled on one particular conception of the moral order among citizens within a state, that is, the conception that views this order as based on rights to independence and autonomy. This is commonly seen as a liberal conception. However, not every plausible conception of the moral order among citizens is based on the rights to independence and autonomy, which is claimed, as we shall see, by Walzer’s notion of political pluralism. In this case, it is at least questionable that Walzer himself models his theory of states’ rights.
on the liberal conception of independence and autonomy. Given the fact that Walzer accepts some version of political pluralism, Walzer needs to explain why it is reasonable to base his idea of the legalist paradigm on the liberal rather than some non-liberal conception of the moral order among citizens. It is possible that when the legalist paradigm is modeled on a certain non-liberal conception, Walzer can argue against equal states' rights and against the principle of non-intervention. Although Walzer will not accept this, the possibility is not ruled out by him. In any event, the legalist paradigm may help us understand how the moral order of international society should work. But it is helpful only if Walzer is justified in characterizing the moral order of international relations in the liberal way. I shall return to this issue below.

The failure of Wolff's and Walzer's arguments does not show that it is inappropriate to talk about rights of states. Although my Rawlsian theory conditionally supports states' rights, I want to give a very brief consideration of an alternative view of states' rights in light of a suggestion of Allen Buchanan's. I should note that my remark in the following is not intended to show that Buchanan's view is correct. Rather, my hope is that a brief look at Buchanan's suggestion can help me pave the way for discussing Walzer's internalist arguments for states' rights, because, as we shall see, there are indications that some aspect of Walzer's internalist argument can be understood in this light.

A state must at least be established by a group of people. Now, it seems fairly
easy to see that a group of people can establish some moral properties in virtue of which this group is justified in doing certain things. If it is also the case that the moral properties established by this group are such that other groups, individuals, or even states, are obligated to take or refrain from certain actions against it, then one can be justified in claiming that this group has acquired some rights which are not the same as the rights that individual persons, independent of this group, have. For example, for a group of vegetarians, the group as an organized entity has the right to impose some restrictions of diet on its members and this right is different from the rights each member has. This group has acquired this right because its members have acted in certain ways. Allen Buchanan calls rights such as this "group rights." A group right is different from individual rights. Individual rights can be exercised independently, at least in principle, by individuals. Group rights, according to Buchanan, "can only be exercised collectively or at least on behalf of the collective." One example of group rights discussed by Buchanan is secession. The right to secession is a group right because, according to Buchanan, individuals have acted in certain ways and without the existence of the group these individuals do not have this right of secession. Here I cannot give any further explanation of the notion of group rights. But, intuitively, it is reasonable to say that a group of people, because of actions on their part, may have created some moral properties attached to the group itself (but not to individuals independent of the group) and that these moral properties can be adequately captured by the notion of rights.

It seems quite natural and reasonable for us to accept the view that considerations similar to the establishment of group rights also apply to states, concerning their rights.
In some cases, states may possess some moral property (that is, having rights of some sort) because their members have acted in certain ways. On this consideration, although we should say that there exist only people, artificial constructions, and natural objects which are important elements of a state, we also have to say that the mere collection of these elements does not constitute a state. There must be something extra that makes a collection of people, artificial constructions, and natural objects a state. This something extra is, as we may call it, a process of political construction (of the state). Through such a process of political construction, a state can come to exist because, among other things, a monopoly of legitimate use of force by the state is established and a system of political specialization is practiced. It is at least reasonable to say that some rights can be ascribed to states precisely because their members have participated in the process of political construction by consent or by some other means. Here I need not specify all possible means by which people could participate the process of political construction of their states. It is reasonable to say that people can adopt different means simply because of their unique historical and social conditions. For some states, such a process of political construction was accompanied by revolution. For others, the process of political construction may have followed a more evolutionary course. There may be states whose creation may have depended heavily on external factors. These are very general observations. We need not further investigate how states come to exist, since this is not my present concern. The point of considering the creation of states is to indicate that it is at least sometimes reasonable for us to say that states, because of the ways their members established them and the ways that they are administered, can gain certain moral
properties, that is, can have rights of some sort.

The above consideration of how states can come to have rights is quite brief and general and is not meant to be a proof of states' rights. But it is at least a prima facie plausible line of argument for states' rights. Now, it is obvious that to argue for states' rights along this "group-rights" line of argument would be quite different from the argument based on the analogy between persons and states. For one thing, the group-rights line of argument seems to imply that states' rights would be established based on some moral consideration independently of states' rights. In this view, since the establishment of states' rights involves some independent moral consideration, it is natural for us to think that states' rights can be rightfully challenged by the moral consideration in question in cases other than those few special situations. Walzer's internalist argument for states' rights rejects this. One line of Walzer's internalist argument accepts that some independent moral consideration (that is, the moral consideration independent of states' rights) is required in his argument for states' rights, but rejects that the moral consideration in question can be rightly appealed to trump states' rights. In the following section, I will try to show Walzer's internalist argument cannot support Walzer's quasi-absolutist statist claim for states' rights or for the primacy of states' rights.

4.3 Walzer's Internalist Argument for States' Rights

Walzer, though not entirely clear, presents two approaches for his internalist
argument for states' rights. The first is to establish states' rights by a special consent theory. The second argument is to establish states' rights by showing that states have these rights because the state provides the most effective institutional protection of people regarding their rights and well-being. In the following, I want to show that even if these internalist lines of arguments for states' rights can be accepted, they are not strong enough to support the statist claim that states rights may not be constrained or trumped by the principle of human rights or some other moral principle in cases other than those of genocide, massacre, and enslavement.

4.3.1 Walzer's Special Consent Theory

Walzer asserts that states derive their rights ultimately from the rights of individuals. But what does he mean by this? According to Walzer, "the rights of states rest on the consent of their members." To appeal to popular consent, as Luban puts it, is now "the canonical modern account of legitimacy" or states' rights. But what is mysterious about Walzer's consent account of states' rights is that he thinks that the consent he talks about is not only "of a special kind" but also a "metaphor." This is puzzling because, according to the standard view, the consent that justifies the state is not metaphorical but quite real, though it can be either explicit or tacit. By contrast, it seems that Walzer's "special kind" of consent is neither explicit nor tacit consent. Here is what Walzer says.
State rights are not constituted through a series of transfers from individual men and women to the sovereign or through a series of exchanges among individuals. What actually happens is harder to describe. Over a long period of time, shared experience and cooperative activity of many different kinds shape a common life. “Contract” is a metaphor for a process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment. The protection extends not only to lives and liberties of individuals but also to their shared life and liberty, the independent community they have made, for which individuals are sometimes sacrificed.  

Here it seems that the kind of consent or contract Walzer characterizes as “of a special kind,” or metaphorical, exists not between people and the state, as we normally think from Hobbes’s and Lockes’s theories. Rather, the consent or contract exists among a group of people when they, through a historical process of mutuality and association, form a certain kind of common life or community. Here it seems that the special kind of consent or contract Walzer is talking about is non-political in nature. Rather it is communal. To say that a consent or contract is political, we are saying that the consent or contract is made, implicitly or explicitly, for the purpose of establishing the state. To say that a contract or consent is communal, we are saying that such a consent or contract falls short of establish the institution of the state. Since Walzer explicitly maintains that his special consent involves neither transfers of rights from individuals to the sovereign, nor any exchange of rights among individuals to establish the state, Walzer’s special consent can only be understood as non-political. The view that Walzer’s special consent is non-political captures Walzer’s explicit intent of rejecting the idea that this contract can be used to explain the moral relationship between the people and the state. Furthermore,
since Walzer explicitly says that the special consent exists only among people who form a common life through a historical process of mutuality and association, it is fair to say that Walzer’s special consent is communal. For these two reasons, Walzer special consent theory does not establish any states’ rights, at least not directly.

We can understand the distinction between communal consent and political consent from a different perspective. Earlier I discussed briefly the notion of group rights. Although I did not prove the notion of group rights, I think it is still a helpful device for us to understand the distinction between communal consent and political consent. If a group of people participates in a historical process of mutuality and association and thus forms a common life, then, in light of the notion of group rights, we can reasonably say that this group of people gains rights of some sort, which individuals of this group would not have independently. These rights in question can thus be plausibly called “group rights,” since the notion of group rights seems able to capture the moral property the notion of communal consent may imply. This talk of the community’s group rights is appropriate because the talk of communal consent is intended to convey the idea that a community, because of the communal consent among its members, has some moral status. By contrast, to talk about the political consent between people and the state is to talk about the moral relationship between people and the state. In many cases, it is reasonable to use, among other things, rights of the state to characterize such a moral relationship. In light of the notion of group rights, we may say that a group of people, if they form a state by means of making a political contract or consent, can “create” rights for their state. The notion of political consent is intended to express the idea that when
people do give their consent to create a state, then this state has some rights. However, the communal consent cannot, at least directly, explain the moral relationship between the people and the state, since the communal consent itself has nothing to do with the state. In other words, the notion of communal consent is not able to justify the rights of states.

If my exposition of the quoted passage is correct, then there does not seem to be any consent theory of political legitimacy or states' rights. Walzer's consent is of a special kind, it seems to me, because it differs from the standard view about the consent theory of political legitimacy proposed by Hobbes, Locke, Rousseau, and so on. Walzer's notion of special consent is meant to explain the formation of community, not the state. The moral aspect of involving the notion of consent allows us to say that the communal consent at best establishes communal rights of some sort. In this regard, we can say at most that Walzer's special consent theory explains how a community comes to exist and perhaps justifies the view that a community can have rights of some sort. If this interpretation is correct, then it seems that Walzer has not established states' right by this special consent theory. Of course, if it can be shown that a certain state is also a community as characterized by Walzer, then it seems straightforward that this state has rights of some sort derived from the communal rights. Such a reasoning from communal rights to states' rights seems to have some prima facie plausibility, if we do accept the above discussion of communal and political consent as well as communal and states' rights.

But it seems that Walzer cannot accept the reasoning from communal rights to
states' rights. One important reason why Walzer cannot accept this line of reasoning is that this line of reasoning does not say anything about states that are no community. In this case, if there are non-community states, then Walzer's special consent theory would give him no ground to say that these non-community states still have rights and these rights cannot be rightfully challenged, if they do not commit the crimes of genocide, massacre, or slavery.

From the above discussion, we can see that the distinction of communal contract and the political contract is important, because it helps understand that communal rights are acquired in a way different from how states' rights are acquired. Unless there is some independent argument for showing some inherent connection between communal rights and states' rights, it is not warranted to simply claim that a state has rights because the community within it has rights. Even if this claim could be accepted, it still does not show that states which are no communities have the same rights nonetheless. Thus, Walzer's special consent theory does not and cannot ground his quasi-absolutilist statist claim for states' rights, because this is what Walzer's statist view wants to establish. To establish the latter, there is a possibility—namely, if it can be shown that all states are communities, then states may have rights derived from communal rights.

But can Walzer make a claim that all states are communities? To make such a claim, it must be shown by Walzer that all or most members of any given state share a common life by going through the historical process of mutuality and association, as characterized by Walzer. Although Walzer does not give any further explanation
regarding the meanings of mutuality and association, it seems plausible to say that if some members of a state are discriminated against by some other members, and such discrimination is institutionalized within the state, then this state does not meet the requirement of mutuality and thus is no community. Intuitively, the notion of mutuality would not seem compatible with discrimination. We don’t have to imagine some hypothetical cases, where a certain group treat others not on a mutuality basis, in order to show that Walzer cannot plausibly claim that all states are also communities. In this world, it is easy to find out that there have been states that have institutionalized discrimination of some sort such that some members are institutionally discriminated against by others. At any rate, it is plausible to say that not all states are community-states. So, even if Walzer’s special consent theory is accepted, it does not support the claim that all states have rights. Walzer’s special consent theory does not say and cannot plausibly say that a non-community state still have states’ rights to the extent that these rights may not be challenged in the name of the people who are discriminated against by their states. For these reasons, Walzer’s special consent theory is not strong enough to support his quasi-absolutist statist claim that states’ rights may not be challenged in the name of human rights or some other moral consideration in cases other than the special situations of genocide, massacre, and enslavement.

I am inclined to think that Walzer must recognize the distinction between communal consent and political consent, for his conception of the state contains, among other things, the government and people, the latter of which Walzer sometimes mentions as the community within the state. In this respect, the question to be answered now is
how states’ rights can be derived from communal rights and why we should think that the
former may not be challenged by other states or international agents in the name of
human rights in non-special cases. Walzer’s answer seems to rely on his conception of
the function of the state.

4.3.2 Walzer’s Protection Argument

According to Walzer, the state is supposed to protect not only the rights of
individuals but also the rights of the community. Such a view of the state seems to
suggest that states have rights because of the kind of service (that is, protection) they
provide to their citizens and communities. But if states acquire rights by providing
protection of individual rights and communal rights, this account cannot really be seen as
a consent theory of political legitimacy.¹⁹

Walzer seems to adopt this non-consent argument for states’ rights and his statist
claim for the primacy of states’ rights. Walzer says that the state “claims to protect” this
communal life or the ongoing character of it “against external encroachment.” No doubt
states do typically claim to do this. But this is not the point. Implicitly, Walzer wants to
claim that states have rights by virtue of providing protection to their communities. But
establishing this “protection” theory of political legitimacy is not enough for validating
the statist claim of the primacy of states’ rights. For one thing, if individuals and
communities within a certain state can be better protected by violating the rights of that
particular state, then it seems reasonable and justifiable to do so by the protection theory
of states’ rights. In this case, Walzer’s claim for the primacy of states rights would be quite limited and not as strong as Walzer intends. He wants a stronger account for the strong statist claim.

One way of having a stronger account is to appeal to human experience. This seems to be Walzer’s strategy. Walzer seems to argue that, given human experience in history, the state is now the most viable political construction within which not only do the lives and interests of individuals receive protection but also the community can develop. In this view, it seems plausible to say that the state, for being the most practical institution to provide protection of individuals and the community, is justified in claiming that it must have those rights and that these rights should not be violated in most cases in order to adequately protect its citizens and the community against any external encroachment.

The above argument by human experience has its intuitive appeal. Also, it may be seen as the first step toward establishing the claim that states cannot adequately protect their citizens and their communities without having strong rights to territorial integrity and political independence. In this world, it is not practical to say that states can protect their citizens and communities while others have no obligation to respect their territorial integrity and political independence. There is ample empirical evidence showing that international conflicts, which often bring about harms to citizens and/or communities, are often caused by infringement of these two rights.

The above two considerations can establish these two rights, however, only on the condition that they are practically important for protecting citizens and communities.
It is not clear that they can establish Walzer's more radical claim that these two rights may not be violated in the name of individual rights. Actually, if the above reasoning for the principle of states' rights is accepted, it does not say anything about cases where states violate systematically and gravely people's rights to life and liberty without committing genocide, enslavement, or massacre. That is, the above reasoning considers only those cases in which the community and people's rights to life and liberty are violated when states' rights are violated. Such reasoning actually does not imply that in other situations states' rights may not be violated in the name of the community or people's rights. If internal horror imposed on the people by the ruling party of a certain state is so grave that the people's rights to life and liberty are constantly threatened and violated, the above reasoning simply is irrelevant. Many international relations theorists point out that internal oppression and terrorism by the local government have caused the most morally terrifying crimes against humanity that human beings have ever experienced. Putting aside the crimes committed in Nazi Germany's Holocaust, the Soviet Union's Gulag, and Mao's Cultural Revolution, many oppressive regimes commit internal crimes, like arbitrary arrests, sentencing without fair trials, political terrorism, police brutality, and so forth, that no reasonable human beings will see as morally acceptable. It is not enough for Walzer to justify his claim for the primacy of states' rights by simply appealing to the fact that states protect the rights and well-being of people and communities against external threats. For, such a line of argument establishes only limited cases for the principle of states' rights. To establish the principle of states' rights that would range over more cases, Walzer has to explain that this principle holds
even for states whose governments are brutal and oppressive.

Actually, Walzer believes that in most cases highly oppressive states (such as those that violate systematically and gravely people's rights to life and liberty) are still accorded states' rights, just like just and legitimate states, nonetheless. Walzer's point is that if an internally illegitimate government or state, no matter how oppressive or brutal it is, does not commit genocide, massacre, or enslavement, then it must be given the rights to political sovereignty and territorial integrity in the strong sense. But given the fact that it is an oppressive regime, there is at least prima facie reason to question Walzer's decision to give such a regime strong rights and put other states under the obligation of nonintervention. More importantly, Walzer's protection theory provides no moral ground for us to accept the statist claim that even highly repressive regimes enjoy strong states' rights. Thus, Walzer's protection argument for the primacy of states' rights fails.

4.4 Walzer's Externalist Arguments

Even if Walzer were to concede that his internalist lines of argument are undermined by my criticisms above, he would not be thereby convinced that his statist position is indefensible. He believes that the internalist arguments are just part of his attempt to establish his statist claim of the primacy of states' rights. It seems that Walzer wants to convey the idea that no internalist argument can capture the whole picture of the moral standing of states, because the internalist line of reasoning misses an important
part of politics—international relations. The moral standing of states is not just to be accounted for with regard to whether there is any contract between the community and the state or whether the state protects the people and the community. It also has to be accounted for within the context of international relations. Walzer calls this "the international standing of governments [or states]." To justify the statist claim for the primacy of states' rights, Walzer presents another line of argument—the externalist line of argument. If this externalist line of argument would be successful, then my Rawlsian theory of international justice would be severely undermined. In the remainder of this chapter, I shall try to show that this externalist line of argument fails.

Walzer believes that states as members of international society have some equal rights very similar to those states' rights endorsed by Rawls expressed in the latter's principle of international equality. How such a notion can make sense will be discussed immediately. What seems clear is that Walzer does not believe that the domestic account of political legitimacy can adequately explain the rights that states may have within the larger context of international relations. One of Walzer's major claims is that "states can be presumptively legitimate in international society and actually illegitimate at home." Walzer's view seems to come from a domestic analogy that in society "bad" persons still enjoy their civil rights to the extent that they do not violate others' rights. In discussing matters of international justice, Walzer seems to believe that the internal moral quality of states is not a major concern (as long as this internal feature constitutes no violation of other states' rights), just as personal character is not a major concern of social justice (as
long as persons do not violate other people's rights). He seems to be concerned only with how states' rights can be upheld in international society. Thus, according to Walzer, although the rights of states ultimately derive from people's rights to life and liberty, the rights of states may not be justifiably challenged by any other state or international institution in most cases in the name of people's rights. His view is explicitly stated in the following passage:

There exists an international society of independent states. States are the members of this society, not private men and women. In the absence of a universal state, men and women are protected and their interests are represented only by their own governments. Though states are founded for the sake of life and liberty, they cannot be challenged in the name of life and liberty by any other states. Hence the principle of non-intervention. The rights of private persons can be recognized in the international society, as in the UN Charter of Human Rights, but they cannot be enforced without calling into question the dominant values of that society: the survival and independence of the separate political communities.

In this passage, we can sense that Walzer takes an approach quite different from that taken by the cosmopolitan and Rawls. Walzer's statist approach is revealed in his claim that there exists a society of states, which needs to be preserved even when such a preservation has to be done at the expense of overlooking serious violations of people's rights. It is this claim that the externalist argument is supposed to support.

However, the society of states may be unjust, and people may think that it is reasonable that a rectification of international injustice may call for some constraints on states' rights by appealing to, say, the principle of human rights. Walzer can agree that
reformation is needed when the international society is unjust. But he cannot accept any
view that such reformation need be done by limiting or depriving states’ rights in the
name of human rights, for this may have the consequence of destroying the society of
states itself. For Walzer, people live primarily in national societies where they practice
morality and establish moral relations among themselves. Walzer seems to argue that by
preserving the society of states, national societies are also preserved. Even if we accept
this line of thinking, one question needs to be answered: should all or most existing
national societies be preserved as a matter of international justice? It seems that Walzer’s
externalist argument for the statist claim is to propose a view that almost all existing
states be respected and preserved, because states in most case are justified in accepting
different conceptions of social justice and political legitimacy. This is a view very similar
to unconditional political pluralism that I briefly indicated in Chapter 2. From the
Rawlsian point of view, such an unconditional political pluralism is not acceptable.

Walzer’s concern for the preservation of the society of states may suggest that we
should take a consequentialist interpretation of Walzer’s argument. However, it appears
that Walzer does not want to be seen as a consequentialist. Walzer seems to think that the
consequentialist will not stick with the statist claim for the primacy of states’ rights. In
Walzer’s view, the consequentialist may say that whether we should argue for the statist
claim for the primacy of states’ rights is a practical matter, that is, whether sticking with
the statist claim would best bring about the consequence of preserving the society of
states. It may turn out, Walzer may be worried, that the consequentialist will say that if
we have reasonable ground to believe that abandoning the quasi-absolute statist claim
and adopting a more modest claim about states’ rights like the Rawlsian claim would best help bring about the goal of preserving the society of states, then it is reasonable and justifiable for us to abandon the quasi-absolutist statist claim. Whether this consequentialist line of reasoning is plausible is a question I shall leave aside. For Walzer does not want to embrace this consequentialist line of reasoning. Walzer thinks that, under the condition that states are major actors in both domestic and international politics, it is not just a practical matter but also a matter of principle that we should accept the statist claim for the primacy of states’ rights. Two arguments from the externalist perspective are proposed by Walzer to defend the statist claim as a fundamental moral principle of international relations. They are the argument from foreigners’ ignorance and the argument from political pluralism.

Before I discuss these two externalist arguments, I want to make some preliminary remarks about some aspects of the externalist argument. First, the externalist line of argument is to explain what states ought to do, as a matter of international justice or morality, regarding other states as members of the society of states. Secondly, the externalist argument has a distinct feature: the internal moral quality of a state is no concern for the externalist. The claims that the above mentioned two externalist arguments—the argument from foreigners’ ignorance and the argument from political pluralism—are intended to established can now be explained a bit further. The argument from foreigners’ ignorance is to show that it is of moral necessity that foreigners should accept the statist claim for the primacy of states’ rights, because foreigners have no justifiable ground for claiming that a certain state is internally illegitimate and thus
foreigners have no justifiable ground to claim that a state (without committing genocide, massacre, or enslavement) cannot rightfully and fully enjoy strong states' rights. The argument from political pluralism is purported to show that since people in different societies accept different moral beliefs and states are justified for adopting different conceptions of social justice and political legitimacy, there is no single moral principle that can be used to judge the internal moral quality of different states. Thus, according to this argument, there is no other prior and independent moral principle, like the principle of human rights, that can be said to impose constraints on states' rights. In the following, I will explain why these arguments fail by pointing out, among other things, that it is a mistaken view for the statist to say that the internal moral qualities of any given state are irrelevant to our concern for international justice and that Walzer cannot coherently claim that there is no morally correct principle except the statist principle.

4.4.1 The External Sense of Political Legitimacy

Before I discuss Walzer's two externalist arguments for the statist claims of the primacy of states' rights, I want to introduce a notion that will help my discussion—the external sense of political legitimacy. Earlier, I discussed Walzer's internalist arguments for states' rights, that is, his argument by the special consent theory and his protection argument. Although I explained how both failed to support Walzer's statist claim for the primacy of states' rights, it seems fairly straightforward that states can be illegitimate in accordance with either of the two internalist views. Since, as indicated earlier, Walzer
wants to establish the moral standing of states by putting them in the context of international relations, Walzer also wants us to understand the moral standing of states or the political legitimacy of states from the international perspective. I have said this is Walzer's externalist line of reasoning for states' rights and for his statist claim for the primacy of states' rights. In this respect, Walzer also wants us to understand political legitimacy of states from the externalist perspective. The externalist (or external) sense of political legitimacy differs from the internal senses in one important respect: a state can be legitimate in the external sense without at the same time being internally legitimate. In other words, the external sense of political legitimacy is independent of internal sense of political legitimacy. Walzer wants to show that if a state is legitimate in either of these two senses of political legitimacy, then it should have states' rights in the strong sense. If this can be established, then it seems fairly obvious that his statist claim for the primacy of states' rights can be supported.

The external sense of political legitimacy can be understood from two perspectives, descriptive and prescriptive. The descriptive sense of external political legitimacy is that when a state is seen by other states as legitimate, then it is legitimate. The prescriptive sense of external political legitimacy maintains that states must treat other states as if they are legitimate, no matter whether they are in fact internally legitimate or not. We may say that Walzer's externalist argument for his statist claim is to argue for the prescriptive sense of external political legitimacy. The descriptive sense of external political legitimacy is relatively uninteresting, because the fact that state A treats state B as legitimate does not imply that state A is justified in doing so. The more
interesting case for a theorist of international justice is to show that state A is required as a matter of international justice to treat B as legitimate, no matter whether B is internally legitimate in most cases.

Walzer’s purpose in making this distinction between internal and external senses of political legitimacy, as I see it, is to explain that a state which is illegitimate in the eyes of its people should still be treated as legitimate in international relations.27 For the purpose of easy reference, let us label this prescriptive external sense of political legitimacy as “the principle of external legitimacy.” Given this brief characterization of the principle of external political legitimacy, one important question we want to ask and discuss is: what is the justification for requiring foreign states to treat an internally illegitimate state just like an internally legitimate one? If there is no justification for this, then Walzer’s externalist argument for his statist claim for the primacy of states’ rights fails. Let us now turn to the two externalist arguments: the argument from foreigners’ ignorance and the argument from political pluralism.

4.4.2 Walzer’s Argument from Foreigners’ Ignorance

Walzer’s argument from foreigners’ ignorance for external political legitimacy is the following. First, Walzer claims that foreigners are ignorant about the history and culture of a historical state. According to Walzer, foreigners are ignorant about a historical state in the sense that they “don’t know enough about its history, and they have no direct experience, and can form no concrete judgments, of the conflicts and harmonies,
the historical choices and cultural affinities, the loyalties and resentments, that underlie it. Secondly, since foreigners are ignorant about how the people in this historical state perceive their government, they have no reasonable and justifiable ground to judge whether there is a fit between the government and the community. Given these two premises, Walzer claims that, in international politics, foreigners have no reasonable and justifiable ground to answer the moral question about the internal political legitimacy of any state. Walzer claims, based on the above two reasons, that this question “ought to be determined instead by a morally necessary presumption: that there exists a certain ‘fit’ between the community and its government and that the state is ‘legitimate’.” If the above reasoning is sound, then all except a few states will be externally legitimate, that is, will be judged as legitimate by foreigners. But this line of argument for the external sense of political legitimacy is problematic, to say the least.

The first problem with this argument from foreigners’ ignorance is that it is simply false that foreigners cannot reasonably and justifiably know the history and culture of any given historical state. In many of today’s states, there are universities and research institutes setting up programs for the purpose of gaining understanding of the history, politics, social phenomena, and many aspects of the cultures of foreign societies. There are anthropologists, sociologists, political scientists, linguists, philosophers, and scholars of many other disciplines, devoting themselves to the task of understanding foreign societies. There are impressive research results produced by their efforts. Walzer’s claim that foreigners are ignorant about any given historical state is a total
denial of the contribution of these researches. Even without knowing such scholastic researches, foreigners can be well informed about a given state by visiting that state, by reading the local papers of that state, even by reading reports about this state, and so on. All these show that Walzer’s claim is simply false. It is a puzzle why Walzer makes such an obviously false claim.

Walzer may reply that foreigners are ignorant simply because they cannot have the kind of knowledge that the people of a given historical state have about their society. It is because of the lack of such “internal” knowledge that the foreigners have no justifiable ground on which to judge the political situation of a historical state.

I think that it is plausible to say that foreigners cannot know a historical society as the people of that society know it, especially if one has in mind the kind of knowledge that people obtain through their living in the tradition and culture. But then the question is whether it is true that foreigners cannot give justifiable judgments about the political legitimacy of the state without having this experience-based knowledge about a society. Walzer believes that it is true. But I think Walzer’s belief must be based on unwarranted reasoning.

There are two levels of knowledge and judgments involved in Walzer’s belief. Regarding the kind of knowledge that local people, but not foreigners, can have, Walzer may be right. Perhaps, for example, no foreigners can know about some aspect of the American society the way Americans know it. Foreigners may not be able to know the racial aspect of the American society the way Americans know it. While this may be the case, it does not follow that foreigners cannot form any reasonable and justifiable
judgment in this regard; Walzer at best can say that some form of knowledge or justifiable judgments can only be formed by direct experience. But he cannot thereby say that foreigners cannot form any justifiable judgments about a historical state. Furthermore, the above claim does not even establish that justifiable moral judgments about some political aspect of a historical state cannot be formed without direct experience. Walzer appears to presuppose this in his argument from foreigners' ignorance. Some common examples can easily illustrate this.

Foreigners may not have experience-based knowledge about the racial aspect of the American society, for example. But this does not imply that foreigners cannot have justifiable judgments about the racial aspect of the American society. Foreigners can form justifiable judgments about the racial aspect of the American society based on all forms of report by American writers. Furthermore, the claim (that foreigners cannot know a historical society the way the local people know it by living in it) does not imply that justifiable moral judgments about some political aspect of this historical society cannot be formed without experience-based knowledge. Foreigners can, as Walzer does, form a justifiable judgment that blacks in South Africa were deeply and systematically discriminated against before the 1990's. Foreigners can form a justified moral judgment about the Apartheid in South Africa. Oddly enough, Walzer believes that South Africa's Apartheid is morally wrong. In this case, he cannot say that foreigners cannot form justifiable moral judgments about a historical state. If Walzer insists on his belief that experience-based knowledge is a necessary ground on which justifiable moral judgments can be formed, then Walzer cannot even say, as he does, that Apartheid is morally wrong.
Now Walzer might want to bite the bullet and say that he was mistaken in saying what he said about South Africa’s Apartheid. In doing this, he might be able to avoid the difficulty. Even so, Walzer’s position is still unacceptable in his own terms. For in this case, Walzer would have to say that since he is no German, he cannot have justifiable knowledge about the political legitimacy of Germany under the Nazi regime and cannot form a correct judgment about the political legitimacy of the Nazi regime by any other means. But this is exactly contradictory to what he wants to and does say about the Nazis. He could of course bite another bullet by admitting mistake in his comments about the Nazis. In this case, he would be a consistent absolutist statist, which is a position he does not take and, more importantly, is wrong, though I admit that I have no argument for the latter claim.

From the above discussion, it is clear that Walzer, in not adopting absolutist statism, has to admit that foreigners indeed can form justifiable judgments about the political legitimacy independently without having any “direct” knowledge about a historical society. This is a position he has to adopt, though it is contradictory to what Walzer wants to establish by the argument from foreigners’ ignorance.

Walzer may reply that his argument from foreigners’ ignorance is still sound except for the three special cases of genocide, massacre, and enslavement. So, even though Walzer judges that the Nazi regime was illegitimate, he may say that it is reasonable for a valid theory to make a few exceptions. This is of course a fair reply. However, we have to examine whether allowing exceptions will undermine, for example, the coherence of the theory. If it turns out that the theoretical coherence will indeed be
undermined by such exceptions, then this theory is flawed. As we shall come to see later, the theoretical coherence of Walzer's theory is significantly undermined by allowing foreigners to make justifiable judgments of the political legitimacy of a historical state in those cases.

I should remind my reader that I do not claim it is easy for foreigners to form correct judgments about the political situation of a particular state. What I am trying to say here is that there are indirect means which can help foreigners to form more or less justifiable judgments in the relevant regard. It is without doubt that foreigners should be very cautious in judging the political situation in other states. But Walzer's claim is a radical one. He simply doubts that foreigners are ever able to form correct judgments about the political situation in a given state, because foreigners cannot have experience-based knowledge of that society. Although I think this is not a plausible claim, I cannot here provide argument to refute this claim.

Even if we grant Walzer that foreigners cannot have experience-based knowledge of a society and that foreigners, because of the former, cannot form any justifiable moral judgments about some political aspect of that society, these do not seem to support his conclusion: foreigners ought to adopt a morally necessary presumption that there exists a certain fit between the community and its government and that the state is legitimate. Most of us would think that it is reasonable to say that when we, as foreigners, are ignorant and have no reasonable ground to judge the politics of a certain state, then we should refrain from making any judgment: we should refrain from judging whether this
state is legitimate or illegitimate until we have collected enough relevant information about this state. But Walzer claims that it is morally necessary that ignorant foreigners treat a state they know nothing of as legitimate. Where does this moral necessity come from? I mentioned earlier that Walzer rejects the possibility of establishing any universally valid moral principle in virtue of which states’ rights may be rightfully constrained or challenged. Because of lacking such a universal moral principle, Walzer claims that ignorant foreigners have no moral ground to give moral judgments about the political situation of any state. But if this would be true, then Walzer, as a foreigner, cannot rightfully say that the Nazi regime was illegitimate. But, as discussed earlier, since he does think that foreigners can rightfully make such a judgment about the Nazis and can rightfully challenge the Nazi Germany’s states’ rights, he cannot coherently hold his argument from foreigners’ ignorance and judge that the Nazi regime was illegitimate. The question here is not whether Walzer is right in saying that the Nazi was illegitimate. Rather, the question is what bases Walzer’s judgment.

It seems that Walzer’s justification for his judgment about the Nazi regime is that the Nazi regime violated people’s rights to the extent that no reasonable human being will tolerate, no matter how much we know about the historical conditions of Germany under the Nazi regime. If this is indeed the justification for Walzer’s judgment about the Nazi, then it seems that the question is how Walzer can justify his claim that reasonable human beings will tolerate highly oppressive regimes which violate gravely human rights but do not commit any of the crimes of genocide, massacre, and slavery. Putting the question in a different way, what justifies Walzer’s claim that people will accept a highly
oppressive regime (that does not commit any of those three crimes) as legitimate? I don’t think Walzer can defend this latter claim. Actually Walzer does not address this question. Rather, he considers cases of highly oppressive regimes in a quite misleading way. He maintains that if people under a highly oppressive regime do not revolt, then foreigners ought to treat the moral relationship between the people and the regime as if there is some sort of “fit” between them. This is not acceptable, as I shall show below.

An unacceptable consequence would be produced if Walzer were to insist on the last claim—that highly oppressive despotic regimes (that do not commit genocide, massacre, or enslavement) ought to be treated as legitimate. One reason why a highly oppressive regime that fall short of committing any of the three crimes ought to be treated as legitimate as a matter of international justice, according to Walzer, is that when we, foreigners, do not observe any obvious and massive revolt by the people against the government in that state, then we ought to treat this highly oppressive state as legitimate. But why? Walzer argues that if foreigners do not treat this state as legitimate, and instead intervene into this state in the name of people’s rights to life and liberty, then foreigners violate the fundamental principle of self-determination. Also, Walzer argues that if the people of this state do not revolt in any significant sense, then “there is still a “fit” of some sort, which foreigners are bound to respect.” I find these two reasons unconvincing. Let me explain.

First, the principle of self-determination is an expression of the idea that the people or community of a given state have the right to determine their own form of political affairs. This is the communal right to political decisions, as I explained earlier. It
is not a right of the state. Walzer claims that states have rights against foreigners because states can provide protection for the people to exercise the right to self-determination. In my view, this is just another expression of his protection argument for the principle of states’ rights. I explained earlier that this protection argument is not adequate to establish the claim that states still have those rights when they fail to honor people’s right to self-determination. I think it is more plausible to say that a state ought not to violate the principle of communal self-determination just like foreigners ought not to do so. If Walzer wants to treat the principle of communal self-determination as the fundamental principle in international justice, he ought to allow foreigners to act in the name of this principle of communal self-determination, even if this means violation of the states’ rights. In other words, in light of Walzer’s view about the principle of communal self-determination, there is no moral necessity that foreigners always treat any given state as legitimate. The principle of communal self-determination should allow foreigners to denounce the rights of a certain state in the name of the principle of self-determination, since it is a principle on which states rights ground. Thus, according to Walzer’s principle of communal self-determination, he simply has no ground to argue for the principle of external political legitimacy.

The second line of reasoning—if the people of a state do not operate significant revolt against their government, then foreigners must act as if there is a fit between the two—is also flawed. Here is why. Walzer says, “the history, culture, and religion of the community may be such that authoritarian regimes [including highly oppressive ones] come, as it were, naturally, reflecting a widely shared world view or way of life.” It is
true that the existence of a state cannot be separated from the history, culture, and
religion of the community. But this does not imply that any state is legitimate if we can
find some historical or cultural explanation of its existence. For example, we can explain
how Germany under the Nazi regime came to exist by considering the history, culture.
and the contemporary social, economic, and political conditions of the German people.
But, in explaining the existence of the Nazi regime, we do not thereby imply that
Germany under the Nazi regime was legitimate. Walzer may say that the Nazi regime
was not legitimate because it committed the crime of massacre and genocide. In saying
this, Walzer would appeal to some moral principle other than the consideration of culture,
history, and other relevant factors for explaining how the Nazi regime was internally
illegitimate, as discussed earlier. The case of the Nazis is of course what Walzer sees as
an exception in his theory. It seems we cannot use what he regards as a special and
exceptional case to reject his argument. In the following, I shall try to show that Walzer’s
exceptions are ad hoc and are not based reasonable ground.

Walzer makes a hypothetical case to illustrate his above claim about the political
legitimacy of a historical state. Suppose that a new government of Algeria has the
following features: it establishes a militant dictatorship and religious “republic,” it
deprives its citizens of civil and political liberties, and it is brutally repressive. The new
political elite of Algeria has established itself and resists all challenges. Also all women
have been returned to their traditional religious subordination to patriarchal authority. It
is apparent that the existence and many policies of this new regime of Algeria can be
explained by looking into the history and culture of the Algerian people. But should we
say that the state of Algeria under this new regime is legitimate? Walzer says yes, because the new regime is deeply rooted in the history and culture of the Algerian people. Walzer says, "It may seem paradoxical to hold that the Algerian people have a right to a state within which their rights are violated. But that is, given the case I have described it, the only kind of state that they are likely to call their own." I find Walzer's reasoning very unconvincing.

We can accept that the Algerian people will call a state their own when this state develops and preserves many aspects of their history and culture. But this does not mean that the Algerian people will necessarily see the new regime characterized by Walzer as acceptable. I find it highly implausible to say that the Algerian people would accept a highly oppressive regime as legitimate, simply because the existence of this oppressive regime can be explained by appealing the historical, social, and political conditions of the Algerian people. First, it simply does not make sense that Walzer can have a theory which, on the one hand, claims that people's rights to life and liberty are the ultimate source of political legitimacy, but, on the other, claims that people would accept a highly oppressive regime as legitimate when this regime gravely violates these two rights. Secondly, the Algerian people may think that a legitimate regime would develop out of their cultural and historical conditions. But this does not imply that all regimes established within their society are legitimate. Foreigners should not make hasty judgments in this respect. The Algerian people may or may not think that the new Algerian regime imagined by Walzer is illegitimate. We have to look into the situation more carefully. However, Walzer says that foreigners have to see the new regime as
legitimate because the Algerian people have a right to their state within which their rights are violated. Now, since the Algerian people's rights are violated by the new regime, why cannot we foreigners rightfully, even in Walzer's terms, judge that the Algerian new regime is illegitimate? If Walzer's socio-historical theory of political legitimacy were correct, then no regime could be illegitimate. The Nazi regime would be legitimate, according to this view, since the Nazi regime also grew out of the socio-historical context of Germany.

It is plausible to say that the Algerian people have a right to their state, that is, a state developed out of their history and culture. But this does not ground any claim like Walzer's that this right justifies a repressive state. Walzer's claim sounds as if he believes that if the Algerian people in general don't show to foreigners that they are fighting very hard against the new regime, then they "deserve" whatever policies the regime imposes on them. That is, if they don't revolt, then it must be assumed by outsiders that there is a fit between them. We may use an analogy to illustrate the implausibility of Walzer's view here. Suppose a physically strong and brutal man has raped a woman. (We can even imagine that the raped woman was the brutal man's wife.) During the course of the crime, this brutal man threatened the victim by sheer violence that if the victim resisted, fought back, or yelled for help, she would be killed. (We can even imagine this brutal man has somehow made the woman believe that their situation is what a normal husband-wife is or should be.) Under such a life threatening condition (or a submissive condition), the victim did not resist. As reasonable human beings considering this case, we will not think that there was some sort of fit between the
criminal and the victim. We will judge that it is justifiable and even required that a capable third party intervene to stop the crime in the name of the victim (assuming that the third party correctly judged the situation). In such a case, we as an objective third party don't think that the lack of resistance by the victim is necessarily a sign of acceptance. We think that it is not justified to treat the non-resisted rape as a consensual sex. By analogy, we as foreigners have no moral ground to always treat a highly oppressive regime as legitimate simply because there is no significant revolt by the people. But Walzer urges that we as outsiders should take the lack of resistance or revolt by the oppressed people as a sign that the oppressed accept the oppressor. This is similar to urge us to see any non-resisted rape as a consensual sex. This is unacceptable.

4.4.3 Walzer's Argument from Political Pluralism

Although it is a fact that people in different societies develop different views of morality and different ways of organizing their political affairs—that is the fact of pluralism—this fact does not by itself establish normative claims, we may say. Walzer nonetheless believes that this fact of pluralism is a sound ground on which to establish the normative claim of political pluralism, that is, it is a requirement of international justice that states, because of being justified in accepting their own conceptions of social justice and political legitimacy, be respected. From this claim, Walzer goes on to argue for the statist claim of the primacy of states’ rights.

Before I discuss Walzer's argument from political pluralism, I want to consider a
problem arising between Walzer’s argument from foreigners’ ignorance and that from political pluralism. Recall that Walzer’s argument from foreigners’ ignorance is intended to reach the conclusion that it is of moral necessity that ignorant foreigners treat a historical state as legitimate. In the above, I have discussed why I believe this argument fails. Those problems aside, when we put these two lines of argument together, there arises a problem of inconsistency. The problem comes from Walzer’s characterization of the ground of his political pluralism. Walzer’s view of political pluralism rests in part on foreigners’ enlightenment, instead of ignorance. We as foreigners have to accept political pluralism because, according to Walzer, this “reflects our recognition of diversity and our respect for communal integrity and for different patterns of cultural and political development.” In other words, foreigners must be able to recognize the fact that there is political diversity among the nations of the world. If foreigners are ignorant about this, there is no ground to accept Walzer’s view of political pluralism. Foreigners must know more or less about different historical and cultural factors, which in turn justifies their belief in the diversity of political systems. Apparently this is very different from and inconsistent with Walzer’s view about foreigners’ ignorance. Here Walzer’s theory has two inconsistent views about foreigners’ ability to know any given historical state. In this regard, Walzer’s claim that it is morally necessary that foreigners treat other states as legitimate is either supported by his claim about foreigners’ ignorance or is supported by a reason inconsistent with his view about foreigners’ ignorance. Such an inconsistency in the characterizings of foreigners’ ability to know and judge the political aspect of a given state gives rise to a difficulty for his reader to assess the validity of his argument. It
seems that Walzer makes these two characterizations of foreigners’ ability without providing any criterion in accordance with which we as his readers would know when it is appropriate to appeal to foreigners’ ability to know and when it is appropriate to appeal to foreigners’ ignorance with regard to judging the political situation of a given state. In fact, I doubt that it is possible to be consistent by appealing these two conflicting characterizations of foreigners’ ability to know and judge the political situation in a given state.

Walzer may say that to accept political pluralism does not require foreigners to know anything about historical states. Walzer may say that foreigners can have a justified belief in political pluralism when this belief is based on the justified belief that different states can be justified in ordering their societies and arranging their political affairs in different ways. However, this line of reasoning is flawed. Recall that for Walzer the appeal to political pluralism is to explain the moral necessity that foreigners should treat historical states as legitimate. If Walzer is to justify political pluralism by appealing to the moral belief that states are politically legitimate in their own ways, then he is to justify political pluralism by appealing to the belief in the above mentioned moral necessity. In this case, Walzer’s reasoning begs the very question that he is attempting to answer.

After exploring the inconsistency between Walzer’s argument from foreigners’ ignorance and that from political pluralism, I now turn to Walzer’s justification for his version of political pluralism. Walzer’s argument from political pluralism maintains that
If we, foreigners, do not think that a certain state has all the elements required by our conception of political legitimacy, we still ought to respect this state as legitimate, nonetheless. To establish this line of argument for the external sense of political legitimacy, and thus establish his statist claim for the primacy of states’ rights, it is crucial for Walzer to show that his view of political pluralism is justified.

Two assumptions work together to support Walzer’s inference to political pluralism. The first is that there exist diverse political systems rooted in the historical and cultural grounds of states. The second, as mentioned earlier, is that there is no one single philosophically correct and universally valid moral principle by which we, foreigners, can judge the political legitimacy of any given state. I think we should have no problem with the first assumption, which simply recognizes the fact of political diversity in international relations. The second assumption, however, deserves some investigation, since first assumption cannot itself establish Walzer’s normative claim of political pluralism. After all, a factual description of political diversity by itself does not warrant a normative claim about political pluralism. So Walzer’s argument for his normative view of political pluralism requires a further claim, namely, the claim embodied in the second assumption above, according to which there is no philosophically correct and universally valid moral principle by which we can judge the political legitimacy of our and other states.

Let us begin our examination of Walzer’s normative claim against any universal moral principle by considering one of its consequences. If this claim were correct, what adjustment, if any, would Walzer have to make in his statist conception of international
justice? On the assumption that his claim were correct, then Walzer would have to abandon his "rules of disregard," which prescribe that in certain situations the principle of states’ rights can be disregarded. I mentioned earlier that Walzer maintains that intervention (which, according to Walzer, is equivalent to challenging a state’s rights) is prohibited even in the name of people’s rights to life and liberty, except in situations like massacre, enslavement, and so on. These latter are the situations where the rules of disregard apply. For many of us, it is obvious that in situations like these intervention is not just allowed but is also required. Although this is obvious, we still have to explain our justification for intervention in these situations. I think Walzer and many of us would say that intervention in these cases is justified because people’s rights to life and liberty are gravely violated. So, there is at least one principle which justifies intervention. This principle is quite similar to the principle of basic human rights that I defended in Chapter 3. Presumably Walzer and we all believe that this principle is philosophically correct and universally valid. According to Walzer’s characterization, to say that intervention into a certain state is justified is equivalent to saying that this state is not legitimate. So, Walzer has to admit that there is at least one philosophically correct and universally applicable moral principle by which we can judge the political legitimacy of each and every state. If Walzer would deny this, as he actually does, then his rules of disregard should be abandoned. In this case, he would have to say that no intervention is justifiable, even in situations like genocide, enslavement, and massacre. I don’t think such an extreme theory of international justice is acceptable to any reasonable human being, including Walzer. So Walzer’s radical claim against any philosophically correct and universally valid moral
principle cannot be established even within Walzer's own theory of international justice. He is incoherent in holding both the rules of disregard and the claim against any universal moral principle.

But can Walzer maintain his radical claim against any universal moral principle by abandoning his rules of disregard? I don't think he can. For one thing, the rules of disregard are designed to address the moral concern of political philosophy in cases where people's rights to life and liberty are gravely violated. To abandon the rules of disregard is tantamount to accepting a view that Walzer does not want to accept, that is, absolutist statism. Since Walzer does not want to embrace the latter, he can only abandon his claim against any universal moral principle. In this case, his view of political pluralism is not supported. For this reason, his argument for the statist claim for the primacy of states' rights from political pluralism is groundless.

We can look at Walzer's problem from another angle. It seems that to accept the rules of disregard, the question concerning intervention and political legitimacy is not whether it is justifiable to intervene or whether there can be a universal principle by which the political legitimacy of states can be judged. Rather, the question is when intervention is justifiable and when this universal moral principle can rightly be applied. I think Walzer may have confused these two types of questions such that he thinks that the rules of disregard are compatible with his radical claim against any universal moral principle.

Actually, this account of the incoherence of Walzer's view, as discussed here and earlier, shows that there exists some sort of incompatibility between the principle of
people’s rights to life and liberty and the principle of external political legitimacy. That is, people’s rights to life and liberty can justify the requirements of intervention that are rejected by the principle of external political legitimacy. Thus, the above discussion also proves my claim that Walzer’s quasi-absolute statist position fails his attempt to establish his statist claim for the primacy of states’ rights.

Let me briefly recapture what I have discussed about Walzer’s statist arguments. Walzer rejects Rawls’s suggestion of the principle of human rights as a fundamental element of international justice and claims that states’ rights cannot be violated, as a matter of international justice, in the name of basic human rights, except in few special situations like genocide, massacre, and enslavement. Walzer tries to establish this position by adopting a quasi-absolutist statist claim for the primacy of states’ rights. According to Walzer, two accounts can be given to establish states’ rights, an internalist account and an externalist account. The internalist account appeals to two different arguments for political legitimacy: the special consent theory and the protection argument. But neither of these internalist accounts is strong enough to support Walzer’s statist claim for the primacy of states’ rights. Walzer also tries to show that the principle of states’ rights can be accounted for by appealing to his normative principle of external political legitimacy. His account of the principle of external political legitimacy is based on two arguments, one from foreigners’ ignorance, the other from political pluralism. But these two arguments also fail. The argument from foreigners’ ignorance fails because it is invalid. The argument from political pluralism fails because the crucial claim against any
universal moral principle cannot be supported by Walzer's general statist view about international justice. In light of these considerations, I think it is clear that Walzer's criticism of the Rawlsian conception of international justice fails.

Notes:

1. Walzer also talks about cases where genocide, enslavement, and massacre, do not occur but intervention is allowed. (Intervention, according Walzer, is tantamount to be a challenge to the rights of the intervened state.) For example, Walzer maintains that when state A is already intervened by state B, then state C can rightfully intervene into state A in order to eliminate the effect of state B's intervention. Walzer thinks that this is should be seen as an exception to the principle that states' rights should not be challenged for whatever reason. Here, in most cases, I shall leave out this and other similar cases. I consider only cases where states have been violating human rights gravely but fall short of committing genocide, massacre, or enslavement.

2. Many articles involved in the debates are collected in Charles Beitz (ed.), *International Ethics*.


4. *Ibid*.

5. *Ibid*.


7. Walzer, *Just and Unjust Wars*, pp. 58-61. Hereafter this work will be referred to as JUW.

8. JUW, p. 58.


13. The idea of state's monopoly over the legitimate use of force is Max Weber's well known and widely accepted claim. The idea of a system of political specialization is adopted from Michael Taylor, *Community, Anarchy, and Liberty*, p. 8.

14. JUW, p. 54.


16. JUW, p. 54.


18. JUW, p. 54.


20. In discussing the issue of self-determination, Walzer argues that it is only within the state (or when the states' rights to territorial integrity and political sovereignty are respected) that people or the community can develop or exercise the right of self-determination (JUW, pp.87-91).

21. Walzer, "The Moral Standing of States," p. 212. Hereafter this article is referred to as MSS.
"Walzer, Just and Unjust Wars, pp. 53-54. Hereafter this work will be referred to as JUW.

1. Walzer, Just and Unjust Wars, pp. 53-54. Hereafter this work will be referred to as JUW.

2. JUW, p. 61. I should note that this is the first of the six propositions that Walzer summarizes as his legalist paradigm theory of aggression. I should also note that Walzer is concerned primarily about justice of and in wars. It is not entirely clear what his position about a general theory of international justice would be. And I make no attempt to figure it out. Nevertheless Walzer's arguments do express a deep and important view supporting the statist view of international justice.

MSS, p. 216.

MSS, p. 216.

MSS, p. 212.

MSS, p. 212.

MSS, p. 212.

MSS, p. 216.

JUW, pp. 87-91.

This is shown in his discussion of Mill's view about self-determination. Walzer agrees with Mill in this respect and even formulates the principle of self-determination as the following: Always act so as to recognize and uphold communal autonomy. JUW, p. 90.

MSS, p. 226.


MSS, p. 225.

See also JUW, pp. 87-89.

MSS, pp. 215-216.

Mss, p. 225.

JUW, p. 86.

Walzer lists some additional situations where the rules of disregard may apply. See JUW, p. 90.
CHAPTER 5
JUSTICE WITHOUT NATIONAL BORDERS—THE LIBERAL
COSMOPOLITAN CRITIQUE

5.1 Introduction

In Chapter 3, I indicated that Rawls's belief that the Difference Principle does not apply to the realm of international relations is criticized by liberals like Charles Beitz and Thomas Pogge, as well as by other commentators. Although the Rawlsian conception of international justice, according to my reconstruction in Chapter 3, holds that a principle of international distributive justice will be chosen in the international Original Position (IOP) when certain conditions are met, liberals like Beitz and Pogge would say that my proposal for such a principle of international distributive justice is not acceptable. Beitz and Pogge would reject my reconstruction of Rawls’s theory, because they would think that my reconstruction is undermined by problems generated by Rawls's state-centric approach to issues of international justice. In this chapter, I want to argue that the state-centric Rawlsian theory of international justice can be upheld against Beitz’s and Pogge’s criticisms.

Cosmopolitans like Beitz and Pogge do not accept a state-centric approach,
mainly because they believe that such an approach ignores the fact that national boundaries have caused distributional inequalities at the global level and the fact such distributional inequalities have significant impact on the life prospects of persons born into different states.¹ For these “liberal cosmopolitans,” as I shall call them, our concern for people’s life prospects should not be bound by national boundaries. An acceptable theory of justice, according to the cosmopolitans, should not treat states as primary units of moral consideration. Rather, the primary units of moral consideration must be individual human beings, with special regard to their rights and well-being. Such a cosmopolitan view about justice treats human beings as members of a global community. A theory of global justice, according to the cosmopolitans, considers primarily the rights and well-being of the members of this global community. For the cosmopolitans, states, whether regarding their interest in having states’ rights or their interest in the preservation of a just order within each state, receive at most a secondary consideration. For this reason, the cosmopolitans will not accept the Rawlsian theory of international justice that suggests state-centric principles of international justice. Such a cosmopolitan view about global or international justice is drastically different from both Rawls’s and my own Rawlsian conception of international justice. This cosmopolitan view is succinctly expressed by Beitz as follows:

[The cosmopolitan view of justice] is concerned with the moral relations of members of a universal community in which state boundaries have a merely derivative significance. There are no reasons of basic principle for exempting the internal affairs of states from external moral scrutiny, and it is possible that members of some states might have obligations of justice with respect to persons elsewhere.²
Here I should stress once again that the Rawlsian theory of international justice does not deny that the parties in the international Original Position (IOP) may choose some cosmopolitan principles, when the conditions of the world change such that the parties think it rational to choose cosmopolitan principles. However, cosmopolitans typically do not argue that their cosmopolitan view of justice is relevant only in a world drastically different from our current one. They maintain that their cosmopolitan view of justice is relevant to, and can provide guidance for, this world, where the state system significantly shape international relations. So if the cosmopolitans are right, then Rawls’s and my Rawlsian conception of international justice would be refuted. In this chapter, I shall try to defend my Rawlsian view of international justice against the cosmopolitan criticisms.

I shall defend my view primarily by examining Beitz’s and Pogge’s views. Beitz’s and Pogge’s views are particularly relevant to my project because their arguments for the cosmopolitan view are based on their criticisms and re-interpretations of Rawls. In addition, though, I discuss these two as examples of the cosmopolitan view because both give articulate and plausible arguments for the cosmopolitan position. Also, as mentioned in Chapter 4, they engage in the debate with the statist argument. I believe that examining their views will eventually help us better understand issues of international justice.

Two particular lines of argument by Beitz and Pogge will be my focal points. The first aims at establishing some principle of global distributive justice which applies primarily to human beings rather than to states. The major disagreement between my view and this line of the cosmopolitan argument is that my view accepts that some
international distributive principles may apply to states, whereas the cosmopolitan believes that global distributive principles apply primarily to individuals.

The second line of the cosmopolitan argument that interests me aims at establishing the claim that states have at best some secondary significance from the point of view of justice. According to this view, an appropriate theory of international justice should not take into consideration the interest of states in the process of determining principles of international justice. This line of argument, if accepted, would invalidate the state-centric Rawlsian approach and the notion of Critical Political Pluralism, as explained in Chapters 2 and 3. This is because the Rawlsian approach allows us to take some of the interests of states into account in the process of determining fundamental principles of international justice. For this reason, the cosmopolitan would maintain that it is a mistake for Rawls and me to adopt a state-centric approach to issues of international justice or to try to establish Critical Political Pluralism as a fundamental notion in the Rawlsian theory of international justice. The remainder of this chapter will be divided into two main sections to deal with these two lines of argument.

In the section that immediately follows, I will examine the cosmopolitan arguments for certain principles of global distributive justice presented by Beitz. Beitz is well-known for arguing that Rawls's Difference Principle should be extended to the global level. I want to show that Beitz's arguments and claims, even if they are acceptable under some conditions, do not undermine the Rawlsian view of international justice.

In section 5.3, I shall discuss the cosmopolitan criticism that the Rawlsian conception of political pluralism and its view of states' rights and basic human rights are
not acceptable. Although the cosmopolitans are willing to acknowledge that states can have some secondary moral significance in addressing issues of global justice, they typically hold that the concern with people’s rights and well-being should override states’ interest, which is typically expressed in terms of states’ rights. One important claim made by Pogge is that any form of (political) pluralism is acceptable only when such a pluralism is allowed by the cosmopolitan view of global justice, that is, any form of political pluralism is acceptable only on the condition that people’s rights and well-being have already been taken care of in accordance with the cosmopolitan principles of justice. According to Pogge, the Rawlsian notion of Critical Political Pluralism is mistaken because Pogge believes that there is no reason, from the moral point of view, to give states primary moral consideration even under the state system. I shall try to show that given the condition of the state system and other relevant conditions, this cosmopolitan line of argument does not undermine the Rawlsian view of Critical Political Pluralism and does not undermine the Rawlsian view of states’ rights and human rights.

The central point of consideration that my Rawlsian approach will take to rebut these two cosmopolitan lines of argument is that the cosmopolitans fail to make morally meaningful discriminatory treatments between just and unjust states in their theory of international justice. The Rawlsian state-centric approach is more plausible precisely because, as we shall see, this Rawlsian theory of international justice maintains that under relevant conditions it is morally appropriate and necessary to make differential treatments between just and unjust states.
5.2 International Distributive Justice

As explained in Chapter 1, the cosmopolitan-liberal view is based on the standard liberal view of justice. The core of the cosmopolitan-liberal view about international justice is that states should be ruled out as morally irrelevant with regard to international justice, from the point of view of OP or IOP. The cosmopolitan typically criticizes Rawls's theory of international justice for failing to address questions of international distributive justice. I tried to show in Chapter 3 that the Rawlsian conception of international justice need not reject all notions of international distributive justice. However, the cosmopolitan would not think that my proposal of a Rawlsian notion of international distributive justice explained in Chapter 3 is a plausible one. We need to examine what the cosmopolitan has to say in this regard.

The main concern of the cosmopolitan is that since the enormous inequalities among nations with regard to the distribution of economic goods have profound influence on people's life prospects from the moment of birth and throughout their lives, and since these differences are based on arbitrary distinctions, there ought to be some principle of global distributive justice to address moral concern with such international inequalities. Two lines of argument are presented by Beitz in this regard. One line of argument maintains that Rawls needs to accept an international version of the Difference Principle, because, among other things, there either already exists a global cooperative scheme or something similar to such a scheme is emerging. The other line of argument maintains that even if there is no such global cooperative scheme, a certain principle of international
distributive justice is still needed. Since my version of the Rawlsian theory of international justice does not reject all notions of international distributive justice, how are Beitz’s two lines of argument for global distributive justice to refute my view? As we shall see later, the second line of argument by Beitz is actually not as interesting as the first. Nevertheless, before I say anything about Beitz’s two proposals, I want to remind the reader of what I have tried to established in Chapter 3 regarding international distributive justice.

In Chapter 3, I have explained that the parties in IOP as representatives of states will choose a state-centric principle of international distributive justice as follows:

The (Rawlsian state-centric) principle of international distributive justice:

International redistribution of goods and resources is allowed only to the extent that (1) such redistribution does not harm any state regarding the preservation and promotion of its just social order, and (2) it helps the disadvantaged states to get on the track of building, maintaining, or restoring, their just social order.

I shall not repeat myself by explaining this Rawlsian state-centric principle. Although I have stressed that the cosmopolitans do not accept any state-centric view of international justice, I have not explained the cosmopolitan view in detail. In this section, I want to show that the cosmopolitan view expressed by Beitz’s two lines of argument for certain principles of global distributive justice, if valid at all, does not undermine the Rawlsian
state-centric principle of international distributive justice.

5.2.1 Distributive Justice within a Global Cooperative Scheme

Beitz and many others argue that problems arising from unequal distribution of resources and other goods at the international level ought to be addressed by an international version of Rawls's Difference Principle. The core of the Difference Principle is that everyone in society has a prima facie equal claim to a share of the benefits of social cooperation, and departures from this egalitarian requirement are justified only when the resulting inequalities are to the greatest benefit of the least advantaged persons in society. To apply this Difference Principle to the international realm, there can be at least two versions of this international Difference Principle (IDP): one is a state-centric version, the other a person-centric version.

The state-centric version of IDP would seem to require that states of the world have equal claims to goods and resources of the world and that unequal distributions of goods and resources among states are allowed only when they are arranged to the greatest benefit of the least advantaged state(s).

The person-centric version of IDP, by contrast, would seem to require that every person in the world has a prima facie claim to an equal share of the world's goods and resources and that unequal distributions of resources and goods at the global level are allowed only when such inequalities are to the greatest benefit of the least advantaged persons in the world. Since the cosmopolitan does not accept any state-centric theory of
international justice, he will not accept the state-centric version of IDP. In the following, my discussion will focus on how Beitz tries to justify the person-centric IDP. I shall leave aside the state-centric version of IDP, since my Rawlsian view of international distributive justice is also state-centric and is already explained. I believe but will not argue that the state-centric version of IDP, when further articulated, would be a principle significantly similar to the Rawlsian principle.

Apparently, in order to apply the person-centric version of IDP (hereafter "IDP" refers to the person-centric version, unless otherwise specified), there must be some justifiable common measurement of the well-being of persons of the world, so that we can reasonably distinguish the advantaged from the disadvantaged persons. That is, there must be a universal conception of the good in terms of which the well-being of persons is measured. In *A Theory of Justice*, Rawls's conception of primary social goods suggests a common measurement of the well-being of citizens within liberal society, no matter what their particular conceptions of the good are. According to Rawls, primary social goods are things that everyone in liberal society wants, no matter what his or her particular conception of the good might be. The Difference Principle requires that everyone have a prima facie equal claim to these goods and holds that an unequal distribution of these goods would be acceptable only when such inequality is to the greatest benefit of the least advantaged. Following this line of thinking, a natural extension of the idea of primary social goods at the global level would seem to be a certain notion of primary global goods in terms of which the well-being of persons in the world can be measured, since primary
global goods are supposed to be things that every person in the world will want to have more, no matter whatever else this person wants. When a person has more of these primary goods than another person, we can say that the former is better off than the latter. If IDP is accepted, then such an unequal distribution of primary global goods needs to be justified.

Beitz, unfortunately, does not discuss or specify any notion of primary global goods. It seems that he simply assumes that it is justifiable to extend globally Rawls’s primary social goods for liberal society. If this is indeed what Beitz intends, then Beitz must claim that everyone in the world will want more of rights and liberties, opportunities and power, income and wealth, and self-respect—that is, things listed in Rawls’s primary social goods. One question that immediately arises, therefore, is what bases Beitz’s claim that Rawls’s primary goods are also primary global goods. Beitz has to give us an acceptable explanation of this. If we think that Rawls’s notion of primary goods is socially conditioned, that is, if Rawls’s primary goods are things that only people in a certain liberal society will want more of, then it seems plausible to think that people living in a society with quite different social and historical conditions might not have the same notion of primary goods. For example, the Chinese people, whose cultural tradition does not teach them to value rights and liberties, may not see these as primary goods. In this case, it would not be reasonable and justifiable to extend Rawls’s notion of primary goods to the Chinese and even globally. Thus, the failure to explain why it is justifiable to extend Rawls’s primary goods globally undermines Beitz’s attempt to give an acceptable cosmopolitan interpretation of Rawls’s theory of justice. In this respect, Beitz’s attempt to
argue for IDP is severely undermined, since a different notion of primary global goods 
like the one suggested in Chapter 3 might lead a different and even state-centric notion of 
international distributive justice.

Now, Beitz might say that he did not intend to extend Rawls’s primary social 
goods at the global level. Beitz might say, rather, that his assumption is simply that there 
are certain basic needs of human beings that must be satisfied if they are to survive and 
have a minimally decent life and these are what we might call “primary global goods.” 
Beitz might say that the freedom from hunger and the freedom from disease, for example, 
are those basic needs of human beings that qualify as primary global goods. When such 
primary global goods are distributed unequally and affect people’s life prospects in ways 
that give rise to our moral concern, then IDP maintains that such inequalities are not 
allowed and need to be fixed for the purpose of maximally benefiting the least 
advantaged. Such a notion of primary global goods is very minimal, compared to Rawls’s 
notion. What’s more, it seems that the proposed minimalist notion of primary global 
goods can avoid the problems generated by extending Rawls’s notion of primary goods at 
the global level. It seems plausible to say that those things listed in the minimalist notion 
of primary global goods are things that human beings want no matter what else they want. 
Everyone wants to be free from hunger and from disease regardless of what his/her life 
plan is. Thus, our question now is whether such a minimalist notion of primary goods is 
able to support the derivation of IDP, which is an egalitarian principle in character. I think 
such a minimalist notion of primary goods does not lead to IDP. Here is why.

The minimalist notion of primary goods is, as we may say, socially independent,
since these primary goods are things that every human being can be assumed to want no matter to which society s/he belongs and no matter what else s/he wants. In this respect, it seems that we can talk about and relate such primary goods to IOP, since primary goods are supposed to base the rational decision of the parties in IOP. It seems plausible to say that this minimalist conception of primary goods, being socially independent, will be allowed by the veil of ignorance into IOP and will serve as the base on which the parties in IOP will choose principles of international justice. The reason is that the veil of ignorance, according to Rawls and Beitz, will filter out everything that is contingent on social particularities. If this is right, however, it seems that the parties in IOP cannot rationally base their choice of IDP on this minimalist conception of primary goods without further information. The reason is that the minimalist conception of primary goods is too weak to support an egalitarian IDP.

As I explained in Chapters 2 and 3, the parties in the first stages of OP and IOP have only a minimalist conception of primary goods, similar to the one we just discussed above. The reason should be obvious: the veil of ignorance in the first stage of OP and IOP filters out all contingent information, which includes conceptions of the good and the right which are socio-culturally dependent. Now when the parties in IOP are to base their choice on such a minimalist conception of primary goods, they have no reasonable ground to choose the egalitarian IDP. Why? Because the veil of ignorance prevents them from knowing whether choosing IDP would indeed make them better off. Here our question is not whether IDP would be able to address the moral concern of problems caused by international distributional inequalities. Our question is whether there is
reasonable ground for the parties to choose IDP. I have claimed that the minimalist conception of primary goods alone is not strong enough to lead the parties to choose IDP, because the parties, basing their choice on this minimalist conception of primary goods, have no reasonable ground to know whether the implementation of IDP will in effect make them better off in the real world. Now I want to explain this in a slightly different way.

Recall that our description of IOP is, among other things, based on our considered judgments of justice. The introduction of a certain notion of primary goods as the base of choice of the parties in IOP is part of our characterization of IOP. To introduce a certain notion of primary goods is to impose a condition on the process of deliberation such that the parties will be led to choose a certain principle of international justice. Here we have two alternative conceptions of primary goods, Rawls's liberal conception and the minimalist conception of primary goods. When Rawls's liberal conception of primary goods is part of our description of IOP, Rawls and Beitz believes that the parties in IOP will choose IDP. But since we have rejected the idea of incorporating Rawls's liberal conception of primary goods into our description of IOP, it is at least not clear that the parties would think it rational to choose IDP. For the rational parties to choose IDP, they will have to have reasonable grounds for believing that the implementation of IDP would make them better off than any alternative principle. However, the implementation of IDP is not just intended to address our moral concern with hunger, disease, malnutrition, and so on, but also to force people to accept a conception of the good that they may not in fact accept, since IDP, as explained earlier, is fundamentally an egalitarian principle, that is,
the choice of IDP is based on an egalitarian moral belief that everyone should be given equal concern and respect. In other words, in order to show that IDP will be chosen by the parties in IOP, Beitz must assume that such an egalitarian moral belief is part of his description of IOP. In this regard, we can see that if our description of IOP, in addition to the veil of ignorance, the rationality of the parties, and the formal constraints of right, includes only the minimalist conception of primary goods without including some moral notion like, for example, the egalitarian moral belief, then the parties in IOP cannot rationally choose IDP. They can at best choose a notion like the General Conception of International Justice (GIJ), as I explained in Chapter 3. Let me remind us what GIJ requires.

GIJ: An international arrangement and/or international institution (which is designed to assign rights and duties, and/or to divide benefits and burdens of international cooperation) ought to be constructed in non-arbitrary ways in the sense that (1) this arrangement and/or institution and other existing relevant rules of international relations are administered in accordance with the notion of formal justice, and (2) this arrangement and/or institution does not violate basic human rights.

If it is accepted, then the parties make their decision by measuring their well-being in terms of the minimalist conception of primary goods, then they will choose GIJ. This is
because GIJ is very general and neutral to particular socio-cultural conditions. The
generality and neutrality of GIJ provide the parties reasonable grounds to believe that the
implementation of GIJ is compatible with particular conceptions of the good they may in
fact hold in the real world. Unlike IDP, the implementation of GIJ would not force them to
accept a certain particular moral belief or conception of the good that they in fact do not
accept.

Furthermore, as far as hunger, malnutrition, and so on, are our moral concern,
clause (2) in GIJ requires, as explained in Chapter 3, that just international institutions
comply with the principle of basic human rights, which guarantees everyone in the world
the right to life, the right to security, and so on. In this regard, it is quite straightforward to
say that those moral issues caused by sufferings from hunger, illness, malnutrition, and so
forth, can be addressed by the principle of basic human rights prescribed by GIJ, since the
principle of basic human rights is to provide a moral guarantee for all human beings that
they live a minimally decent life. Thus, if we are concerned about those sufferings caused
by international distributional inequalities, GIJ is able to address those issues that Beitz
thinks can only be addressed by IDP.

Therefore, we can say that since the parties in IOP with only the knowledge of the
minimalist conception of primary goods are not able to choose IDP, and since GIJ is able
to address those moral issues that concern Beitz and many of us, Beitz’s argument for
IDP is both groundless and not strong enough to rule out the possibility that the parties in
IOP under certain conditions will choose GIJ, not IDP.
Now Beitz may say that GIJ is not incompatible with IDP. Since GIJ is such a general principle and is not specific enough to give us concrete guidance in addressing those moral issues, Beitz may say that the parties need to choose a more concrete and meaningful principle of international distributive justice. This sounds fair. As explained in Chapter 3, the parties need to and will choose a more concrete and practically meaningful principle. In this regard, Beitz may say that if the parties in IOP are further informed such that it is reasonable to base their choice of the principle of international distributive justice on the belief that all human beings ought to be given equal respect and concern, then it would be rational for the parties in IOP to choose the more specific but egalitarian IDP. In this case, Beitz may say, even if GIJ would be chosen by the parties in IOP, this does not show that they will not choose the compatible and more specific IDP. Beitz may argue that the parties will choose IDP if their choice is further supported by the belief that everyone ought to be given equal concern and respect.

According to my reconstructed Rawlsian theory of international justice, the above view that might be proposed by Beitz is not a rejection of the Rawlsian state-centric view of international distributive justice. The key question here is whether it is ALWAYS reasonable to inform the parties in IOP that they base their choice on the consideration that all human beings should be given equal respect and concern. My view is that it is not always reasonable for the parties in IOP to base their choice on this belief. Let me explain this.

As explained in Chapter 3, my Rawlsian theory of international justice accepts that the conditions of the world can change. The condition of the world may be such that
there is no empirical base to characterize the parties in IOP as having the belief that all human beings should be treated with equal respect and concern. Here, what I mean by the empirical base of characterizing the parties this way is that it must be the case that to give all human beings equal respect and concern is a considered judgment of justice that people in every society do in fact have or can accept on reflection. Here let me remind my reader that in our discussion of OP and IOP in earlier chapters, we have seen the important roles considered judgments of justice play in reaching “correct” descriptions of OP and IOP. Since the egalitarian belief that everyone should be treated with equal concern and respect is a moral belief and is supposed to be filtered out by the veil of ignorance, the only way that this belief can be incorporated into the process of IOP is to see it a relevant considered judgment of justice. Thus, if this egalitarian moral belief can play any role at all in guiding the parties to choose principles of international justice, it must be a relevant considered judgment of justice.

As we discussed earlier, considered judgments of justice are those that people may or may not have even on reflection. It is simply a matter of fact. When certain people in fact don’t have a particular considered judgment of justice even on reflection, then our theory of moral methodology cannot criticize these people for not having it. Our moral methodology begins with what considered judgments of justice people in fact have, be it on reflection or not. There is no pre-existing principle or criterion in virtue of which we can require people to have a certain moral belief as a considered judgment of justice. At least the Rawlsian contract theory does not presuppose such principle or criterion. So, according to the above explanation, if people in many societies do not have such a
considered judgment of justice and will not accept this on reflection, then there is no empirical base to characterize the parties in IOP such that they will base their choice on the belief that everyone should be treated with equal concern and respect.

Our objection to Beitz's proposal can be understood from a different perspective. That is, the condition of world politics may or may not be conducted under the state system and states may or may not be justified in accepting different conceptions of social justice and political legitimacy. When it is the case that world politics is conducted under the state system and states can be just and legitimate on different moral grounds, then it is reasonable to inform the parties in IOP in these regards. Since states affect significantly, either positively or negatively, people's rights and well-being in both domestic and international realms, it is reasonable to think that the parties would make different decisions with or without such information. In other words, it is reasonable to make differential treatments between just states and unjust states, since presumably people living in a just state are better off than living in an unjust state, other things being equal.

Beitz might say that whether world politics is conducted under the state system is not relevant to the parties' decision. But even if we accept this view, it does not imply that we should not make differential treatments between just and unjust states in matters of international justice. The existence of states and the state system is not an important factor. What is of importance is the information that states may or may not be just and legitimate and that they may be just and legitimate in different ways. Beitz cannot reasonably say that this piece of information is morally irrelevant. This is because it is not
reasonable, nor is it justifiable, for a theory of international justice to treat just and unjust states alike. And it does not seem reasonable for a theory of international justice to treat all just states as if they were just by the same moral principle, when states in fact can be just in accordance with different moral principles. It seems to me Beitz’s proposal does not differentiate between just and unjust states, since the interests of just states as well as the interests of unjust states do not receive different treatment in Beitz’s proposal: no interest of the state is considered in Beitz’s cosmopolitan argument for IDP. Beitz’s cosmopolitan argument for IDP is thus twofold: one the one hand, the egalitarian moral belief as part of the description of IOP will lead the parties to choose IDP; on the other, states will not should receive any primary consideration in deciding fundamental principles of international justice.

Beitz may say that states deserve some moral consideration but only in a secondary sense. However, such a view cannot be taken too seriously. For according to the cosmopolitan principles of global justice, which treat individuals as primary units of moral consideration, the concern for the well-being and rights of individuals always, at least in theory, overrides any consideration for states. It seems that, according to the cosmopolitan, if a certain international arrangement would make the least advantaged persons significantly better off, then this arrangement must be carried out regardless of whether the consequence of this arrangement would neglect the legitimate interest of a just state, that is, the consequence of bring about upsetting the just social order of that state. For example, we can imagine a state which is just in a non-liberal sense. That means this state is just and legitimate without complying with the Difference Principle.
To this state, the imposition of IDP means to impose a liberal idea of distributive justice on it. In order to comply with IDP, this state may even have to adopt a domestic policy of distributive justice by, for example, adopting a different taxation policy. In Beitz's argument, the interests of any state, just or unjust, are and should not be considered in determining fundamental principles of international justice. There is even no consideration of states' legitimate interest in preserving their just social order. In this regard, Beitz's claim that his theory will give just some of states' interests some secondary moral consideration should not be taken too seriously.

My Rawlsian theory maintains that the concern for preservation of the just order of the relevant states is a legitimate concern and should be taken into consideration when we are to decide on the appropriate principles of international distributive justice in IOP. The justification for this Rawlsian view is that a just state is supposed to have taken care of its people's rights and well-being according to certain morally acceptable principles. If the cosmopolitan view allows upsetting of the just order of a state, then it is simply addressing the moral concern of international inequalities by creating another moral problem—that is, a problem of causing social injustice. And it does not seem reasonable to say that the parties in IOP would choose a principle of international distributive justice that can discard principles of social justice derived from OP. For this reason, the cosmopolitan view is not satisfactory.

The cosmopolitan does not seem to be convinced by the above consideration. He wants to argue that even when world politics is conducted under the state system, the
A personal-centric version of IDP is the only correct principle that can adequately address international distributional inequalities. For the cosmopolitan, state boundaries are morally arbitrary. To adopt my reconstructed Rawlsian view of international distributive justice, according to the cosmopolitan, is tantamount to accepting a morally arbitrary factor into the notion of global justice. Let us consider this rebuttal.

The existence of states is a contingent fact. World politics need not be conducted under the state system. There is no question about either of these. But is such a contingent fact morally arbitrary and thus morally irrelevant from the point of view of IOP? The cosmopolitan says yes. But why? Presumably, he says this because he believes that all or most state boundaries were created in either morally irrelevant or morally unacceptable ways. State boundaries may be created in a straightforwardly morally irrelevant ways. For example, boundaries may be created in accordance with natural geographical barriers. More often than, morally unacceptable methods are typical means of creating boundaries in human history. Sheer violence and/or compromise among powerful states, for example, are among common causes of the existence of state boundaries. These intuitively explain why we should see state boundaries as morally arbitrary and morally irrelevant to the determination of appropriate principles of international justice, especially when the existence of state boundaries helps create international distributional inequalities which in turn generate moral issues of our concern.

This is a legitimate concern. I do not deny that international distributional inequalities caused by state boundaries can and in fact do generate issues of moral concern. The question we need to answer is whether addressing such moral concern will
lead us to accept the cosmopolitan argument for IDP. I don’t think it will. The main reason is that we can address such issues of moral concern by both a theory of social justice (and political legitimacy) and a theory of international justice, as explained in Chapters 2 and 3, which allows us to make differential treatments between just states and unjust states. The cosmopolitan proposal is that such moral issues should be addressed by a single theory of global justice, which excludes the moral relevance of states, just or unjust. I have argued so far that on the assumption that states can be justified in accepting the liberal and non-liberal conceptions of social justice and political legitimacy (which are derived from OP), there is no reasonable ground for us to accept the cosmopolitan proposal of IDP.

Beitz may reply that my rejection of his proposal of IDP as being unreasonable is valid only on the assumption that different states can be justified in accepting different conceptions of social justice. Beitz may say that if every state in the ideal world would have to follow Rawls’s two liberal principles of social justice, then non-liberal states would not be just and it may not be unreasonable (from the point of view of OP) to require non-liberal states and their people to redistribute some of the goods in their possession to other societies.

At this point, the dispute between my reconstructed Rawlsian theory and Beitz’s view seems to be related to the dispute about pluralism and universalism with regard to social justice. I shall discuss issues related to pluralism in a later section. There is another aspect of the cosmopolitan proposal, however, that deserves some remark. A discussion of this aspect should reveal that my rejection of the cosmopolitan proposal of IDP need
not depend on any pluralist view of social justice. Here is why.

It seems that if we were to accept the cosmopolitan proposal, then there would be no need for talking about social justice. This is because even if it can be shown that the liberal conception of social justice is universally valid, the cosmopolitan would seem to say that the requirement of IDP should override requirements of the liberal principle of social justice. That is, when a society is facing the choice of satisfying the requirement of the liberal principles of social justice and the requirement of IDP, the cosmopolitan would say that this society has to satisfy whatever would make the least advantaged persons better off first, be they its citizens or foreigners. For the cosmopolitan, there is no priority for meeting requirements of the liberal principle of social justice. Concern for social justice, according to the cosmopolitan, is important only in a secondary sense, that is, concern for social justice is to be addressed within the framework of the cosmopolitan project. Thus, the society in question has to satisfy IDP first, regardless whether the consequence of satisfying IDP would prevent this state from satisfying the requirement of the liberal principle of social justice. It seems that the cosmopolitan would not care about whether this society would be internally unjust (by failing the liberal principle of social justice), because the consideration of preserving a just social order is seen by the cosmopolitan as primarily state-centric. One possible consequence of accepting the cosmopolitan view would be that we will live in a world where a just international order can be maintained but we may in fact live in unjust societies. In seeing this, we will and should ask: why would the parties in IOP, envisioning such a consequence, think it reasonable to choose the cosmopolitan IDP? Presumably, according to Rawls, people are
better off living in a just society than living in an unjust society, other things being equal. If we accept this view, then the parties would not think it reasonable to choose the cosmopolitan IDP, since choosing IDP would not give them a moral guarantee that they will be better off. For these considerations, Beitz's cosmopolitan view of international justice is not a reasonable one.

The above discussion of the unreasonableness of Beitz's view of global distributive justice may still be challenged by Beitz. Beitz might say that his view is fundamentally an ideal theory, that is, his theory applies primarily to a world where states no longer play such a significant role in both domestic and international politics. To deal with questions of international inequalities under the current state system, a non-ideal theory is needed. This non-ideal theory sets a cosmopolitan goal but allows some accommodation between his ideal theory and the practical conditions. Beitz might say that, in this non-ideal world, IDP as envisioned by him would not require states to comply with IDP first. If Beitz would say this, then, according to this non-ideal version of IDP, states would be allowed to take care of their internal social and political orders first. If this view about the ideal and the non-ideal theories would indeed be adopted by Beitz, then this view does not undermine my Rawlsian theory of international justice. For this suggested non-ideal theory would be state-centric in the sense that the interest of states in preserving and/or maintaining a just social order is taken into consideration in determining what is just at the global level. In other words, this suggested view would accept that under the current state system we need a state-centric view of international
distributive justice, which is the view that my Rawlsian theory of international justice holds.

However, Beitz might say that the problem with my reconstructed Rawlsian theory is that it still holds a state-centric ideal theory of international justice. Beitz might say that it is only a practical consideration for his theory to accommodate the state system with his view about international justice. Beitz might say that there is no deep moral reason to hold a state-centric ideal theory of international justice. For this reason, Beitz might say that my Rawlsian theory of international justice might be accepted only for practical reasons, but not moral reasons, since the existence of states and state boundaries is morally arbitrary.

To this objection, we have to consider what the ideal theory of international justice is, which in turn requires us to consider what the correct description of IOP is, since the alleged moral reason or moral point of view is expressed through the correct description of IOP. As mentioned earlier, Beitz’s cosmopolitan view adopts Rawls’s description of OP but extends it to the global level. Embedded in such a cosmopolitan view of IOP is Rawls’s deep moral theory expressed by the commitment to the Kantian view of persons. Now since the cosmopolitan description of IOP is supposed to be accepted by all or most people, the cosmopolitan view of IOP must maintain that a Kantian moral theory will be universally accepted. But people living in a state with quite a different cultural tradition may ask: why do we have to accept this Kantian moral theory when we reflect on what is just and unjust at the global level? Beitz does not discuss this question. He seems to assume that the deep moral theory embedded in Rawls’s
description of OP is an acceptable one. But this is a questionable assumption. According to my accounts of OP and IOP, we need not presuppose, and it is problematic to presuppose, a Kantian moral theory. Since I have explained my view in Chapters 2 and 3, I shall not repeat myself in detail. Nevertheless, it is easy to see why Beitz’s cosmopolitan account of IOP is flawed, if my earlier arguments are accepted.

As explained in Chapter 2, Rawls’s incorporation of the Kantian moral theory into his description of OP is effected through the method of reflective equilibrium. One important feature of reflective equilibrium, as we saw, is that some socio-culturally rooted factor or factors (that is, considered judgments of justice) inevitably play a significant role in the construction of OP. But, then, the moral theory embedded in the cosmopolitan view of OP must be dependent on some socio-cultural factor or factors. Since socio-cultural factors are prima facie particularistic, not universal, that is, when we talk about something as part of the history and culture of a society, we presumably mean to say that the thing we talk about is unique to this society. In this case, Beitz is not justified in simply assuming that the cosmopolitan view of IOP is in fact universally accepted. Thus, Beitz cannot be justified in claiming that the Kantian theory provides a universally accepted moral point of view to denounce the moral relevance of states in determining fundamental principles of international justice.

Beitz might say that his cosmopolitan view of IOP does not require that the Kantian moral theory is in fact universally accepted. Beitz might say that the cosmopolitan view of IOP would be accepted by every reflective person, no matter to what socio-cultural tradition s/he belongs. That is, Beitz, following Rawls, might say that
all or most persons can be persuaded to accept this view of IOP (which includes the Kantian theory as part of the IOP) by philosophical reflection. People can be persuaded to accept this cosmopolitan description of IOP because, according to Beitz, this cosmopolitan view of IOP will lead us to accept the notion of justice as fairness at the global level.

Even if it is agreed that fairness is a necessary or even defining feature of a liberal theory of international justice, however, Beitz’s reply is not satisfactory in one important respect: how can the cosmopolitan view of IOP, which favors a particular socio-cultural tradition, be said to be fair? Isn’t the procedure of IOP characterized by the cosmopolitan itself already biased against different socio-cultural traditions of different states? Beitz might say that his cosmopolitan account of IOP can derive a fair theory of international justice, even though the moral theory embedded in his account of IOP is culturally biased. If Beitz would indeed say this or something similar, though, it seems to me that Beitz may be giving up the Rawlsian contract theory and favoring some alternative approach. The reason is this.

According to Rawls, his contract theory is to argue for a liberal conception of justice by proposing a procedure through which principles of justice would be determined. One important feature of this contractarian approach is that there is no independent moral theory according to which the outcome of the procedure of determining principles of justice is judged. According to Rawls, if the procedure itself is fair, then the outcome is fair. The contract theory does not appeal to any independent moral theory to explain why the derived principles of justice are fair. The fairness of the procedure explains the
fairness of the derived principles. In this regard, if Beitz's IOP as a procedure of determining principles of international justice is in fact unfair (because of being culturally biased), then if Beitz still thinks his principles are fair, they are not fair in the sense Rawls has in mind in his procedural account of fairness.

Beitz of course can disagree with Rawls regarding what is the correct account of fairness. Beitz may say that he does not argue that the Kantian moral theory provides an independent criterion of fairness. Rather, his view, Beitz may say, is that the correct account of IOP will include the Kantian moral theory. This means that any proposed account of IOP would be incorrect if it does not include the Kantian moral theory.

But why does a correct account of IOP need to include the Kantian moral theory? If we accept Rawls's view that in a correct account of OP socio-cultural factors like considered judgments of justice play an important role, then it is not necessary that a correct account of OP include the Kantian moral theory. After all, the Kantian moral theory is a product of Western culture. If a correct account of OP need not include the Kantian moral theory, then there is also no need that a correct account of IOP incorporate the Kantian moral theory, since IOP is an extension of OP. In other words, Beitz's cosmopolitan account of IOP does not give a strong case for the contractarian interpretation of fairness.

Let me wrap up my discussion in the last few paragraphs. Earlier I offered criticism that Beitz's cosmopolitan view of international justice is unreasonable since it does not make appropriate differential treatments between just and unjust states. Beitz may try to rebut my criticism by saying that there may be practical reasons for considering
the interest of just states. But he will insist that there is no moral reason for giving states such a primary treatment. I tried to explain that the so-called moral reason must be expressed in terms of a correct characterization of IOP. If Beitz’s view were to hold, then a correct description of IOP would include the Kantian moral theory. However, there is no empirical base for including the Kantian theory. In this respect, the moral reason Beitz utilizes to criticize the Rawlsian state-centric approach is not justified. I tried to explained that the notion of justice as fairness intended by Rawls should not be construed to presuppose the Kantian theory. The Rawlsian notion of justice as fairness, according to my explanation, is better understood in the procedural sense.

The above criticism of Beitz’s cosmopolitan view is based on the fact that Beitz also accepts the Rawlsian contract approach. Whether Beitz and other cosmopolitans would choose a different approach to international justice is a question that I must leave aside in the present inquiry.

My discussion and criticisms of Beitz’s argument are intended to point out that the liberal-contract theory of international justice need not be constructed in accordance with the cosmopolitan project. One important aspect of my criticisms of the cosmopolitan view is based on my acceptance of Critical Political Pluralism, although so far I have not utilized directly this notion of Critical Political Pluralism in my commentary. From what Beitz says, it is not entirely clear to me that Beitz would reject the idea of Critical Political Pluralism. It seems to me that Beitz and Pogge are quite ambivalent in this regard. Sometimes they suggest explicitly or implicitly that different states can be
justified in accepting different conceptions of social justice. But sometimes they seem to suggest that the liberal conception of justice is the most appropriate conception of justice, both for regulating social institutions and for regulating global institutions. However, neither of them seems to fully appreciate the implication of accepting political pluralism. In a later section, I will examine Pogge’s view about political pluralism, which seems to address the concern in this regard.

Let me re-capture what I have tried to show in this section. Beitz argues that IDP is the appropriate principle of international justice to address the moral concern arising from distributional inequalities caused by the existence of state boundaries. But I have tried to show that to impose IDP might force some just states to abandon their just social orders, which is unreasonable and too demanding. However, I accept that IDP can be valid when the conditions of the world are quite different from those under which the Rawlsian principles of international justice are presented, as explained in Chapter 3 and briefly in this section. In this case, IDP would not be a principle for the world under all circumstances. If it is correct to say that IDP holds only for a world under some different conditions, then IDP would be compatible with, and would not undermine, the state-centric Rawlsian principle of international distributive justice.

5.2.2 Distributive Justice in a non-Cooperative World

Beitz’s second line of argument for the need of a certain principle of international
distributive justice considers the case where the world is non-cooperative. This line of argument, as indicated earlier, is not as significant and interesting, since, as we shall immediately see, Beitz's second line of argument is weak and can be criticized for exactly the same reasons that I have presented so far in this section. Thus, my discussion of Beitz's second line of argument will be quite short. Nevertheless, it is still worth considering what Beitz has to say about international distributive justice in a non-cooperative world.

Beitz's proposal for IDP, according to Beitz, is based on the assumption that a global cooperative scheme exists or is emerging. When such a global cooperative scheme does not exist or is not seen emerging, then Beitz seems to agree that IDP does not apply or is irrelevant. However, even under the condition of no global cooperative scheme, Beitz still maintains that a certain principle of international distributive justice is relevant. In this case, this alleged principle of international distributive justice is not to regulate how international institutions should distribute benefits and burdens of international cooperation, since there is no international cooperative scheme. According to Beitz, this alleged principle of international distributive justice is to regulate the division of benefits of the natural but unequal distribution of (natural) resources caused by state boundaries. Beitz wants to argue that natural but unequal distribution of resources in accordance with national borders is not justifiable and that therefore unequal benefits produced from unequal distribution of resources are subject to the regulation of a certain principle of international distributive justice in a non-cooperative world. This is because such a natural distribution by national boundaries is, according to Beitz, morally arbitrary, just as
social positions and family wealth are morally arbitrary for determining what is just, from the point of view of OP. In claiming that such a natural but unequal distribution is morally arbitrary, Beitz maintains that there must be a certain principle of international distributive justice. Here is what Beitz says:

The parties to the international original position would view that the natural distribution of resources is morally arbitrary. The fact that someone happens to be located advantageously with respect to natural resources does not provide a reason why he or she should be entitled to exclude others from the benefits that might be derived from them. Therefore, the parties would think that resources (or the benefits derived from them) should be subject to redistribution under a resource redistribution principle.  

In the above quoted passage, Beitz seems to say that natural distribution of resources is morally arbitrary, and, for this reason, no one is entitled to exclude others from the benefits that might be derived from them; therefore, the parties in the international Original Position would choose the "resource redistribution principle" (RRP). Although Beitz does not further specify what the requirement of RRP is, it seems reasonable to think that the requirement of RRP would be egalitarian in nature, similar to that of IDP. From the cosmopolitan point of view, international distributional inequalities give rise to similar issues of moral concern, and RRP would require a similar solution to these issues even in a non-cooperative world.

I mentioned in Chapter 3 that the cosmopolitan criticizes Rawls for rejecting any principle of international distributive justice. To some extent, I agree with the
cosmopolitan in this regard. As explained in Chapter 3, my reconstructed Rawlsian theory of international justice suggests a state-centric principle of international distributive justice to address moral issues generated by international distributional inequalities. In this respect, the objection that Beitz might have against my reconstructed Rawlsian view is not about whether there should be some principle of international distributive justice. Rather, Beitz's objection is the state-centric nature of my Rawlsian principle of international distributive justice. In this section, what I want to determine is whether my proposed state-centric principle of international distributive justice can be upheld against Beitz's egalitarian criticism in terms of RRP. I think and try to show briefly that it can.

If my discussion in the previous section is accepted, then I think it is fairly easy to see why my Rawlsian view is not undermined or refuted by Beitz's cosmopolitan argument. For one thing, as explained in Chapter 3, the state-centric Rawlsian view of international distributive justice is actually insensitive to whether the world is cooperative or not. This is because fortunate states, according to this state-centric view, are under the obligation of helping unfortunate states build a just order, which includes the obligation of helping them address issues about basic human rights, especially when international distributional inequalities contribute to the cause of sufferings of people in the unfortunate states. If this state-centric principle of international distributive justice is able to address moral issues like hunger, illness, disease, malnutrition, then the parties in IOP have a reason to choose this state-centric principle. Now, if we also accept that the parties in IOP have only a minimalist conception of primary goods on which to base their choice, and that the parties accept that living a just society is preferable to living in an unjust
society, then the parties will have no reasonable base to choose the egalitarian RRP, which, just like IDP, imaginably might force states to comply with its requirement at the cost of upsetting their just social order or giving up a chance of building a just social order. In other words, most of the reasons that have so far been used against Beitz's egalitarian IDP can also be used against Beitz's egalitarian RRP. Because of this, I shall not further discuss why Beitz's proposal of the egalitarian RRP is not a reasonable principle of international justice. For if what I have said so far about my Rawlsian view of international justice is accepted, then Beitz's cosmopolitan view of international distributive justice does not undermine or refute my view, if the latter is valid at all. More importantly, my state-centric Rawlsian view can avoid the problems that plague Beitz's egalitarian IDP and RRP, by emphasizing that the goal of international distributive justice is to help states build a just social order, liberal or non-liberal. The goal of building a just social order is the natural, or even ultimate, goal of a theory of social justice. Any theory of international justice will be problematic if it requires redistribution at the cost of undermining or upsetting the just social order of any society, assuming that the conception of social justice this society accepts is derived from OP. I believe this is one of the problems of Beitz's and, as we shall see, Pogge's cosmopolitan theory of international justice.

In this section, I have discussed Beitz's cosmopolitan criticism of Rawls, whose theory of international justice rejects IDP or any conception of international distributive justice. I agree with the cosmopolitan critic that Rawls should not reject all proposals of
international distributive justice. However, I have defended Rawls's state-centric approach. I have tried to show why it is reasonable and justifiable to adopt the Rawlsian state-centric approach under some relevant conditions. Though I think Rawls's view about international distributive justice is mistaken, one aspect of Rawls's reason for rejecting principles of international distributive justice deserves a quick remark.

Rawls does not think it appropriate to talk about principles of international distributive justice like IDP, because he believes that in this non-ideal world the major source of problems of social justice is primarily not lack of natural resources. He believes that "well-ordered societies can get on with very little...Perhaps there is no society anywhere in the world whose people, were they reasonably and rationally governed, and their numbers sensibly adjusted to their economy and resources, could not have a decent and worthwhile life." Of course, many problems that many societies have to face in this world are not exactly like what Rawls says here. Nevertheless, what Rawls tries to convey is that in this world and other worlds with similar conditions, the major problem of international justice is to deal with politically unjust states and/or economically unfortunate states. Rawls seems convinced that if international institutions would be designed in accordance with the state-centric principle to deal with these problems, then it is at least practically more viable to build a just world order consisting of just states than the cosmopolitan proposal. The Rawlsian theory of international justice maintains that Critical Political Pluralism provides a sound base for this. However, Pogge's cosmopolitan view does not seem to agree with the Rawlsian view regarding the issue of political pluralism. So let us now turn to Pogge's view of political pluralism, which is an
paradigmatic example of the cosmopolitan view of political pluralism.

5.3 Pogge's Criticism of Rawls's Critical Political Pluralism

In this section, I shall discuss another cosmopolitan criticism of the Rawlsian conception of international justice. This line of the cosmopolitan criticism is found in Thomas Pogge's criticisms of Rawls's Critical Political Pluralism. Pogge, like Beitz, rejects Rawls's state-centric approach to international justice, to which Rawls's Critical Political Pluralism is tied. Pogge's criticism is twofold. First, Pogge rejects Rawls's dichotomy of OP and IOP and proposes a different view about how OP ought to be extended to derive principles of international justice. Second, Pogge rejects Rawls's Critical Political Pluralism and suggests his own cosmopolitan version of pluralism. In the following, I will examine these two lines of criticism from Pogge. Before I begin, I want to make it clear that my reconstructed Rawlsian theory of international justice tries to explain what justice requires under the state system. Critical Political Pluralism is one of the notions used for this purpose. The reconstructed Rawlsian theory does not make any explicit claim about justice for a stateless world. In this regard, Pogge's criticism is relevant because Pogge and the Rawlsian view have quarrels about international justice under the state system. Whether the Rawlsian view disagrees with Pogge's view about justice in a stateless world is a question I shall leave aside. In other words, the dispute is: what does international justice require, given that there are states?
5.3.1 Extending the Original Position at the Global Level

Pogge rejects Rawls’s idea of using both OP and IOP for the derivation of different sets of principles of justice. According to Rawls, principles of social justice are decided by OP, while principles of international justice are decided by IOP. I explained in Chapter 2 how OP can derive and justify different conceptions of social justice. This explanation was done in light of my two-stage account of OP. It is this explanation of the derivation and justification of different conceptions of social justice that also vindicates the possibility and justification of Critical Political Pluralism for Rawls’s general theory of justice. In addition, I explained how this Critical Political Pluralism is crucial to the derivation and justification of the Rawlsian principles of international justice. However, Pogge does not think that the distinction between OP and IOP is the best way for Rawls to address issues of justice. Actually, Pogge believes that Rawls’s own account of OP “will lead one to abandon Rawls’s primary emphasis on domestic institutions in favor of globalizing his entire conception of justice.” Notice that Pogge’s conception of Rawls’s “entire conception of justice” is not the general theory of justice that I mentioned Chapter 2. Rather, it is meant by Pogge to refer to Rawls’s liberal conception of Justice as Fairness (JF). The most significant and substantive difference between Rawls’s general theory of justice and JF is that egalitarianism is not necessarily connected with the former, while JF is essentially an egalitarian conception. Pogge wants to argue that the egalitarian JF should be globalized. Pogge attempts to show that a globalized egalitarian JF is the most appropriate conception of international justice that Rawls can and should adopt and
develop. Pogge’s claim about what a Rawlsian conception of international justice should be is drastically different from my presentation in Chapters 2 and 3. The issue here is not just to find an assessment of these two (my and Pogge’s) competing interpretations of Rawls’s conception of international justice. More importantly, this is an issue about what an appropriate liberal conception of international justice would be, which is the main purpose of this dissertation. To settle the dispute between my account and Pogge’s account, we first need to understand Pogge’s theory.

Pogge’s view about how JF can be globalized is expressed in his idea that there needs to be only “a single, global, original position.” Let us call this a Global Original Position (GOP). The proposal of GOP is that there needs to be only one single meeting among rational individuals in OP; there is no need of IOP, nor is there a need of different OPs. In one single meeting among rational individuals in OP, according to Pogge, all problems of social and international justice would be addressed by one single set of principles of justice (which is seen by Pogge to be Rawls’s two liberal principles of social justice) derived by OP. But how can a single meeting in OP (with the derivation of JF) be sufficient to address all kinds of problems of justice? I want to examine his question by further considering the notion of GOP.

One important feature of GOP is that it is not IOP, nor is it OP. We may recall that Rawls’s idea of IOP is based on OP in the sense that the parties in IOP who are deliberating on principles of international justice will be instructed to take into consideration different conceptions of social justice derived from OP. In Rawls’s view,
the principles of international justice are primarily designed to resolve disputes about the justice of international relations in a well-ordered society of states. This is the ideal part of Rawls's theory of international justice, as I explained in Chapter 3. Rawls's intuition is that just states may have quarrels over what is just and unjust in their external relations. Sometimes such disputes arising from international relations may not be adequately addressed by principles of social justice, because these disputes may have nothing to do with problems of social justice. Thus, Rawls believes that we need a separate set of principles of justice to regulate states' external relations. Pogge's proposal for GOP is based on the belief that the above mentioned considerations for IOP are not appropriate.

According to Pogge, GOP does not presuppose OP. Actually, Pogge maintains that there is no need to go through OP first to derive a set of principles of justice for domestic societies and then to go through IOP to derive another set of principles of justice for international society. Pogge believes that to go through both OP and IOP already assumes that states' boundaries are of moral importance to our reasoning about justice. Pogge believes that national borders are just like other social and natural contingent factors which are morally arbitrary and thus morally irrelevant. National borders are morally irrelevant to the decision of the fundamental principles of justice because they are created by historical accidents, according to Pogge. For this reason, Pogge maintains that there is no justification for IOP, because IOP assumes the moral standing of states whose interests are relevant to our reasoning about international justice. Since the influences and existence of existing states are based on historical contingent factors and should be ruled out from the point of view of GOP, according to Pogge, the parties in
GOP will be instructed not to consider how rights and duties, and burdens and benefits, ought to be assigned and distributed within societies or among societies; instead they will be instructed to consider the assignments of rights and duties and allocation of burdens and benefits by taking a global perspective, or a perspective that is concerned with the well-being of all individual citizens of global society. Since the constraints and instructions given to the parties in GOP are exactly the same as those given to the parties in Rawls’s OP, except that the scope of the application of the chosen principles in GOP is global society, not domestic society, Pogge argues that Rawls’s two principles of JF would still be chosen for exactly the same reason they are chosen in Rawls’s OP. In this case, JF, because of the global scope of its application, will be globalized. According to this view, Rawls’s two principles of JF will apply globally as well as locally. JF is applied globally such that, in an ideal world, global institutions will comply with Rawls’s two principles of justice, so that every person in this world will be guaranteed equally extensive liberties, be given equal opportunities to positions and offices, and unequal arrangements will be allowed only to the maximum benefit of the least advantaged persons in the world. According to Pogge, JF will also be applied locally, that is, all local institutions will comply with the principles of JF. To apply the two principles of JF both at the global level and at the local level explains Pogge’s idea that problems of social justice and problems of international justice will be addressed by a single set of principles of JF.

This should explain in a general fashion Pogge’s proposal of GOP as a “single, global, original position.” If this proposal is accepted, then Rawls’s OP-IOP dichotomy is
challenged, which may well mean that Rawls’s conception of international justice will also be challenged.

One important argument for Pogge’s proposal of GOP and rejection of Rawls’s OP-IOP design derives from the suggestion that national borders are morally arbitrary, and thus morally irrelevant. Because national borders are morally irrelevant, they are not allowed to be considered in GOP. Pogge’s concern is that if we accept Rawls’s OP-IOP design for reasoning about justice, then we implicitly accept the justifiability of “the enormous distributional significance that national boundaries now have...for determining the life prospects of persons born into different states.” Pogge asks, “How can he [Rawls] justify that boundaries are, and would continue to be, associated with ownership of, full control of, and exclusive entitlements to all benefits from, land, natural resources, and capital stock?” This challenge to the moral relevance of national boundaries reveals Pogge’s moral intuition about choosing GOP and the globalized JF, which is egalitarian in character.

I am sympathetic to Pogge’s intuition. But I don’t think that his criticism cannot be met by my reconstruction of Rawls’s theory, because, as I explained in Chapter 3, Rawls need not hold that “that boundaries are, and would continue to be, associated with ownership of, full control of, and exclusive entitlements to all benefits from, land, natural resources, and capital stock.” I think Rawls does not commit himself to this view. What Rawls intends to establish in his theory is the claim that some interests of just states need to be considered when we are to determine the fundamental principles of international justice under the state system. Rawls does not and will not accept the view ascribed to
him by Pogge. The Rawlsian general liberal theory of justice attempts to show that when
the conditions of the world are different, it is reasonable and justifiable to think that we
need different sets of principles of international justice. The Rawlsian theory does not say
that JF can never be globalized. It says only that the globalized JF is not appropriate for
the world under the state system, and thus GOP is not a proper method for deriving
principles of international justice for this and other worlds under similar conditions. The
question here is not whether Pogge’s proposals of GOP and the globalized JF are
necessarily unacceptable. Rather, the question is whether Pogge’s proposals are
appropriate for a world under the state system. Rawls and I argue that Pogge’s proposal
do not apply to this world. Pogge argues otherwise.

Pogge’s challenge to the moral relevance of states can be seen as a challenge to
the Rawlsian state-centric view of international justice. Pogge’s GOP is another way of
expressing this challenge. From the Rawlsian point of view, Pogge’s challenge is a real
challenge only when Pogge insists that even under the state system GOP is more
appropriate than Rawls’s OP-IOP design.

Pogge’s proposal of GOP claims that even under the state system states’ interests
are morally irrelevant to the determination of the fundamental principles of international
justice, since such interests are based on morally arbitrary factors—national borders.
There is little doubt that states’ interests can be morally irrelevant when morally arbitrary
factors define the interests of states. For example, a state’s expansionist interest in
controlling more territory by aggression is morally irrelevant. However, it is not clear that
all interests of states are morally irrelevant. This does not imply that the Rawlsian view
holds that all interests of states are morally relevant. In my account of IOP, only some interests of states are morally relevant, especially the interest in preserving a just social order. In a stateless world or a world where states no longer have significant impact on people's rights and well-being, states' interests may be seen as practically irrelevant to issues of international or global justice. But, when states, via their basic structures, do have an significant impact on people's rights and well-being, it not reasonable to simply dismiss the existence of states and some of their interests as morally irrelevant. Also states' external policies and international politics can have an impact on people's rights and well-being. A just state can provide protection to its people with regard to what they think is valuable about their societies and their states. The Rawlsian view is that it is not reasonable to treat just states and unjust states alike. And this reasonable discrimination can be properly expressed in IOP. Pogge's GOP would seem to treat just and unjust states equally by treating all states as morally irrelevant. This does not seem plausible.

Pogge may say that it is not states that concern him. Rather, it is people's rights and well-being that are the ultimate concern of any acceptable theory. For this reason, Pogge may say that the state-centric Rawlsian theory of international justice is not acceptable. To this criticism, I shall say that the Rawlsian theory is also concerned with people's rights and well-being. However, the Rawlsian theory takes a different approach to address this moral concern. The Rawlsian theory holds that this moral concern can be addressed properly by a theory of social justice and a theory of international justice. We need a theory of social justice, as distinct from a theory of international justice, because each addresses different aspects of this concern and by different means. According to the
Rawlsian view, different states, because of their unique social and historical conditions, may find different ways of arranging their political affairs and organizing their societies. When these are seen as just from the perspective of OP, then it is reasonable to say that people's rights and well-being are respected and promoted. A theory of international justice, according to the Rawlsian view, must respect such diversity since these different conceptions of social justice can be justified as derived from OP. This is the central claim of the state-centric Rawlsian theory of international justice. And the OP-IOP design is to express such a view.

GOP is different from the OP-IOP design, since there is no fundamental difference between principles social justice and those of international justice. For Pogge, there is only one single set of principles of justice applied locally and globally. Pogge may say that societies are different because of different social and cultural conditions. Societies can even reasonably adopt different political systems. But Pogge would say that at the most fundamental level every society must accept the same principles of justice. Society A can adopt, say, a presidential system, society B a monarch-parliamentary system. However, if each of these societies can be said to be just, the basic structure or the major institutions of A and B must be regulated by the same principles of social justice. If society A does not accept the principles of JF, then, according to Pogge, it is not just.

But what is the reason for claiming the necessity and universality of JF? If people in society A, after extensive public debate, accept a set of different principles, it does not seem reasonable to say that society A is still unjust because it is not regulated by the
principles of JF. This is not a plausible view. Pogge does not want to say that society A is unjust, as we shall see later. But his proposal of GOP would lead him to say that society A is unjust, because Pogge would say that the two principles of JF are the principles that would be chosen in GOP. This view of the necessity and universality of JF is problematic, because the construction of GOP is done through reflective equilibrium, which incorporates some particularistic factors, just like Beitz's account of IOP and Rawls's own account of OP. Just as Beitz's account of IOP and Rawls's own account of OP are not acceptable. Pogge's account of GOP is not acceptable. My reconstructed accounts of OP and IOP can avoid such a problem, as explained earlier.

Although Pogge argues for the universality of the two principles of JF, he sometimes also admits that states can be justified in accepting non-liberal conceptions of social justice. This view seems inconsistent with Pogge's proposal of GOP, which allows only one single set of principles of justice applied both locally and globally. If he would allow for different conceptions of social justice, then his proposal of GOP seems self-defeating. Pogge's characterization of GOP would seem to prevent him from treating non-liberal states as just. If he is serious about adopting a certain form of political pluralism, then it would seem that he has to abandon GOP and perhaps the globalized JF. Since GOP is not acceptable, the question that remains is whether it is coherent for Pogge to hold both some form of political pluralism and the globalized JF.

Pogge seems convinced that to allow different conceptions of social justice does not thereby defeat his claim of a cosmopolitan conception of global justice—the
globalized JF. Pogge wants to argue that it is reasonable and coherent to maintain a certain view of political pluralism as well as to maintain a globalized version of JF. Pogge seems to believe that political pluralism is compatible with a globalized version of JF. This is quite different from our Rawlsian view about how accepting some form of political pluralism would affect our theorization of international justice. The Rawlsian theory of international justice does not think it plausible to hold some form of political pluralism on the one hand, and a globalized version of JF, on the other. This is because the requirements of a globalized version of JF, which are egalitarian in nature, would force states to comply with the requirements of globalized JF and, therefore, to abandon their particular conceptions of social justice. Let me now turn to Pogge’s view of political pluralism. I want to show that Pogge’s attempt to hold some form of political pluralism along with the globalized JF fails. Since Pogge bases his criticism of the Rawlsian Critical Political Pluralism on this failed attempt, his criticism fails also.

5.3.2 Political Pluralism

Pogge argues against Rawls’s conception of international justice in part because Pogge thinks that Rawls’s intended idea of political pluralism is not in line with the liberal conception of pluralism. According to Pogge, Rawls’s view of political pluralism is to “express liberalism’s own principle of toleration for other reasonable ways of ordering society.” Pogge is correct in saying that “Rawls himself may be expressing this desire by conceiving the second session of the original position [that is, IOP] in
nonindividualistic terms.\textsuperscript{18} Pogge also is correct in acknowledging that this may be the reason why Rawls does not accept the idea of extending his egalitarian conception of justice as fairness to the international domain.\textsuperscript{19} Pogge criticizes Rawls's Critical Political Pluralism, however, because it is not based on Rawls's own liberal theory of JF. According to Pogge, Rawls's view of political pluralism is more a concession of the liberal conception of social justice to non-liberal conceptions of social justice than a balancing of the two conceptions on an equal footing. Pogge comments on Rawls's conception of international justice by saying that "The hierarchicals [or non-liberals], unencumbered by any principle of toleration, get their favorite law of peoples, while the liberals surrender their egalitarian concerns and some important human rights."\textsuperscript{20} Pogge believes that it is a mistake for a liberal to give up his fundamental belief in liberal principles of JF and try to compromise with the non-liberal in order to reach a seemingly universally acceptable conception of international justice.

The cause of such a mistake is, according to Pogge, that Rawls confuses two views of pluralism. Here are the two views of pluralism that Pogge talks about:

(a) Liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions: a liberal world order will therefore leave room for certain kinds of non-liberal national regimes.\textsuperscript{21}

(b) Liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions: it would thus be illiberal to impose a liberal global order on a world that contains many peoples who do not share
our liberal values. 22

How does (a) differ from (b)? According to Pogge, by acknowledging (a), we do not compromise our liberal convictions. Indeed, if we do not “envision a liberal order in this way.” 23 then we would compromise our liberal convictions. But according to Pogge, those who accept (b) would compromise their liberal convictions with those who do not share them. Thus, Pogge would have us accept (a) and reject (b).

The crucial step in making sense of this distinction is the notion of a liberal world order. How, though, does (a) provide a notion of a liberal world order different from the one provided by (b)? Pogge does not directly explain this. He simply gives an analogy of the domestic case, which he think would vividly explain the difference. Let us look at this domestic analogy.

(c) A liberal society must leave room for certain non-liberal communities and lifestyles.

(d) It would be illiberal to impose liberal institutions on a society that contains many persons who do not share our liberal values. 24

It seems clear at least for Pogge that a liberal society is tolerant precisely because it maintains a liberal social order. Presumably, a liberal society is tolerant and pluralist because it leaves room for persons who do not share liberal values. This is a quite standard description of pluralism within a liberal society. In this domestic case, what is to

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be noted is that a liberal society enforces a liberal social order (or imposes Rawls's two
principles of social justice or something similar), while at the same time leaving room for
persons who do not share liberal values. This is what is in the statement of (c). If (c) is
correct, it would imply that it is not illiberal to impose a liberal social order on a society
that contains many who do not share those liberal values. In this case, (d) would not be
accepted by liberals who believe a liberal society should be tolerant. Liberals, in this
domestic case, will accept (c). But can something similar be said about (a) and (b)? That
is, is it the case that a liberal must accept (a) but reject (b)? Pogge thinks yes. But it does
seem so obvious to me.

Before I further discuss the latter question, certain points must be fixed. First we
have to decide what kind of pluralism we are talking about when we discuss pluralism at
the domestic level and at the global level. In the domestic case, the kind of pluralism is,
as mentioned in Chapters 1 and 2, value pluralism. A liberal society tolerates different
values, or in Rawls's terms, different comprehensive doctrines of value. In a liberal
society, each citizen is equally protected by the society to embrace different
comprehensive doctrines of value as long as his belief and/or action in this regard does
not violate others' similar and other rights. This is what we mean by saying that we will
leave room for people who do not share liberal values while at the same time
implementing the liberal principles of justice to maintain social order. However, there is
one important condition of implementing such a liberal social policy: everyone within
society will have to accept this liberal conception of social justice as legitimate, according
to liberals. But why would anyone who does not share the liberal values want to accept
this liberal conception of social justice? If a non-liberal accepts the liberal conception of social justice, would he not thereby be forced to accept some liberal values? In this case, the liberal society is not as pluralist and tolerant as claimed by Pogge. Pogge does not address this question.

The Rawlsian general theory of justice can address this question. As explained in Chapter 2, the liberal conception of social justice can help sustain a liberal society as pluralist and tolerant, because this liberal conception is presented as a political conception of social justice. One important feature of understanding the liberal conception of social justice as a political one is that the liberal conception of social justice is concerned only the political aspect of social life. It does not prescribe other aspects of social life; nor does it regulate personal conduct, familial relations, churches, universities, and so on. Rawls believes this is one important way of understanding why a liberal society is pluralist and tolerant. In this view, while a liberal society is tolerant of different comprehensive doctrines of value, there is a single conception of social justice and political legitimacy implemented in this society. People in a liberal society can debate whether it is better to accept a different conception of social justice and political legitimacy. But they are not allowed to use illegal means to change the basic structure of society.

Now let us consider what kind of pluralism a just world order would or should allow. Obviously, from the liberal point of view, a just order must allow value pluralism at the global level. But would such a just order envisioned by Pogge also allow different states to implement different conceptions of social justice and political legitimacy? Such a tolerance of different conceptions of social justice and political legitimacy for different
states is political pluralism. If states would not be allowed to implement different conceptions of social justice and political legitimacy, then this is a world of political monism. It is important to note that in a politically monistic world, value pluralism may still be allowed. We can imagine a world where the liberal conception of social justice and political legitimacy is the standard, but states, because of their unique social conditions and historical traditions, may adopt various religious and/or moral systems. Given the above explanation of value pluralism and political pluralism, we now have to determine what kind of pluralism Pogge envisions in his ideal world order. Pogge seems to embrace a politically pluralist world. Pogge maintains that “while the world can contain societies that are structured in a variety of ways, some liberal and some not, it cannot itself be structured in a variety of ways.” I should note here that what Pogge says here can be understood in two different ways. First, he may say that it is a fact that states and their internal orders are structured in different ways. On the other hand, Pogge can mean that states can be justified in accepting different conceptions of social justice and ordering their societies accordingly. The first way of understanding is quite uninteresting, since it is hard to see what normative implication is intended by Pogge. The second reading is more interesting, because it has the normative implication that a just world order ought to be a politically pluralist one.

Pogge is right in saying that a just world order cannot be structured in different ways. He thinks that it must be structured in accordance with the liberal conception of global justice. As I explained earlier, this liberal conception of global justice is expressed in terms of the globalized principles of JF. Now let us examine whether this globalized
conception of JF can support Pogge's belief in political pluralism.

Pogge argues that if the Algerians want to establish a religious state and the Americans want their society to be liberal democracy (both consistent with a just world order), then "they can both have their way."{26} This is a claim of political pluralism. However, Pogge maintains that if the Algerians want the world to be organized according to the Koran and the Americans want it to accord with liberal principles, then they cannot both have their way. Pogge is convinced that "there is no room for accommodation here."{27} Pogge seems to say that the world order can only be established either in accordance with the American (the globalized JF) or the Algerian (the non-liberal) way. In this case, Pogge concludes that the liberal must insist that a just world order be established on the globalized version of the principles of JF. But this seems to be a questionable argument.

What is the reason for saying there is no room for accommodation between the Americans and the Algerians? What is to be accommodated? I think it is the external relations between the two societies. However, Pogge seems to think the external relations between the two are based on their views about their societies, that is, the Americans want the Algerians to structure their society just like the American do and the Algerians want the Americans to do the same. It is such an "expansionist" view that seems to lead Pogge to say that there is no accommodation between the two. But, is it reasonable for the Americans and the Algerians to hold such a view about international relations? Why cannot we say that it is reasonable for both the Americans and the Algerians to have an interest in preserving their just social orders and a separate interest in deciding what is
just in regulating their external relations? If we think it is reasonable to separate the interest in preserving just social orders from the interest in having just international relations, then there would be room for accommodation between the Americans and the Algerians in building a just world order. In other words, if a liberal is willing to accept some form of political pluralism, then it is reasonable for him to separate these two aspects (that is, the interest of preserving a just social order and the interest of establishing a just international order) when he is considering how a just world order is to be established. Such a view does not necessarily lead to a rejection of Pogge’s proposal of the globalized JF, when different societies would accept JF. However, when different societies are accepting different conceptions of social justice (on the condition that they are derived and justified by OP), then it can be reasonable and justifiable to hold the state-centric Rawlsian conception of international justice. Pogge’s claim that a liberal should universalize the liberal notion of social just (JF) at the global level seems to fail to consider the reasonableness of separating these two aspects. The reasonableness of separating these two aspects is based on the view that different societies can be justified in building a just social order in different ways.

Nevertheless, let us suppose that Pogge’s argument for his vision of a just world order would go through. In this case, the question is whether a world order regulated by the globalized JF would tolerate political pluralism. I think such a world order regulated by the globalized JF would not be bound to respect political pluralism. This is because, as explained earlier, the globalized JF would impose requirements on both liberal and non-liberal states such that non-liberal states may have to adjust their social orderings and
political arrangements such that they be compatible with the globalized JF. In this case, if political pluralism of some kind (for example, Critical Political Pluralism) is seen as an essential element of a just liberal world order under current or similar conditions of international relations, then Pogge’s view about a just world order will not guarantee this. For this reason, Pogge’s proposal of the globalized JF fails to achieve what he intends, that is, some form of political pluralism. Pogge thus fails to establish his claim that liberals should accept (a) and reject (b).

Pogge’s purpose in criticizing Rawls’s political pluralism is obvious. If Rawls’s political pluralism is a reasonable view, then Pogge’s proposal for a globalized version of JF would be difficult to establish. However, the above discussion of Pogge’s criticism of Rawls’s political pluralism may not convince Pogge that his globalized version of JF is less favorable than Rawls’s conception of international justice. Maybe Pogge can simply withdraw from any defense of political pluralism as expressed by him in (a) and his remark about the acceptability of the Algerian way of organizing their society. Pogge may simply hold that there is no compelling reason to adopt global political pluralism. Pogge may want to argue that a political theory, domestic or international, ought to be concerned primarily with people’s rights and well-being, which can only be adequately addressed in terms of the liberal principles of JF. Pluralism, whatever its form, is acceptable only under the condition that the principles of JF are complied with. Thus, Pogge might say that if his globalized version of JF cannot justify political pluralism as asserted in (a), then so be it. Liberals, according to Pogge, should not try to accommodate fundamental
liberal convictions for pluralism.

At various points in his text, this—giving up political pluralism for the sake of the globalized JF—seems to be Pogge's view. In this view, Pogge seems to suggest that political pluralism is not possible without making some unacceptable compromise between the liberal and non-liberal view of social justice. In fact, Pogge believes that Rawls makes two concessions to the non-liberal in order to establish his political pluralism. First, Rawls's principle of basic human rights is a significant deviation from the standard liberal view of human rights. Pogge thinks that this is Rawls's first (unacceptable) concession to the non-liberal. Second, Pogge believes that Rawls's political pluralism also gives up liberalism's individualistic position in order to justify the rights of states. In the following section, I shall briefly discuss these two criticisms of Rawls by Pogge.

5.3.3 Human Rights and States' Rights

Pogge's criticism of Rawls's principle of human rights is twofold. First, he maintains that Rawls's list of human rights will not be accepted by liberals, since Rawls's list of basic human rights is far shorter than liberals desire. Secondly, Pogge thinks that the principle of human rights will not be accepted by the non-liberal (hierarchical) states because, Pogge claims, there is no reason, historical or philosophical, why the non-liberal states would want to adopt and be bound by the principle of human rights. I think Pogge is right only in pointing out the fact that Rawls's list of human rights is short from his
liberal point of view and is not historically rooted in hierarchical societies. Pogge’s claim that liberals and non-liberals will not accept this list of human rights as a fundamental principle of international justice deserves further investigation.

Rawls is aware of the fact that his list of human rights is shorter than liberals typically propose and is aware of the fact that the notion of human rights is not historically connected to non-liberal societies. But these facts do not necessarily cause any problem for Rawls. Problems will arise for Rawls only if he is not able to show that liberals and non-liberals, following the constraints of IOP, will accept his list of human rights as a principle of international justice. Problems of this sort are already addressed, however, because I have already shown in Chapters 2 and 3 that Rawls’s principle of human rights would be chosen as an element of both the General Principle of Social Justice (GSJ) and the General Principle of International Justice (GIJ) that will constrain principles chosen in the second stage of OP and principles chosen by representatives of just liberal and non-liberal states in the second stage of IOP. Even so, I want to consider Pogge’s criticisms, because they are typical cosmopolitan liberal criticisms.

Let us begin with Pogge’s claim that non-liberals have neither historical nor philosophical reasons to accept Rawls’s principle of human rights. What Pogge wants to point out by this criticism is that Rawls does not have good reason to hold that the principle of human rights would be chosen in IOP. Pogge’s criticism is that Rawls’s state-centric approach cannot justify the principle of human rights. As explained in Chapter 3, Rawls’s own account does have problems in explaining why the principle of human rights will be chosen by the parties in IOP. However, I also tried to explain that my account of
IOP, which is also state-centric, can help Rawls in this regard. I tried to explain that the principle of human rights will be chosen by the parties in IOP. In this respect, the dispute between Pogge’s view and my Rawlsian view of human rights is not whether the parties in IOP will choose the principle of human rights. Rather, it is a dispute about the content of human rights.

Pogge wants to argue that the Rawlsian principle of human rights is a product of an unacceptable compromise between the liberal and non-liberal values. Pogge’s reason is that the Rawlsian notion of human rights is too modest and a deviation from the standard liberal view which is expressed in the two principles of JF. The standard liberal view of human rights contains a much more extended notion of human rights. But the question is why we should suppose that the parties in IOP will choose the extended notion of human rights. Pogge intends to show that his proposal of GOP can explain why the liberal and the non-liberal, when situated in GOP, will accept the more extended liberal notion of human rights derived from JF. However, I have explained earlier why Pogge’s proposal for GOP is not acceptable under the state system. If my explanation is accepted, then Pogge has no ground to criticize the Rawlsian view of human rights and suggest the more extended liberal view of human rights.

Pogge, however, has another strategy to rebut the Rawlsian notion of human rights. Pogge believes that the Rawlsian principle of human rights is too modest to be acceptable to liberals. Pogge thus maintains that it is not coherent for a liberal like Rawls to suggest such a modest view of human rights. According to Pogge, “Those who are really committed to a liberal conception of justice will envision a law of peoples which
demands that persons everywhere enjoy the protection of the full list of [the more extended liberal notion of] human rights as well as adequate opportunities and material means that are not radically unequal."\textsuperscript{30} Pogge argues that there is no sound reason for liberals to "surrender their egalitarian concerns and some human rights in exchange for the hierarchical [or non-liberal] delegates accepting the remainder."\textsuperscript{31} Pogge claims that "such a bargaining model is quite un-Rawlsian and also does not fit with his account, on which the two groups of delegates deliberate in mutual isolation."\textsuperscript{32}

It seems that Pogge’s criticism in this regard is deeply rooted in his rejection of the OP-IOP design and in his proposal of a single GOP. Put aside my discussion of Pogge’s GOP earlier in this chapter, the question that we have to settle is whether non-liberals (and perhaps some liberals as well) will find the proposal of GOP acceptable. Pogge’s account of GOP is just like Rawls’s account of OP, except that the former has a wider scope. In this respect, GOP will thus be inherently associated with Rawls’s deep moral theory, which is connected with the Kantian notion of persons. According to Pogge’s proposal of GOP, Rawls’s deep moral theory will be imposed globally. Thus, everyone in every society of the world would be said to accept this deep moral theory if s/he would be situated in Pogge’s GOP. As I explained in Chapter 2, to impose this Rawlsian-Kantian deep moral theory on the procedure of OP is itself a violation of the constraint of the veil of ignorance and thus constitutes a bias against others who do not accept this deep moral theory. In seeing this, non-liberals may ask why they should also buy into Pogge’s GOP. Those who do not accept this Rawlsian-Kantian deep moral theory can legitimately complain about GOP as a biased procedure. In this respect,
Pogge's claim that his proposal of GOP can provide philosophical reason for the more extended liberal notion of human rights (which is based on the globalized JF) would be significantly undermined. Since the OP-IOP design can explain why non-liberals as well as liberals would accept Rawls's principle of human rights without involving such a bias, the OP-IOP design is more favorable than Pogge's GOP.

Pogge's criticism of Rawls's OP-IOP distinction and his proposal of GOP are also based on his view that Rawls's OP-IOP distinction leads to a justification of states' rights, which is a deviation from liberalism's fundamental individualistic position. This is correct. But Rawls (and those who accept his general liberal theory of justice) would not be moved by this criticism. Rawls's general theory of justice does not reject individualism. A certain conception of social justice or even a conception of global justice can be constructed on the individualistic base only when relevant conditions are present. For example, in a certain democratic society (like American society) under certain social and political conditions, it may be suitable to construct a conception of social justice based on individualistic considerations. But when the social and political conditions are quite different from those of such a democratic society, it is not immediately obvious that individualism would be appropriate or relevant. Of course, the parties in OP (even in my account) are still representing individuals. But this does not imply that they will necessarily choose some individualistic conception of social justice. Rawls's conception of international justice guarantees each society equal rights to pursue what its citizens and/or community collectively regard as suitable under the constraints of
Pogge does not seem to consider the issue from this perspective. Pogge maintains that the Rawlsian principle of international equality is a major deviation from standard liberalism. He argues that this Rawlsian principle of international equality, which asserts the primacy of states’ rights, is no principle of justice because this principle leads only to a modus vivendi, but never peace and justice. A modus vivendi is a mode of coexistence. According to Pogge, “the participants in a modus vivendi are primarily motivated by their own self-defined interests and do not much care about one another’s interest as such. Yet each has reason to support a shared institutional scheme...that accommodates the interests of other parties to the point where they find it in their best interest to participate as well.” Thus, a modus vivendi involves an agreement among a plurality of parties “to restrain their competitive behavior in certain ways.” One important aspect of a modus vivendi is, according to Pogge, that since the purpose of maintaining the agreed institutional scheme is that continued participation is in each party’s best interest, the terms of the agreement must satisfy the condition of “prudential equilibrium.” that is, must be such that all parties see it as rational to participate in the ongoing terms of cooperation.

Pogge believes that it is not entirely undesirable that the world order be maintained as a modus vivendi. Pogge acknowledges that the mechanism of a modus vivendi can be an effective way of ending a state of ongoing war or even preventing an all-out war. Sometimes this modus-vivendi model provides a viable account of how a world order can be maintained among parties who don’t share any value in common.
according to Pogge. This can be further understood by considering the following. To maintain a modus vivendi, each must see the ongoing terms of an international modus vivendi as acceptable in the sense that to continue contributing to (or cooperating in) the maintenance of the world order is in self-defined interest. One factor affecting a state’s decision on whether it should keep contributing or cooperating is its own perception of the expected utility of doing or not doing so. It can happen that certain international situations (most importantly, the general distribution of power which affects one’s vulnerability and opportunity cost of contribution to cooperation) is such that most (major) parties see it as their rationally preferred option to keep contributing to the maintenance of the status quo. Even if this can happen, according to Pogge, it is not clear that such a world order is, or is close to being, just. This is because the mechanism of maintaining such a world order has no inherent connection with the regulation of justice, according to Pogge. States’ choices of being cooperative in maintaining the modus vivendi in essence are not connected to or constrained by considerations of international justice.

Even if a modus vivendi can be maintained, Pogge argues that such a state of affairs is inherently unstable over time. For, if a modus vivendi is to endure, the distribution of benefits and burdens may then have to be (frequently) adjusted so that cooperation in maintaining this orderly state of affairs continues to be seen by relevant parties to be each party’s rationally preferred option. This generates a serious problem. For, according to Pogge, the fact that the terms of cooperation in a modus vivendi need to be adjusted frequently “generates, below the surface, a competition over the terms of the modus vivendi, and this competition is not restrained at all.”37 The consideration of
advancing one's interest justifies the choice of upsetting the current modus vivendi, if one deems it the rationally preferred choice of course of action.

According to Pogge, there is a vicious circle involved in the modus-vivendi strategic reasoning. From each state's point of view, others are seeking to shift the balance of power against it. In the long run, others, because of the shift in power configuration, may be able to eradicate it. This state may think that it cannot eliminate this possibility (of being eradicated) for the time being. So, its best counterstrategy for now is to try, within the framework of the modus vivendi, to weaken other states' positions. Since this is a matter of survival, this state should not be constrained by any moral principle that is perceived to prevent it from adopting appropriate strategy of survival and/or prosperity. For if it does, it will be competing in a disadvantaged position. Others of course will not constrain themselves by their ethical doctrines either. As a result, a modus vivendi will be full of fierce competition among parties who try to survive and advance their own interests.

It is no surprise that the relations within a modus vivendi, according to Pogge's account, are neither peaceful nor just, since Pogge's account of a modus vivendi is based on Hobbes's famous theory of the state of nature. Pogge believes that this model of a modus vivendi can explain well the current international relations. Whether this is the case is disputable. But it is not crucial for me to settle this question here. What needs to be addressed here is whether Rawls's conception of international justice will lead to a modus vivendi as characterized by Pogge. Let me now turn to this question.

Pogge seems to suggest that Rawls's conception of international equality will be
likely to lead to a modus vivendi of the sort just described and ultimately to a global state of nature. The key to Pogge's claim is that if states are given rights, then they will not be constrained by any consideration of justice. But this is true only when states would not comply with the principles and constraints proposed in Rawls's theory of international justice. Rawls's ideal theory assumes that these constraints and principles of international justice are strictly complied with. In this regard, Pogge's criticism should better be seen as a challenge to the idea of constructing such an ideal theory. Pogge's criticism of Rawls's conception international justice in terms of the notion of a modus vivendi should be seen as claiming that it is impossible to construct an ideal theory of international justice.

I think Pogge's criticism in terms of a modus vivendi is self-defeating. It is self-defeating, because his proposal of GOP and a globalized version of JF is also an ideal theory. The state of affairs of the modus vivendi can exist not just among states, but also among individuals. If states, because of their rights and the instrumental mode of reasoning, will co-exist in a modus vivendi, then, by the same token, individuals, because of their rights and the instrumental mode of reasoning, also co-exist in a modus vivendi.

Pogge may say that not all ideal theory will be plagued by the consequences of the modus vivendi; only an ideal theory that supports states' rights is impossible. To determine how plausible this reply is, we have to look further into Pogge's criticism. According to Pogge, the Rawlsian state-centric theory of international justice cannot escape from the problems of the modus vivendi argument, because this theory cannot solve the assurance problem, that is, there is no mechanism provided by the Rawlsian
theory to effectively assure all states that other states will comply with the principles and other relevant rules of international justice.\textsuperscript{40}

Pogge's challenge is very confusing, however. For one thing, to say that my Rawlsian theory provides no effective mechanism to solve the assurance problem is different from saying that my Rawlsian theory is not justifiable. We know that a theory that cannot adequately solve the assurance problem would be practically irrelevant. But this should not be taken to be equivalent to the criticism that this practically irrelevant theory is not justifiable, if we understand a justifiable theory as one that can be derived on morally acceptable grounds. On the other hand, Pogge's criticism of the Rawlsian view with regard to the assurance problem can be seen as relatively unimportant, for this assurance problem is not unique to the Rawlsian theory. It is a problem for all normative political theory. Every normative political theory has to explain how some mechanism would work to give assurance to every involved party that others will comply. However, Pogge maintains that the Rawlsian theory of international justice provides no guidance for institutionalizing the needed mechanism. I don't know what leads Pogge to assume this about the Rawlsian view. It seems that there are currently some international institutions more or less effective in enforcing their regulations on involved parties. There does seem to be a priori or even a posteriori reason to claim that international institutions cannot be effective in enforcing regulations among states. If this is right, then there would seem to be no reason to say that the Rawlsian theory cannot allow international institutions or some international coordination effective enough to more or less address the assurance problem.
Although the above defense of Rawls seems implicit in Rawls's theory, Rawls does not directly discuss how the assurance problem can be effectively addressed. Nevertheless, Rawls does not seem to believe that institutions themselves can adequately solve the assurance problem, though Rawls apparently believes that institutions are important for solving this problem. It seems that Rawls believes that we need another notion in order to address adequately the assurance problem, that is, the notion of the natural duty of justice.

According to Rawls's notion of the natural duty of justice, every actor has a natural duty to "further and support just institutions." Two requirements are involved in the natural duty of justice. First, in the realm of international affairs, states are to comply with and to do their share in just institutions when such institutions exist and apply to them. Second, states are to help establish just institutions when they do not exist, at least when this can be done with little cost to states. The natural duty of justice applies not only to states in the ideal world; it also applies to states in the non-ideal world. If all or most states would fulfill this natural duty of justice, the assurance problem would not arise. This is of course not a direct solution to the assurance problem. But if all or most states would abide by this natural duty of justice, then Rawls's theory of international justice need not necessarily lead to a modus vivendi as characterized by Pogge.

Pogge may ask why most states would want to fulfill the natural duty of justice. To this question I have no direct answer. What I can do is only to ask: would Pogge's proposal of a globalized JF be immune to the assurance problem? If Pogge thinks that the assurance problem, if not adequately addressed, would severely undermine a theory of
international justice, then he would have to show that his theory of a globalized JF is either immune to this assurance problem or able to address this problem adequately. However, I believe (but will not argue) that his theory of a globalized JF will be severely crippled by this assurance problem, because non-liberal as well as liberal states, if they would not comply with Rawls’s principles of international justice, would not comply with the principles of globalized JF. since Pogge’s criticism in terms of the modus vivendi seems to suggest that states would not, in a significant sense, comply with any principle of justice. Pogge may say that he does not care about whether states comply with the principles of globalized JF; he cares only whether these principles would be complied with by citizens of the world. If so, then Pogge’s theory is not for this world. It is a theory for a world where states no longer play any significant role in shaping global affairs. In this case, Pogge’s view about a globalized JF, if correct at all, has no direct bearing on Rawls’s theory of international justice. On the other hand, even in the stateless world, the assurance problem will not wither away: every citizen of the world would not comply with the principles of globalized JF, if s/he is not assured that others comply with the principles. Whether there can be a global mechanism to solve this assurance problem in this stateless world is a question that seems to escape Pogge.43

Notes:

1 Pogge, “An Egalitarian Law of Peoples.” p. 198. Hereafter this article will be referred to as ELP.
2 Charles Beitz, Political Theory and International Relations, p. 182. Hereafter this work will be referred to as PTIR.
3 Charles Beitz, Political Theory and International Relations, p. 128.
4 TJ, p. 21.
This idea of the procedural interpretation of fairness is expressed in the notion of pure procedural justice; see TJ, pp. 85-87.

"PTIR, p. 138.


Pogge, *Realizing Rawls*, p. 240. Hereafter this work will be referred to as RR.

RR, p. 247.

RR, pp. 242-243 and 247.

RR, p. 247.

RR, p. 249.

Pogge, "An Egalitarian Law of Peoples," p. 198. Hereafter this article will be referred to as ELP.

ELP, p. 198.

This hypothetical situation may seem to be biased against Pogge, since he maintains a universalist view about social justice. However, Pogge, surprisingly, also maintains that a non-liberal state can be just and legitimate; see ELP, p. 217. Also, it is closer to our pre-theoretic intuition that different states can be justified in accepting different conceptions of social justice and political legitimacy. For these two considerations, this hypothetical situation is not really biased against Pogge.

ELP, pp. 216-217.

LP, p. 43.

ELP, p. 215.

ELP, p. 216

ELP, p. 216.

ELP, p. 216.

ELP, p. 216.

ELP, p. 216.

ELP, p. 216.

ELP, p. 217.

ELP, p. 217.

ELP, p. 217.

ELP, p. 217.


ELP, p. 215.

ELP, p. 216.

ELP, p. 215.

RR, p. 244.

RR, p. 219.

RR, p. 219.

RR, p. 219.

RR, p. 220.

RR, p. 219.

International relations theorists have long disputed with one another over this. Political realists are willing to accept Pogge's modus-vivendi explanation. But other theorists have pointed out the inadequacy of such a model. For some further discussions and debates on this, see Robert Koehane (ed.), *Neorealism and its Critics*, David Baldwin (ed.), *Neorealism and Neoliberalism* and Stephen Krasner (ed.), *International Regimes*.

RR, p. 244.

TJ, p. 334; see also, pp. 114-117.

These two requirements are adopted from TJ, p. 334.

In ELP, Pogge proposes a global scheme to illustrate how his egalitarian conception of global justice can be practical. However, Pogge does not suggest that his proposal would be a solution to the assurance problem in the stateless world. In RR, Pogge only claims that his theory would propose a basic structure of global society which would be able to address the assurance problem. I really have no idea about how this
would work, unless this proposed global structure is so effective and powerful, just like those imagined in science fiction, that everyone in the world is watched and dares not to deviate.
CHAPTER 6
CONCLUSION

Let me reflect on what I have attempted to show. The main theme of my Rawlsian theory of international justice can be succinctly stated as follows: when we have reasonable and justifiable grounds to say that states can accept different conceptions of social justice and political legitimacy, an appropriate theory of international justice, when it is to impose obligations of international justice on states, must give due consideration to states' legitimate interest in preserving and maintaining their just social order and legitimate political institutions. Related to this main theme is the belief that an appropriate theory of international justice must explain why it is required at the fundamental level to make differential treatments between just and unjust states. My arguments in the dissertation have been to explain why the Rawlsian theory of international justice, according to my reconstruction, is a reasonable and justifiable theory.

My theory is fundamentally a contract theory in the Rawlsian sense, of course. In this regard, I have tried to explain why my liberal conception of international justice will be acceptable to both liberals and non-liberals. I have explained in a quite general fashion how such a liberal conception of international justice might be worked out in light of
some of Rawls's theoretical notions. Although the proposed Rawlsian principles of international justice are state-centric, I explained why such principles are morally more appropriate than either the statist or the cosmopolitan theory with regard to, among other things, address issues of international justice and the ultimate concern of political philosophy—people's rights and well-being. It is more appropriate than the statist theory, because, as I have tried to explain, the statist disregards the principle of basic human rights, which is the fundamental principle that all reasonable and justifiable principles of international justice must presuppose. My theory is also more appropriate than the cosmopolitan, because the cosmopolitan in the fundamental sense disregards the legitimate interest of just and legitimate states. The idea of Critical Political Pluralism is to explain why the Rawlsian state-centric idea of Critical Political Pluralism is morally acceptable precisely because, among other things, it presupposes the principle of human rights. We can look at issues of political pluralism by means of another familiar, but slightly different, notion—tolerance.

Although the extension of tolerance to the global level can be explained in terms of how states can be justified in ordering their societies and arranging their political affairs in different ways, the idea of tolerance would lose its moral meaning if there is no constrain on politics. We want to respect diversity on moral grounds; but we don't want those highly repressive regimes to take political refugee in the name of pluralism. There must be some criterion in accordance with which we can say that this or that type of social ordering and political arrangements cannot be allowed. In this regard, to balance between a universal moral criterion and political pluralism is one of the most important
elements of this Rawlsian liberal theory of international justice. Critical Political Pluralism is to achieve and, I believe, has achieved such a balance. For this reason, Critical Political Pluralism can be said to be the first important feature of this reconstructed Rawlsian liberal conception of international justice.

The statist and the cosmopolitan are seen by this Rawlsian liberal theory of international justice as emphasizing only one aspect of this important balance. I have explained how the Rawlsian theory can cope with criticisms from the statist and the cosmopolitan. We can understand the Rawlsian critique of both as follows: the statist goes too far into the extreme of giving states primary moral consideration unconditionally, while the cosmopolitan goes too far toward the other extreme of ignoring the legitimate interests of just states and making no differential treatments between just and unjust states.

One important feature in my reconstruction of the Rawlsian liberal theory of international justice is that it is acknowledged that empirical conditions are also important in deriving principles of international justice. It is acknowledged that when the conditions of world affairs are drastically different from the current ones, then it is reasonable to say that different issues of international justice might arise and may require people to enter the International Original Position to deliberate on principles of international justice and they may choose principles different from the ones I have presented. In seeing this, since I presented no detailed discussions of the conditions of the world, my discussion of the Rawlsian liberal theory of international justice was yet to be compete. For this reason, a more complete theory of international justice would need to
consult more findings from international relations theorists. However, even so, I believe that the relations between philosophical studies of international justice in particular (and perhaps normative theory of international relations in general) and empirical studies of international relations are interactive. Just as empirical studies can help presenting a more sensible theory of international justice, philosophical studies of international justice can help orient the program of empirical studies of international relations. It seems that there so far has been lacking interaction between these two fields.

The most prevalent discussions and debates about international justice and/or issues of international ethics so far have been between the statist and the cosmopolitan. In this study, I hope I have had some degree of success in showing that there is an alternative view to the prevailing statist and cosmopolitan approaches to issues of international justice, which provides a framework within which we can address issues of international justice and the ultimate concern of political philosophy better than both of these two views.
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