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*Philosophy and Public Affairs*, Vol. 30, No. 3. (Summer, 2001), pp. 257-296.

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*Philosophy and Public Affairs* is currently published by Princeton University Press.

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MICHAEL BLAKE

## Distributive Justice, State Coercion, and Autonomy

Liberalism has difficulty with the fact of state borders. Liberals are, on the one hand, committed to moral equality, so that the simple fact of humanity is sufficient to motivate a demand for equal concern and respect. Liberal principles, on the other hand, are traditionally applied only within the context of the territorial state, which seems to place an arbitrary limit on the range within which liberal guarantees will apply. This difficulty is particularly stark in the context of distributive justice; state boundaries, after all, often divide not simply one jurisdiction from another, but the rich from the poor as well. Allowing these boundaries to determine distributive shares seems to place an almost feudal notion of birthright privilege back into the heart of liberal theory.<sup>1</sup>

This difficulty has led many philosophers to argue that some revision of liberal theory is necessary. These proposals frequently involve either the demand that liberalism focus on previously neglected particularistic commitments, or the demand that it abandon such local concerns and endorse a cosmopolitan vision of distributive justice. What I want to do in this article is identify a different way in which liberalism might deal with the worries created by the fact of state borders. My argument is that a globally impartial liberal theory is not in-

I would like to thank the following for their helpful comments on previous drafts of this article: Chris Bobonich, Ronald Dworkin, Lori Gruen, Frances Kamm, Jon Kaplan, Christine Korsgaard, Steve Macedo, Don Moon, Thomas Nagel, Susan Okin, Alan Patten, Jim Pryor, Tim Scanlon, the Editors of *Philosophy & Public Affairs*, and an anonymous reviewer for this journal. Special thanks are due to Debra Satz for her guidance and mentoring throughout this project.

1. This image is borrowed from Joseph Carens, "Aliens and Citizens: The Case for Open Borders," in Will Kymlicka, ed., *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995), p. 332.

compatible with distinct principles of distributive justice applicable only within the national context. This is true, however, not because we care more about our fellow countrymen than we do about outsiders, but because the political and legal institutions we share at the national level create a need for distinct forms of justification. A concern with relative economic shares, I argue, is a plausible interpretation of liberal principles only when those principles are applied to individuals who share liability to the coercive network of state governance. Such a concern is not demanded by liberal principles when individuals do not share such links of citizenship. What a principle demands changes depending upon the context in which it is applied; that we owe distinct things to fellow nationals need indicate not partiality toward those nationals, but rather a more sophisticated understanding of what impartiality really demands.

In making this argument, I appeal both to John Rawls's theory of justice and to a principle of autonomy I believe underlies contractarian theories such as Rawls's. I do not think that the usefulness of what I say here depends upon the wholehearted acceptance of either of these; I use Rawls's theory as an egalitarian one amenable to the approach I defend, but nothing in my strategy prevents its use by those more opposed to Rawlsian theorizing. The strategy I employ seeks to endorse the idea that we can defend principles of sufficiency abroad and principles of distributive equality at home—because these principles can be understood as distinct implications of impartial principles in distinct institutional contexts. That is, the solution of the difficulty noted above is to be found not in a search for justified partiality, but in the interpretation of impartiality itself. Or so, at any rate, I argue. As a way of introducing my argument to this effect, I will introduce three distinctions.

### I. THREE PRELIMINARY DISTINCTIONS

#### *Relative and Absolute Deprivation*

We can begin by noting that there are two quite different ways of evaluating the moral status of someone's bundle of resource holdings. We could, in the first case, look simply at that bundle in isolation from those held by others. In some situations, this sort of analysis seems sufficient to demonstrate that something morally problematic has occurred. If someone faces a situation of drastic poverty and deprivation,

and we are confident that her situation is created or remediable by human agency, then it seems we might be able to articulate a moral duty toward that person—without yet looking at how her bundle stacks up to those of others. The moral shortfall of her situation is found simply in how little she has, not in how much less she has than others.

The analysis of poverty often takes this form. We can understand such an analysis of a bundle of resources as the analysis of absolute deprivation. It seems plausible to me that much international poverty can be condemned in terms of *absolute deprivation*. There is, I think, a threshold to decent human functioning, beneath which the possibility of autonomous human agency is removed. It seems to be a matter of moral gravity whenever we might prevent someone from falling below that line and fail to do so. The moral problem here, however, does not seem to make any appeal to the holdings of others. That other individuals have more is not, I think, an essential part of the moral claim; it is, at best, a signal that the deprivation in question could be remedied.

The idea of absolute deprivation, however, does not account for all cases in which we want to condemn as inappropriate someone's bundle of holdings. Sometimes, that is, we seem to look precisely to the difference between individual bundles for the source of our moral concern. In many liberal theories, liberal principles give rise not simply to principles condemning poverty but to principles mandating some degree of economic equality. This analysis looks to the gap between rich and poor, and not simply to the fact of poverty itself. Such cases involve a concern not simply with absolute deprivation, but with *relative deprivation* as well. When relative deprivation is morally illegitimate, the moral gravity of the case might be thought to increase as the gap between rich and poor widens. The holdings of the better situated are not simply a signal that poverty might be avoided; they are an integral part of our moral condemnation of the distribution.

What I want to establish in this article, to use this terminology, is that liberalism can concern itself with absolute deprivation abroad, and reserve a concern for relative deprivation for the local arena. Liberal principles can condemn some forms of poverty regardless of institutional relationship; some forms of poverty deny the very possibility of autonomous agency, and so can be condemned by an impartial liberalism committed to the autonomous agency of all. But a concern for relative deprivation becomes an implication of liberal thought only

when individuals share more than common humanity. An impartial liberalism will condemn some disparities in the holdings of goods as unjustifiable to those who share liability to a coercive system of political and legal institutions. Shared citizenship, that is, gives rise to a concern with relative deprivation that is absent in the international realm. Thus, what looks like partiality is in fact the implication of an impartial principle under a different set of circumstances.

*Partial and Impartial Justificatory Strategies*

This last idea might be made more plausible with the introduction of another distinction: one between partial and impartial justificatory strategies. If what we are trying to do is justify an apparent deviation from impartial treatment, there are two distinct methods of accomplishing our ends. The first is to give some reason why partiality is, in this case, appropriate. The second is to demonstrate that the apparent deviation is illusory. What looks like unequal treatment is, in fact, what equality demands.

The first strategy is, I think, the more common in the literature on international poverty. Frequently, those who seek to justify the limitation of distributive guarantees to the local realm seek some set of reasons why preference or priority for the local community is appropriate.<sup>2</sup> The debate between the partialist and the cosmopolitan thus turns on the legitimacy of preferring one's own—a debate, I think, that tends to turn more than it should upon the choice of metaphor: the cosmopolitans interpreting nationality as a morally arbitrary fact of persons, which is akin to race, and the partialists interpreting nationality as more akin to familial relationships.

The second strategy, however, would be to abandon this attempt to find a legitimate source of partiality. This strategy would, instead, seek to explain the apparent inequality as a valid implication of an impartial principle. We could note, here, that the specific guarantees and protections created by a principle can vary depending upon the context within which it is applied. To modify an example from Aristotle: a trainer might give Milo the wrestler six pounds of food per day, and his

2. Ronald Dworkin's idea of "associative obligations," as well as Richard Miller's idea of legitimate patriotic concern, take this form. See Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986), pp. 195–205; and Miller, "Cosmopolitan Respect and Patriotic Concern," *Philosophy & Public Affairs* 27, no. 3 (1998): 202–24.

wispy assistant only one.<sup>3</sup> The trainer could try to justify this with reference to a legitimate preference for Milo's interests and needs; perhaps Milo shares something with the trainer that permits that trainer to abandon the attempt to treat Milo and his assistant equally. The trainer might, instead, say that he is not in fact abandoning impartiality in treating his two charges in this way. What is an apparent inequality in treatment is, in fact, a perfectly impartial application of a principle by which the trainer is commanded (in this case) to give his charges just that amount of food they require. What looks like a case of favoritism is in fact a case in which impartiality has more complicated implications than we had expected.<sup>4</sup>

The strategy of the present article, then, is to begin with a principle which is globally impartial—which does not prefer the local to the foreign—and see whether the demands of that principle become more complex as circumstances become more complex. In particular, as I have mentioned above, I argue that this will imply the moral relevance of relative deprivation within the domestic context but not within the international context.

All of this, however, assumes that states, much as we know them today—with a limited territorial reach and a limited set of persons over which their coercive power is exercised—will continue to exist. Justifying this assumption is our next task.

### *Institutional and Noninstitutional Theory*

A theorist might take a variety of attitudes toward the political institutions we find in the world today. One attitude would involve abstracting away from the institutions we currently have, and asking what sorts of institutions we would endorse if we were starting from scratch. This approach—which we might call noninstitutional theory—would not privilege those institutions we have over others we might have developed. What borders would look like—and, for that matter, whether

3. See Aristotle, *Nicomachean Ethics*, book II, chap. 6 (1106a36–b7). See also Amartya Sen, *Inequality Re-Examined* (New York: Russell Sage, 1992).

4. I would note, as a further complication, that many—if not most—attempts to justify a deviation from an impartial principle end up justifying that partiality based upon some other impartial principle. See, for example, Robert Goodin, "What Is So Special About Our Fellow Countrymen?" *Ethics* 98 (July 1988): 663–86, which justifies a local preference based upon the globally beneficial consequences of such a preference.

things like states with things like borders ought to exist—would be perfectly valid questions for the theorist to ask.

Another sort of attitude would prompt one to ask not what institutions we ought to have, but what the institutions we currently have would have to do to be justified. This sort of theory—which I call institutional theory—would take much more of the world as a pretheoretical given for purposes of analysis. It would include, I think, both the fact of state power and the division of territorial jurisdiction found in the world today. It would ask not whether we ought to have developed such a world, but what the various states we have now must do for their powers to be justifiable.

These two forms of theory are best regarded as ideal types—we might well develop forms of theory that mix both institutional and noninstitutional forms of analysis. In this article, however, I will engage in a very institutional form of theorizing. This is not, I should emphasize, to say that noninstitutional theory is not useful. Noninstitutional theory is well-equipped to answer certain sorts of questions, just as institutional theory is well-equipped to answer others. The questions that are most pressing in the current international arena, however, seem to require an institutional approach to theorizing. If we want to ask what states as we know them owe to their own citizens and to others, we ought to begin with states as they are currently situated—both in terms of the powers they possess and in terms of the territory over which they have authority.

There are some advantages to beginning with such an approach. The division of the world into distinct political units is likely to continue for the foreseeable future, and a theory that accepts this fact can provide us with more present-day guidance than one that cannot. In the real world, too, alteration of political units and redrawing of political lines is never without cost, and this fact is kept more in view by a theory that acknowledges political institutions than by one that does not. There are, of course, disadvantages to such an approach; in taking much of the world for granted, there are some questions it is unable to address. Such a theory is not well-equipped to answer questions of legitimate secession and territorial change, since institutional theorizing treats matters of borders as pretheoretical givens for the purposes of analysis.<sup>5</sup> This only shows, however, that no single approach to the-

5. I should note, however, that although these borders are taken for granted in this

orizing can answer all questions we need to address. For the questions I address here, however, I am convinced an institutional approach is best.

Institutional theory can, I think, keep our attention directed toward the fact that persons can be situated in more than one institutional context, and that therefore the content of our liberal principles can perhaps vary depending upon the context within which they are applied. That is, it is well-positioned to acknowledge both an impartial principle and the distinct implications of that principle in distinct institutional contexts. In this, I think, we might preserve our sense both that liberalism must apply itself to the global arena, and our sense that shared liability toward the state might affect the content of what liberalism demands. As Appiah has it:

States, on the other hand, matter morally intrinsically. They matter not because people care about them, but because they regulate our lives through forms of coercion that will always require moral justification. State institutions matter because they are both necessary to so many modern human purposes and because they have so great a potential for abuse.<sup>6</sup>

Appiah's sentiment here is emblematic of institutional theory, and reflects the desire that our theories do abstract away from aspects of the world that stand in need of philosophical analysis and justification—including the tremendous coercive powers of the state.<sup>7</sup>

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stage of the inquiry, we can still ask two further questions about the division of the world into states: First, what conditions would have to obtain such that this division into states could be justifiable to all? Second, what principles of nonideal theory would have to be developed to govern the use of secession as a remedy for certain forms of injustice? An account of secession might therefore be developed from some considerations introduced in this article. Principles dealing with immigration might be developed in a like manner. For an sketch of what such an account of immigration might look like, see my entry on "Immigration," in Christopher Wellman and R. G. Frey, eds., *Blackwell Companion to Applied Ethics* (Oxford: Blackwell Publishers, forthcoming).

6. Anthony Appiah, "Constitutional Patriots," in Joshua Cohen, ed., *For Love of Country* (Boston: Beacon Press, 1996), pp. 21–29.

7. I would also insist, further, that both noninstitutional and institutional forms of ideal theory exist; the mere fact of accepting political institutions does not render a theory nonideal. All theorizing requires us to accept some aspects of the world as theoretical premises for analysis; the assumptions can be as thin as the fact of moderate scarcity, or as substantive as the assumption of distributed sovereignty. But the question

One question that immediately arises, however, is that of the conservative bias of such an approach. Is it unduly conservative to demand that we bracket the consideration of state powers and state borders in the present inquiry? I do not think so, once the nature of this sort of theorizing is made clear. A commitment to institutional theory is not a commitment to an acceptance of the policies and actions of the states of the world today. Admitting that states exist, and provisionally taking their borders to be the ones we see today, does not commit us to accepting as gospel what governments say about their own powers. We seek, instead, to derive principles by which the exercise of state power might be justified to all those who are subject to such power. If that project is successful, we might have developed an account by which each state might justify its exercise of political authority. There does not seem to be anything unduly conservative about such an account.

I want to sum up this section by recapping the ways in which I have classified my own approach. I have drawn three distinctions that, I hope, will go some way toward clarifying the approach I choose to take. My approach is institutional in that it accepts the political institutions of sovereign states to be such as they currently are in the world, and asks not what institutions ought to exist but what our institutions might do to be justifiable to all. It accepts that the duties owed to strangers and the duties owed to fellow citizens are distinct, but distinguishes them in an impartial, rather than a partial, manner; it is not that we care more about our fellow countrymen, but that an impartial principle will give rise to distinct burdens of justification between individuals who share liability to the coercive power of the state. And, in the area of distributive justice, this approach will accept the conclusion that liberal principles will condemn certain forms of relative deprivation within the domestic arena, while the same liberal principles will demand a respect only for certain sorts of absolute deprivation in

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of what principles constrain state action assuming full compliance and an absence of catastrophic resource shortfall is quite distinct from the question of how to guide state action when human wills or natural conditions fall radically short. I would reserve the term "nonideal theory" for the latter sort of question, and insist that it is possible to do ideal theory of an institutional sort. Indeed, I think ideal theory of such a sort is the most likely to give us guidance in the real world; it does this not by accepting nonideal conditions, but by showing us how our institutions might be justified under ideal circumstances.

the international arena. It is only because they are required for the justification of coercive force to all those who face it, I argue, that a moral concern with relative deprivation is implied by a liberalism committed to autonomy, and therefore a concern for specifically economic egalitarianism is only morally required within the context of a domestic legal system.

If all this is correct, then I think we may have a means by which to dissolve the problem with which we began. The principle of autonomy I will identify demands that such coercive practices and institutions be either justified or eliminated; since the institution of the state is not likely to disappear at any point soon, and because some form of political coercion seems necessary for autonomous functioning, I think we must instead seek principles by which state coercion could be justified. Only in this search for the justification of state coercion, I argue, does egalitarian distributive justice become relevant.

In the international arena, by contrast, no institution comparable to the state exists. No matter how substantive the links of trade, diplomacy, or international agreement, the institutions present at the international level do not engage in the same sort of coercive practices against individual moral agents. This is not to say that coercion does not exist in forms other than state coercion. Indeed, international practices can indeed be coercive—we might understand certain sorts of exploitative trade relationships under this heading, and so a theory concerned with autonomy must condemn such relationships or seek to justify them. What I do say, however, is that only the relationship of common citizenship is a relationship potentially justifiable through a concern for equality in distributive shares. The Rawlsian theory of justice, I think, is best interpreted in this way—as a demonstration of what must be the case, in the context of basic liberties and in distributive shares, before coercive institutions are to be justifiable to individuals entitled to be the circumstances of autonomy. In this, I suggest, we will arrive at a principled division between citizen and stranger, and a way of situating liberalism's concern for domestic distributive shares within its global concern for the autonomy of all human agents. Thereby, the tension within liberalism identified at the beginning of this article might be dissolved.

I have, in this section, mentioned the principle of autonomy without properly introducing it; I have hardly explained what this term means,

let alone explained what it would mandate in the international arena. I will, in the next section, try to make good on the former defect and will reserve a discussion of the latter topic for another occasion. The structure of my argument will be as follows: I begin by examining some implications of the principle of autonomy; I then proceed to the forms of justification that might legitimate otherwise impermissible violations of autonomy; I demonstrate that the appropriate forms of justification will mandate a concern for distributive shares only within the confines of a domestic state; and I conclude the account with a brief fable designed to illustrate the applicability of the liberal principle of autonomy in the international arena. I will, then, assume for the purposes of the present article that autonomy is something we do and ought to care about in all human beings, and will proceed to examine the argument along the lines given above. The topic of the next section, accordingly, becomes: What, exactly, do we mean when we speak of autonomy?<sup>8</sup>

## II. LIBERALISM AND AUTONOMY

Autonomy has a long pedigree within liberal political philosophy. It is found, most prominently, in political theories taking off from Kantian premises, but a concern for autonomy is found within a wide variety of approaches to political justification.<sup>9</sup> A liberalism committed to the global protection of individual autonomy, I think, stands as a plausible candidate for a defensible and internally coherent liberalism. Such a principle makes no arbitrary differentiation between citizen and stranger but respects equally the autonomy of all individuals—although, as I have suggested, what constraints on action this will entail differ depending upon institutional context. We might therefore begin our in-

8. I would also close this section by noting that I assume, for purposes of the present article, that the set of people bound under the territorial reach of a state's laws and the set of that state's citizens are equivalent. They are not, of course, and I hope to examine elsewhere the consequences of dropping this assumption. For the present, however, I will use this assumption for reasons of explanatory ease.

9. John Stuart Mill, for instance, grounds a concern for autonomy in utilitarian premises, whereas such thinkers as Martha Nussbaum derive this concern from Aristotelian grounds. See John Stuart Mill, *On Liberty* (1859) (Indianapolis: Hackett Publishing, 1978), and Martha Nussbaum, "Non-Relative Virtues: An Aristotelian Approach," in Martha Nussbaum and Amartya Sen, eds., *The Quality of Life* (Oxford: Oxford University Press, 1993), pp. 224–69.

quiry by taking liberalism to demand the protection of individual autonomy, and see what results this assumption will have in the contexts of international and domestic distributive justice. I will not, in the present context, offer a defense of the moral relevance of autonomy; for the moment, I hope that the principle of autonomy as used here may simply be shown to produce plausible and attractive results in the arenas of domestic and international justice. The principle I use in this exercise, therefore, will be the following: all human beings have the moral entitlement to exist as autonomous agents, and therefore have entitlements to those circumstances and conditions under which this is possible. This principle reflects the liberal commitment to autonomy as a basic value, and the belief that the autonomous agency of a foreigner and that of a citizen are alike in moral importance.

Taking autonomy as a value, however, does not determine which variant of autonomy will be defended. In the present section, I outline the liberal principle I defend. I would begin this presentation by introducing Joseph Raz's notion of autonomy, in which autonomous agents are understood to be part authors of their own lives; the autonomous person is able to develop and pursue self-chosen goals and relationships. There are, naturally, certain preconditions that exist before a human agent could be understood as autonomous. Raz identifies three. First, there must be the appropriate mental abilities: the individual in question must have the abilities to form the complex intentions required of an autonomous planning agent, and must have the forms of rationality sufficient to follow through on what those intentions require. I would emphasize that these abilities might be divided into two forms: the mental skills required to act as an agent, and the appropriate attitudes towards one's own life necessary to see one's self as an agent. The latter abilities, since they are subject to at least some control from political institutions, seem to be an appropriate focus of justice. The former abilities, however, seem to be largely beyond the reach of politics, and so I will not focus on this requirement in what follows.<sup>10</sup> The second requirement is that the set of options in question must be adequate; the mental faculties of choice must be presented with options between which choice is possible. What this demands, of

10. I do not say that they are totally beyond the reach of political life; the approach given here might argue for certain programs of education required to bring otherwise disabled persons up to autonomous functioning, for example. I am grateful to Debra Satz for pointing out the implications of such disabilities in the present context.

course, is a famously difficult problem, but—with Raz—we might argue in the present context that no general theory of adequacy is required; it is, perhaps, easier to identify certain circumstances or conditions as inadequate than it is to develop a general approach to what adequate sets of options might share. And, finally, autonomy is incompatible with the existence of coercion. Coercion and manipulation, as Raz notes, reduces the will of one person to the will of another; they are marked as violations of autonomy not simply in virtue of that fact, but because of the symbolic gesture this fact represents. In subjecting the will of one otherwise autonomous agent to the will of another, coercion demonstrates an attitude of disrespect, of infantilization of a sort inconsistent with respect for human agents as autonomous, self-creating creatures.<sup>11</sup> Coercion, both in itself and because it demonstrates contempt for the individual coerced, is forbidden by a liberal principle that demands respect for the conditions of autonomy.

It is, I think, worthwhile to examine some aspects of this concern for autonomy. The first is that the form of autonomy I defend here, while it reflects a Kantian respect for individual agency, is not Kant's own; it reflects, rather than a monistic picture of human autonomy in which the moral law is equivalent in all rational agents, a pluralistic picture of human agency in which there are a multiplicity of valuable options and ways of life. Autonomy, on this latter construal, is a matter of respect for human creatures as agents able to develop specific plans, attachments and interests; as such, it is committed to a pluralism about the specific ways of life to which this autonomous pursuit might be directed.

The second aspect of autonomy I would emphasize is that respect for autonomy is not satisfied by the mere exercise of practical reason. What we demand is not simply the existence of a faculty of choice, or even the mere existence of some options within which this faculty is to be active. Even the most solitary prisoner, after all, can still make decisions, even if they are such minor ones as whether to read the book by his bedside or to go to sleep. The notion of autonomy, reflecting as it does respect for the conditions of partial authorship of one's own life,

11. See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 376–78; see also Thomas Scanlon, "The Significance of Choice," in Stephen Darwall, ed., *Equal Freedom* (Ann Arbor: The University of Michigan Press, 1995), pp. 39–104.

has a more determinate moral content than this. The idea of autonomy reflects an image of individual human agents as creating value by their creative engagement with the world; their allegiances, choices, and relationships constitute sources of value. This creation of value can be destroyed or respected by institutions in the world. The principle of autonomy, that is, relies upon a normative conception of human agents as entities who can take part not simply in practical reasoning about what actions to undertake, but in reflective deliberation about what values and ideals to endorse and pursue. The principle, therefore, demands more than the simple exercise of practical reasoning. It demands that the set of options provide adequate materials within which to construct a plan of life that can be understood as chosen rather than as forced upon us from without.

The third aspect of autonomy I would explore in the present context is that autonomy does not seem to demand the maximization of the number of options open to us. Indeed, it seems plausible that past a certain point, having further options may actually reduce our ability to make sense of and organize our lives in accordance with our plans.<sup>12</sup> Autonomy, it seems, does not depend upon the sheer number of options available, at least above a certain baseline of adequacy. This fact, I think, will have significant implications in the study of distributive justice. If holdings of goods are relevant for the options they open up to us—as well as, perhaps, the ways in which they make access easier to options we already possess—then it does not seem that we necessarily gain any additional autonomy as our holdings increase past a certain level. However much those additional holdings might increase our hedonic tone, a theory premised upon respect for autonomy will not regard these holdings as increasing the morally primary aspect of persons upon which liberal theory is premised. We cannot, therefore, read off autonomy simply by looking at either holdings of goods or at number of options realistically open to us. Above a certain baseline, neither becomes morally important from the standpoint of liberal justice. This fact is, I think, important since it points the way to a conclusion about distributive justice and relative deprivation in the international arena.

12. Gerald Dworkin, "Is More Choice Better than Less?" *Midwest Studies in Philosophy* 7 (1982): 47–61; and Scanlon, "The Significance of Choice."

The fourth, and final aspect of the picture of autonomy I wish to highlight is that even if the above account is true—even if, that is, nothing of any great moral importance hinges upon the number of options open to individuals, above the baseline of adequacy—then it is nonetheless true that certain ways of acting so as to change the options open to us do seem to be relevant. On the account I defend here, that is, there is a world of difference between becoming a doctor because it seems the best option realistically open to me, and becoming a doctor because someone else has made it the best option open to me by making other choices difficult or impossible to pursue. The former reflects simply rational choice among an otherwise acceptable set of alternatives; if I would have preferred to live my life as a crime-fighting superhero, but the circumstances of my society rule that out as a realistic option, it does not seem that my autonomy is invaded by the absence of the superhero option from my set of attainable lives. All sets of options, after all, include constraints on what we can realistically do or be; the mere fact of a limited set of options, as above, hardly seems to matter from the standpoint of the principle I have introduced. But the latter alternative—in which my own free choice from among alternatives is vitiated by another's deliberate agency denying my ability to choose for myself—seems quite different in its moral gravity. In removing otherwise acceptable options—perhaps I could, and would, have become an attorney—the coercer denies my ability to live my own life from the inside, and to create value for myself in the world. What matters here, as above, is not simply what things I may realistically do or be; it is why that set of things looks the way it does, and whether or not it reflects a conscious human attempt to manipulate it so as to subsume my will under another's.

The picture of autonomy I have discussed here is not uncommon within political philosophy. I think a similar concern for autonomy is found in Rawls's own conception of rational autonomy, which is concerned with the capacity of individuals to “form, to revise, and to pursue a conception of the good, and to deliberate in accordance with it.”<sup>13</sup>

13. John Rawls, *Political Liberalism* (New York: Columbia, 1993), p. 72. Rawls differentiates rational autonomy from full autonomy, by which the citizens of a political society are able to act from principles of justice that would be agreed to by rationally autonomous individuals. Since I want to concentrate for the moment on the demands of au-

The notion of rational autonomy reflects a concern with the Rawlsian idea of the two moral powers, the power to act in accordance with a conception of justice and to form and pursue a conception of the good. Individuals, conceived of as free and equal in their moral powers, are understood here as self-authenticating sources of value, able to give value to plans and allegiances through the free exercise of their moral abilities. Rawls's notion of rational autonomy, I think, can be interpreted and defended in accordance with the discussion given above. What I want to do in the rest of this article is to show what such a principle might require in the international arena, and demonstrate that Rawls's own theory of justice might profitably be viewed as a theory by which the coercive force of the state might be justified to free and equal persons who have a *prima facie* moral entitlement to be free from all coercion. For now, I would note simply that the global defense of the conditions of autonomous functioning seems at the very least to be a plausible starting point for an analysis of a global liberal theory.

The principle I defend, therefore, mandates the following: that all individuals, regardless of institutional context, ought to have access to those goods and circumstances under which they are able to live as rationally autonomous agents, capable of selecting and pursuing plans of life in accordance with individual conceptions of the good. There are, I think, several methods by which people might be denied the circumstances of autonomy; famine, extreme poverty, crippling social norms such as caste hierarchies—all of these structures seem comprehensible as violations of a liberal principle devoted to the defense of the circumstances of autonomy, although I cannot here defend these claims in detail. It is enough in the present context to notice that a consistent liberal must be as concerned with poverty abroad as that at home, since borders provide no insulation from the demands of a morality based upon the worth of all autonomous human beings.

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tonomy in the absence of political society, I will not discuss full autonomy in the present context. I would note also that although Rawls develops a political liberalism unconnected to any comprehensive doctrine, and Raz develops a comprehensive perfectionism based upon his respect for autonomy, they are in agreement on autonomy as a basic value. I view Raz's perfectionism as separable from his defense of autonomy, and Rawls's principles ultimately rest upon an extremely similar notion of human autonomy, even if this latter is derived (in Rawls's later writings) from ideals implicit in the popular culture. I regret that I do not have time to explore these matters in any greater detail at present.

There is much more to be said in the above context, but I want now to turn to the issue of coercion. People can be denied their autonomy by being starved, deeply impoverished, or subjected to oppressive and marginalizing norms, but they can also face a denial of autonomy that results from outright coercion. I will refrain from offering a complete theory of coercion in the present context;<sup>14</sup> I will only note that, as I have insisted upon throughout this exercise, whether an individual faces a denial of autonomy resulting from coercion cannot be read off simply from the number of options open to her. Coercion is not simply a matter of what options are available; it has to do with the reasons the set of options is as constrained as it is. Coercion is an intentional action, designed to replace the chosen option with the choice of another. Coercion, we might therefore say, expresses a relationship of domination, violating the autonomy of the individual by replacing that individual's chosen plans and pursuits with those of another. Let us say, therefore, that coercive proposals violate the autonomy of those against whom they are employed; they act so as to replace our own agency with the agency of another.

Perhaps the most obvious form of coercion we might examine is that of state punishment. Coercion by criminal penalties, writes Joseph Raz, is a global invasion of autonomy; incarceration, after all, removes "almost all autonomous pursuits" from the prisoner.<sup>15</sup> This is not to say that such punishment cannot sometimes be justified—very few people think that all criminal punishment is, by its very nature, morally prohibited—but it is to say that it is necessarily an affront to autonomy, and as such something standing in need of justification. Coercive acts and practices are *prima facie* prohibited by the liberal principle of autonomy.

This, however, gives rise to a new topic—the issue of justification. Sometimes, after all, actions that the above analysis would tell us are condemned by our principle seem nonetheless morally justifiable. Some cases of coercion, we tend to think, are at least in certain circumstances justifiable invasions of individual autonomy. A question therefore arises about the appropriate forms of justification, by which

14. My approach to coercion is heavily influenced by Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987). See also Raz, *The Morality of Freedom*, p. 148.

15. Raz, *The Morality of Freedom*, p. 419.

an otherwise impermissible invasion of autonomy might be legitimated. The next section, accordingly, will examine the issue of coercion in greater detail, by analyzing what might divide legitimate and illegitimate forms of coercion; my particular focus will be on the imposition of state punishment.

### III. JUSTIFICATION AND COERCION, ONE: THE CRIMINAL LAW

Some forms of coercion—including some aspects of state coercion—seem morally acceptable; we would not want to endorse a liberal principle that told us that state coercion was never morally appropriate. The question therefore arises: What sorts of considerations could justify what would otherwise be an impermissible violation of autonomy? Note, first of all, that states of affairs that are open to human control are, morally speaking, distinct from those that are not. Before a state of affairs can be condemned by the liberal principle of autonomy, it must be in some sense amenable to control by human agency. To return to the case of famine, we might note that if the world simply did not have the resources necessary to keep any of its citizens alive, then the loss of autonomy felt by those individuals could not be charged as a moral failing to any agent or group of agents; no individual or group could be charged with a violation of the liberal principle of autonomy. The circumstances of the world, in this case, would render hunger inevitable, and human will could not hope to reduce or prevent such suffering. That hunger in the modern world is not like this—that the world actually does have the ability to maintain its inhabitants—indicates that a morally problematic situation, rather than a tragic one, has arisen.

But let us take the case of coercion clearly engaged in by human agents against other human agents. Justification for such coercion can sometimes arise as a result of consent. In law, if I consent to a potential harm being done to me, then no legally cognizable harm has taken place—in lawyers' Latin, *volenti non fit injuria*. In morality, similarly, if I consent to remove from myself the means of autonomous action in some area of life—say, by voluntarily allowing myself to be coerced (imagine a case in which I give you permission to swat me if you catch me drinking)—then the moral harm of coercion no longer seems to exist. Using one's agency to consent to the elimination of previously held options does not, as a rule, violate the princi-

ple of autonomy. Not all such contracts are compatible with the principle of autonomy—voluntary slavery, since it abdicates the entire field of autonomous planning for the duration of life, might be excluded—but as a rule, consent is a possible way to justify what would otherwise be prohibited.

We have, in these ideas, the beginning of a method by which we might understand the potential justification of state punishment—and, from there, return to the issue of relative deprivation and just distributive shares. To see this, however, we must note what form the justification of punishment would have to take. It cannot, of course, be explicit consent—in attempting to justify the imposition of incarceration for manslaughter, for instance, we do not ask the prisoner in the dock what sorts of punishments are those to which he would consent. We phrase our request for justification, rather, in terms of hypothetical consent—not what is consented to, at present, but what would be consented to, *ex ante*, under some appropriate method of modeling rational consent. This approach to criminal punishment reflects the retributivist tradition, on which we can say that criminal's punishment is legitimated not because his punishment will be useful for others, but because he himself, as a rational agent, can be understood under the appropriate hypothetical circumstances as having willed it.<sup>16</sup>

We might, therefore, try to find justification in a variant of Thomas Scanlon's notion of reasonable rejection—if the prisoner in the dock could not reasonably reject a coercive rule licensing incarceration for his offense, then we may take him as having consented, as a reasonable agent, to the imposition of that coercive legal rule in the first place.<sup>17</sup> This tool, I think, will allow us to understand what sorts of coercion might be justifiable, and, in the end, will help us understand how coercive state institutions are the institutional prerequisite for the relevance of egalitarian distributive justice.

Let us therefore return to the analysis of state punishment, and ask

16. See Herbert Morris, "Persons and Punishment," *The Monist* 52 (October 1986): 475–501; Jeffrie Murphy, "Marxism and Retribution," *Philosophy & Public Affairs* 2, no. 3 (1973): 217–43.

17. See Thomas Scanlon, "Contractarianism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), pp. 103–28. See also Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1999).

what the notion of hypothetical consent can tell us in this context. Let us begin by reiterating that coercive punishment is, on this approach, presumptively forbidden as a violation of autonomy. We seek to justify these punishments against this presumption by finding ways in which the punishment might be understood as one to which we could not reasonably withhold our consent. This approach would, I think, nicely correspond with our sense that punishment—the deliberate imposition of judicial harm—is always an evil; a necessary evil, sometimes, but still something extraordinary that stands in need of special justification. Most of us, then, think that some punishments are legitimate, and that some are not; the constitutional notion of “cruel and unusual punishment” might be taken to reflect our latter sense, that some punishments are not justifiable invasions of the principle of autonomy. Indeed, U.S. Supreme Court jurisprudence in this area can be plausibly reconstructed to reflect this way of seeing the issue. The essence of cruel and unusual punishment, in the United States, is not to be found in some essential feature of the punishment itself, but in a proportionality between the degree of punishment and the seriousness of the offense. Thus, capital punishment for the crime of murder is not necessarily cruel and unusual punishment;<sup>18</sup> capital punishment for the crime of rape, by contrast, is proportionately too severe to be justifiable *ex ante* to the one facing the punishment.<sup>19</sup> These cases can be explained on the autonomy approach given above; while capital punishment always infringes upon autonomy in a particularly stark and immediate way, in some cases this putative violation can be justified by means of the hypothetical consent of all those potentially facing the punishment. In some cases of murder, we would be forced (the Court supposes) to accept that it is a legitimate moral response to a deliberate taking of life. In the crime of rape, however, we are not so forced. Whatever one may think of the content of the Court’s reasoning, the pattern of argument seems to correspond with our analysis of the principle given above,<sup>20</sup> particularly in view of the Court’s declaration that the core idea of the prohibition on cruel and unusual punish-

18. *Gregg v. Georgia*, 428 U.S. 153 (1976).

19. *Coker v. Georgia*, 433 U.S. 584 (1977).

20. It may also explain the conviction of some theorists of punishment that purely deterrent punishment is never justified, although I will not explore this idea here. See Murphy, “Marxism and Retribution,” for a good account of this line of argumentation.

ments is the protection of human dignity.<sup>21</sup> This approach would, finally, also explain our conviction that some punishments are abhorrent enough to be ruled out as responses to virtually any crime imaginable. Violations of autonomy, we have already noted, admit of degrees, and if punishment always stands in *prima facie* tension with autonomy, it still exists in a variety of strengths; some punishment is so unmaking of individual autonomy as to be ruled out as a response to any crime.<sup>22</sup>

In this section, I have limited my focus to the function of the state in administering the criminal law. There are, however, forms of legal administration other than that seen in criminal law. Although the focus of philosophers of law has been more squarely centered on criminal law than on these other forms—including, among others, the law of property, torts, contracts, and taxation—these forms of legal adjudication deserve independent attention from within liberal political theory. In the next section of this article, I focus on these forms of law; I will try to establish that they involve coercive state action, and that they are therefore demand justification in exactly the same way as the imposition of criminal punishments. I will, finally, try to demonstrate that only in this demand for justification does a concern for relative deprivation become relevant—and, therefore, that only between people who share the coercive mechanisms of a state does a concern for specifically economic egalitarian justice become appropriate.

#### IV. JUSTIFICATION AND COERCION, TWO: THE CIVIL LAW

Coercion is certainly presented in the law in its most stark form in the institution of criminal punishment. But it seems that even private

21. *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

22. I would note, in passing, that I am not saying that a more “cruel” form of punishment—in the ordinary sense of a more painful or humiliating form of punishment—is necessarily a greater violation of autonomy than a less “cruel” form. I am saying that one way of understanding the Supreme Court’s vision of cruel and unusual punishment is with reference to the idea of autonomy. Those forms of punishment that cannot be justified to citizens understood as autonomous agents are comprehensible as cruel and unusual in this latter sense. Thus, an unduly painful form of execution might constitute a violation of autonomy, but not because it is “cruel” in the ordinary sense of the word, but rather because this particular form of punishment could not be justified to free and equal citizens. I am grateful to an anonymous editor at *Philosophy & Public Affairs* for urging me to be clearer on this matter.

law—the law of contracts, property, and torts—is rife with coercion as well. Contract law is often analyzed as a limited grant of (coercive) legislative power by which individuals are empowered to make legal rules determining ownership that all must be compelled to obey.<sup>23</sup> Property law, too, has a basis in coercion; it is, as Jeremy Waldron notes, a commitment to using collective force against certain persons should they attempt to exercise control over certain goods. Taxation law, too, although not technically a part of private law, seems to involve implicit threats of coercive state action as well. In all these areas of law, the adjudication of disputes will issue in a coercive transfer of legal rights. Whenever a civil judgment is made, for instance, the legal rights transferred from the defeated party to the victor are ones that are ultimately enforced with coercive measures. If we refuse to go along with the transfer in question, we risk imprisonment for contempt. All of these sanctions are built into the structure of the private law. Such practices are, it seems, every bit as coercive, if not as dramatic, as punishment in the criminal law, and stand in a similar need for justification. A civil judgment gives us a choice between surrendering goods or freedom in much the same way as a gunman's threat; while the former is at least potentially justifiable, and the latter generally inexcusable, the conditions under which the former may be justified require an inquiry into hypothetical justification in precisely the same manner as punishment. Although the purposes of the coercive sanctions differ between private law and criminal law, the fact of coercion is necessarily found within all areas of legal rules:

Every decision [judges] make imposes their will on other human beings. When a judge sentences a defendant to prison, the judge's decision takes away the defendant's liberty. When a judge finds contractual liability, the decision forces one party to compensate the other. Every word, then, masks a deed. And the deed, ultimately, is one of power and coercion.<sup>24</sup>

Such an analysis seems to find echoes in Supreme Court jurisprudence as well. In *Shelley v. Kraemer*, the Court noted that the enforcement of

23. See H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), pp. 28–29.

24. Michael D. Danek, "Moral Reasoning and the Quest for Legitimacy," 43 *American University Law Review* (1993): 49.

a restrictive covenant was a much a matter of state action as incarceration, and that the same principles of constitutional analysis would therefore apply.<sup>25</sup> Enforcing a contract, after all, is ultimately legitimating the use of force; and that, we must agree, is something which stands in need of justification from within a liberal theory premised upon autonomy.

Political philosophy has rarely addressed the conditions of moral legitimacy of the private law in any explicit way. The private law, however, stands in as much need of theoretical justification as the practice of punishment. Anthony Kronman has noted, for instance, that the rules governing contract law stand in need of defense from within liberal political philosophy. The law allows certain forms of advantage-taking—such as superior knowledge or intelligence—to influence contractual outcomes and prohibits the use of other forms, such as physical intimidation. There is nothing natural or obvious in this way of developing contract law; surely, the agreements that will be protected by the use of state power stand in as much need of moral defense as any aspect of state punishment.<sup>26</sup> All the forms of legal rules we use are ultimately backed up with coercive measures that implicate the liberal principle of autonomy. The law of taxation, for instance, is clearly coercive. Federal income taxation plainly involves the taking away of previously earned resources from individuals. As above, this form of law seems properly regarded as a putative violation of the liberal principle of autonomy; it gives us, in essence, a choice between surrendering our goods or our lives. This is not to say that such taxation is not justified—if there are to be legal systems at all, coercive means of providing for their upkeep seem required. But it does mean that such taxation is presumptively wrong until justified through the giving of reasons that could not be reasonably rejected by those who face the taxation. What I would conclude here, at any rate, is that law is a web

25. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

26. Anthony Kronman, "Contract Law and Distributive Justice," 89 *Yale Law Journal* (1980): 472. I disagree with Kronman on one central point; he argues that the forms of justification open to a liberal are limited to notions such as fairness and economic egalitarianism. I think, in contrast, that we ought to begin with our more minimal idea of autonomy; this inquiry will end up with an economically egalitarian content in some contexts, but such an outcome will be the result of our moral inquiry, rather than (as Kronman has it) the beginning.

of coercion in which both private and criminal law are understandable as *prima facie* in violation of the principle of autonomy, and in which both private and criminal law therefore stand in need of theoretical justification. As Robert Cover had it, every judicial act is an act of implicit violence, whether that act is the imprisonment of a criminal or the adjudication of a property dispute;<sup>27</sup> it is up to political philosophy to decide whether such implicit state violence is legitimate.<sup>28</sup>

There is one final aspect of this picture of legal coercion worth noticing. Law is not an isolated parcel of unrelated legal rules; it is, if it is to have the force of law at all, unified into a legal *system*. What this means, as a matter of jurisprudence, is that rules must meet certain formal requirements before they can be understood as legal rules; they must be capable of being followed, they must not conflict, they must be available for public knowledge, and so on. These constraints mean that legal rules in a constitutional regime form a unified system of laws, and we might take it as the task of domestic political philosophy to justify the commands of that legal system as a whole to those who live within its coercive grasp. Rawls, for instance, appears to take this as the task of political philosophy; he describes the attributes of a legal system in a way that makes it sound very much like the basic structure he wishes to analyze, and in *A Theory of Justice* appears to identify the legal system with the basic structure—an equation made much more clear and explicit in *Political Liberalism*. This focus has sometimes been taken as arbitrary.<sup>29</sup> In fact, I think it might be reread as reflecting a consistent concern with the circumstances under which a coercive legal system could be justified to all those who live within it. The fact

27. Robert M. Cover, "Violence and the Word," 95 *Yale Law Journal* (1986): 1601. Cover notes that law is always played on a field of violence and death; if this is most apparent in the criminal law, "all law which concerns property, its use and its protection, has a similarly violent base" (n.16).

28. This way of looking at the private law may remind some readers too much of John Austin, whose coercion-based philosophy of law was convincingly disputed by H.L.A. Hart. I would note here only that Austin's question and my own differ to such a degree that my use of coercion may not be susceptible to the same criticisms as his own. See H.L.A. Hart, *The Concept of Law*, and John Austin, *The Province of Jurisprudence Determined*, 5th ed. (1885), ed. Wilfred E. Rumble (Cambridge: Cambridge University Press, 1995).

29. See, for example, G. A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy & Public Affairs* 26, no. 1 (1997): 3–30.

of a legal system, and the need for justification this creates, makes concerns of relative deprivation relevant at the domestic level.

Is there really no equivalent to such a coercive network of law at the international level? Coercion can, after all, occur both between nations as well as within them. What I think is true, however, is that only the sorts of coercion practiced by the state are likely to be justified through an appeal to distributive shares. Only the state is both coercive of individuals and required for individuals to live autonomous lives. Without some sort of state coercion, the very ability to autonomously pursue our projects and plans seems impossible; settled rules of coercive adjudication seem necessary for the settled expectations without which autonomy is denied. International legal institutions, in contrast, do not engage in coercive practices against individual human agents. Other forms of coercion in the international arena, by contrast, are generally indefensible—or, if they are defensible, do not find their justification in a consideration of their distributive consequences. At present, I want only to point out the difference between domestic and international legal institutions; only the former engage in direct coercion against individuals, of the sort discussed above in connection with the criminal and civil law. There is no ongoing coercion of the sort observed in the domestic arena in the international legal arena.<sup>30</sup> It is, I have suggested, only this form of coercion that makes a concern for relative deprivation relevant for a liberal political theory. What I want to do now is give some reasons in support of this claim. Given that state legal systems involve coercion both in the private law and in criminal law, how might we justify the former sort of coercion to comport with the liberal principle of autonomy?

We are trying, in this inquiry, to determine a means by which legitimate coercion might be distinguished from illegitimate coercion.

30. J. Donald Moon and others have pressed on me the objection that the entire international system might be based upon coercion—seen, for instance, in the coercive exclusion of would-be immigrants at the border. This may be correct, but it is important to remember that each distinct form of coercion requires a distinct form of justification. The refusal of entry to a would-be member may or may not be justifiable; the form such justification would take, however, would be significantly different from that offered to a present member for the web of legal coercion within which she currently lives. The mere fact that exclusion is coercive does not erase the distinction between prospective and current membership. Only the latter, I argue, gives rise to a legitimate concern for relative deprivation.

Some patterns of coercive law, that is, seem acceptable to us, and some do not. Let us take as our aim the development of principles by which the two might be distinguished. The idea of hypothetical consent we have examined demands that we be given reasons for our coercion that we could not reasonably reject. Let us bracket the notion of reasonableness for a moment and look at those criteria that would be relevant to the giving or withholding of consent. What criteria would be morally appropriate for the justification of the forms of coercion found in the private law? We have already examined this idea in connection with legal punishment in the criminal law. The seriousness of the offense was the primary criterion on which we would premise our giving or withholding of consent. But private law is not quite the same in focus as criminal law. Private law is directed at the protection of private entitlements, not the prevention of public harms; whereas a crime is conceptualized as an offense against the body politic, the law of contracts, torts, and property aims at the definition and protection of private holdings and entitlements. These laws define, collectively, what sorts of entitlements will exist in our society; they determine what shall count as property, what sorts of private agreements will receive public enforcement, and—in the law of taxation—what sorts of otherwise private resources must be turned over for public purposes. This pattern of laws, then, defines how we may hold, transfer, and enjoy our property and our entitlements.<sup>31</sup> In so doing, I think, these laws create a pattern of entitlements; the state, through the non-criminal aspect of its legal system, defines how property will be understood and held, and what sorts of activities will produce what sorts of economic holding. Consent can be, I think, partially based upon these consequences of various ways of allocating and protecting entitlements. The principles we seek will mandate or constrain certain ways of allocating entitlements, and the consequences these principles have for holdings of property seem a relevant criterion on which consent might be given or withheld.

To briefly summarize my argument so far: individuals who share a legal system also share liability to a coercive legal system. The legal

31. It is worthwhile to note, in this connection, that real property in the United States must be—in theory, if not in legal practice—traced back to an original grant from the sovereign for it to be legally cognizable as property.

system is coercive, and thus stands in *prima facie* conflict with the liberal principle of autonomy. Since we cannot eliminate the state, given the (paradoxical) importance of government for the protection of autonomy, we seek instead a means by which the content of that legal system might be justified through hypothetical consent to all those who live lives the dimensions of which are defined within that system. The legal system coercively defines what resources flow to which activities; the latter fact seems to provide one relevant criterion on which consent might be given or withheld.<sup>32</sup>

There is nothing here, of course, that yet discusses the issue of *relative* holdings of goods. This will change, I think, as we examine more closely the fact that the coercive laws we are discussing apply not simply to an individual but to an entire society. Justification through hypothetical consent, here, is owed to every individual facing consent; the liberal principle of autonomy is concerned equally with all the autonomy of all human beings, so that a coercive scheme enmeshing a wide set of individuals must be justified to each and every one of those so coerced. The idea of consent we employ here, I think, must reflect this fact. It must, that is, model the circumstances of all those facing legal coercion, to ensure that the consent of each such individual is ensured. We seek a device, then, that prevents special pleading—that prevents the justification of principles that benefit some, but that could be reasonably rejected by some other segment of society. A device must therefore be derived that allows us to develop principles that

32. We may notice, now, that I have begun to talk directly about property and entitlements, which seems a more expansive set of concerns than I was earlier willing to allow in the context of autonomy. There is, I think, a good reason for this. Our earlier consideration was the identification of a given situation as violating or respecting autonomy. In this, we noted, there was no necessary concern—above a certain baseline—for the size of our holdings of goods or the number of options realistically open to us. Our present focus, however, is on the justification of a situation already identified as coercive, and therefore as violative of the liberal principle of autonomy. In this focus, I think, more expansive criteria may be employed; we can give and withhold our consent based on considerations that, in themselves, are not necessarily implicated in every discussion of autonomy. In deciding whether to accept a coercive regime defining returns to various positions, that is, we might well examine that proposal in terms of its effects on our resources and economic holdings. The private law is coercive, and it has consequences for the allocation of goods; the former fact makes the private law stand in need of justification, while the latter provides the means by which our consent—the method of our justification—might be given or withheld.

could not be reasonably rejected by any individual faced with social coercion. Such a device would have to abstract away from morally arbitrary aspects of the individuals considered since principles resting upon such morally arbitrary aspects of people could obviously be reasonably rejected by those disfavored.

This presentation has intentionally been both brief and familiar. It is meant to introduce Rawls's own conception of the original position, and to suggest that the device of the original position is plausibly understood as a way of modeling those conditions under which we might develop principles of justice to which we could not reasonably withhold our consent—but, further, my analysis here is meant to suggest that the original position is only a useful device in the context of the justification of certain forms of coercion. The conditions of the original position, further, lead to a principle constraining relative deprivation; this is expressed in *A Theory of Justice* by means of an analysis of rational choice under uncertainty, but I think the analysis of the original position given here can allow us to see that the real purpose of the difference principle is to justify coercion to all those coerced, including the least advantaged. We have to give all individuals within the web of coercion, including those who do most poorly, reasons to consent to the principles grounding their situation by giving them reasons they could not reasonably reject—a process that will result in the material egalitarianism of the form expressed in the difference principle, since justifying our coercive scheme to those least favored by it will require that we demonstrate that no alternative principle could have made them any better off. A principle that would allow material inequality greater than that of the difference principle, on this reading of Rawls, would be a principle which some members of society could reasonably reject; such principles would inevitably involve the reduction of life chances for the worst off, as compared with those experienced under the difference principle, in a way that the worst off could reasonably reject. I will not reproduce the entirety of Rawls's arguments for this conclusion here; I trust they are relatively familiar, and at any rate doing them justice would require more space than I presently have. What I will insist on here is that a liberal theory that begins with a concern for autonomy may properly develop a concern for relative deprivation as a way of justifying state coercion. We may read the conditions of Rawls's original position as a way of modeling the appropri-

ate conditions of hypothetical consent by which the moral harm of coercion might be nullified. The liberal principle of autonomy requires that coercion be justified through hypothetical consent, and that the conditions of this consent in the arena of private law may require—as Rawls argues they do—considerations of relative deprivation and material equality. It is not the case, therefore, that liberalism is committed to an equality of material shares in the global arena. Material equality becomes relevant only in the context of certain forms of coercion, forms not found outside the domestic arena.

As I have said before, I do not think that my argument depends upon accepting Rawls's own arguments. I have assumed, for the present purposes, that his argument from the original position to his principles of justice is correct. If someone is not convinced by Rawls's own argument to the effect that this justification must take the form of the difference principle, I think I am still able to maintain that such a justification requires the hypothetical consent of all members of society, in a way that will inevitably produce a principle constraining acceptable forms of relative deprivation. Those who share liability to a coercive government, after all, must have relatively equal abilities to influence that government's policies under any plausible theory of liberal justice; relative deprivation seems, therefore, an important implication of liberalism domestically for reasons that fail to hold internationally. The liberal principle of autonomy will, between people who share a coercive legal web of private law, make *some* considerations of relative holdings of goods relevant in the context of the justification of that coercion, given the need to arrive at conditions by which we might model hypothetical consent. The necessity of justifying the coercive practices of the private law to all those who are coerced requires us to look at the material effects of the coercion from the standpoint of all those who are coerced, and requires us to obtain the consent of all those so coerced. This process will, I think, inevitably constrain the forms of material inequality permissible within the confines of the state, given the need to justify coercion to the least favored members of society. This seems to hold true even if some other principle of material deprivation is taken to emerge from the appropriate conditions of hypothetical consent.

For the committed Rawlsian, of course, I think my approach can serve a valuable role in defending Rawls's concern with coercion. The

next section of this article focuses upon Rawls, and will offer an interpretation of his work within which this focus upon coercion is a consistent and justifiable aspect of his theory as a whole. I will close the present section by saying that what I hope to have proved in the article up to now is that an impartial liberalism can consistently differentiate the content of what is owed to fellow citizens from what is owed to human beings considered simply as such. Liberalism need not choose between partiality for our fellows and a global disregard for political institutions; liberal impartiality, properly understood, does not condemn distinct duties to fellow countrymen, but rather implies their existence. What we share with one another necessarily alters what our impartial liberal principles demand.

#### V. RAWLS AND COERCION

What I want to do in the present section is to give, very briefly, a reading of Rawls that demonstrates his compatibility with the approach taken here. I disagree with Rawls, obviously, on the implications of his own theory in the international arena;<sup>33</sup> but I think the approach I describe here can be plausibly viewed as a rational reconstruction of Rawls's method that avoids some problems inherent in his international extension of his theory. What I say here, then, is perhaps not what Rawls himself would agree with, but it is certainly open to me to argue that—given his writings—it is what he should have argued all along.

Rawls's concern for coercion is made more explicit in his later writings, although it is present in his earlier work as well.<sup>34</sup> I would begin by noting that Rawls takes the coercive nature of legal institutions as a basic fact in need of justification: "Political power," argues Rawls, "is always coercive power backed by the government's use of sanctions,

33. See John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), for Rawls's own views of the implications of contractualism abroad.

34. See, for instance, John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 343: "It is generally agreed that extorted promises are void ab initio. But similarly, unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind. The reason for this condition is that the parties in the original position would insist upon it." Rawls is here, of course, not explicit about the fact that domestic law is coercive—this is, however, the interpretation he gives to his earlier account by the time of *Political Liberalism*.

for government alone has the authority to use force in upholding its laws."<sup>35</sup> Rawls then argues that it is this sort of power—the coercive power of the state—that stands in need of justification. Both Rawls and I, in this, take the existence of the state as a pre-theoretical given.<sup>36</sup> He accepts the account of states that makes reference to their ability to use coercion in determining what action will be permitted within the state's territory. What Rawls seeks to justify is the use of that authority, by appeal to the norms of public reason which respect autonomy:

[W]e ask: when may citizens by their vote properly exercise their coercive political power over one another when fundamental questions are at stake? Or in the light of what principles and ideals must we exercise that power if our doing so is to be justifiable to others as free and equal? To this question political liberalism replies: our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as rational and reasonable. This is the liberal principle of legitimacy.<sup>37</sup>

Rawls's account of liberal theory, then, begins with the fact of state coercion and seeks to find a way by which this coercion might be justifiable. Rawls argues that coercive power can be justified only if it is power that can be legitimately understood as a use of power by which citizens of a democratic regime coerce *themselves*. Hence, for Rawls, political power must be exercised in accordance with a constitution that respects the status of individual citizens as autonomous agents—that is, literally, as agents ruled by laws they give to themselves.<sup>38</sup> Thus, the laws of a society—or, more precisely, the constitutional essentials and questions of basic justice that will guide subsequent political deliberation—must be justifiable through the use of public reason to all

35. Rawls, *Political Liberalism*, 136.

36. John Rawls, "The Law of Peoples," in *On Human Rights*, ed. Stephen Shute et al. (New York: Basic Books, 1993), 41–82. See also Rawls, *The Law of Peoples*.

37. Rawls, *Political Liberalism*, p. 217.

38. *Ibid.*, p. 77.

those individuals who are to be bound by those laws. To coerce people in ways that they could not reasonably accept—to, for example, use the coercive power of the state to enforce one particular view of the good life—is to treat people as less than free and equal participants in the project of self-rule:

[C]itizens as free and equal have an equal share in the corporate political and coercive power, and all are equally subject to the burdens of judgment. There is no reason, then, why any citizen, or association of citizens, should have the rights to use the state's police power to decide constitutional essentials or basic question of justice as that person's, or that association's, comprehensive doctrine directs. This can be expressed by saying that when equally represented in the original position, no citizen's representative could grant to any other person, or association of persons, the political authority to do that. Such authority is without grounds in public reason.<sup>39</sup>

This account of Rawls's methodology makes it clear that Rawls intends his principles of justice to hold only within a set of individuals who share coercive political institutions, since those institutions stand in need of justification through the use of public reason. In this, I suggest, state coercion has been recognized by Rawls as the precondition for a legitimate concern with relative distributive shares.

On this reading of Rawls, the state has to offer different guarantees to different persons, not because it cares more about one set or the other, but because it is doing different things to some—things that stand in need of justification. To insiders, the state says: Yes, we coerce you, but we do so in accordance with principles you could not reasonably reject. To outsiders, it says: We do not coerce you, and therefore do not apply our principles of liberal justice to you—although you do have an entitlement to the preconditions of autonomous functioning, and we will ensure that these are provided to you if you do not have them now. Both of these, however, reflect a common concern

39. *Ibid.*, pp. 61–62.

with the liberal principle of autonomy, understood here as a liberal principle global in its reach.

This approach seems to make sense of Rawls's own description of his theory, much attacked by the cosmopolitan reading of Rawls. As Rawls notes, his theory does not seek to apply each time there is a division of something advantageous or disadvantageous; churches and universities, for example, distribute goods to their members, but Rawlsian principles of justice do not apply to such institutions. Rawls therefore notes that libertarianism, since it has no public coercive law applying equally to all persons, has no place for a basic structure.<sup>40</sup> Similarly, Rawls is explicit that no basic structure is available for analysis in the international arena.<sup>41</sup> Rawls limits his attention to the state, since the state can do something churches and universities cannot—directly and coercively determine the sorts of returns flowing to various positions, through coercive private law measures ultimately backed (as Rawls notes) by force. My account can, I think, explain why Rawls maintains this focus. Coercion, unlike the simple division of a good, implicates the ability of individual agents to live their lives according to their own plans; it demands justification, specifically justification by which we can legitimately understand ourselves as the author of our own coercion. The liberal principle of legitimacy can now be linked to a more general duty, that of respect for autonomy, which exists both within and beyond the borders of the state. Rawls focuses upon the domestic situation, but I think his otherwise inexplicable break between the domestic and international spheres can be explained by adding my own theory to his.

I think, finally, that this approach can help solve a problem that has much exercised critics of Rawls in recent years. Many theorists have argued that Rawls's discussion of society as a cooperative venture for mutual advantage is deeply problematic since it would imply that the severely disabled—those who are not able to cooperate in any economically viable way—ought to be expelled from society; this is a problematic conclusion, given that such persons seem more in need of

40. *Ibid.*, p. 264.

41. Rawls, "The Law of Peoples," 220–21, n. 2.

the guarantees of justice than most of us.<sup>42</sup> On the approach given here, this objection is mistaken—it confuses the criteria of *membership* with the criteria of *justification*. The criteria for membership within the group of people entitled to justification through principles of liberal justice, on my account, is membership as citizen within the territorial state. This first stage determines the class of people to whom justification is owed; the fact of coercion is what mandates the provision of such justification. Only then, in a second stage, is justification offered, and it is at this stage that the normative idea of society as a scheme of cooperation enters. The use of this idea is legitimated here because we seek, in justification, to get principles by which the coercive legal system might be legitimated to everyone by which they could be understood to voluntarily consent—by which, that is, they might be understood as if they were autonomous agents, freely coming together to develop principles of cooperation. It is not that society is a cooperative venture for mutual advantage; the existence of the severely disabled within society, offered as rebuttal of this ideal, is sufficient to demonstrate that. But it is also true that a society whose membership is defined through its legal system might nonetheless employ this notion to justify the coercive legal system to its own citizens.

In many ways, this last objection to Rawls is similar to the misreading of Rawls made by the cosmopolitans. Their argument that the states of the world form a cooperative enterprise is now comprehensible as theoretically misguided, in addition to counterintuitive in results. Coercion, not cooperation, is the *sine qua non* of distributive justice, making relevant principles of relative deprivation. As a final way of discussing this, I finish with a brief fable that goes some way toward making these conclusions palatable.

#### VI. A TALE OF TWO STATES: BORDURIA AND SYLDAVIA

I would like to conclude this article with a more concrete example of the way in which the version of liberalism I defend here would defend itself against a cosmopolitan critic. For this task, we might imagine two

42. See Robert Goodin, "What is So Special about our Fellow Countrymen?"

societies and see how the liberal principle of autonomy would defend the importance of material equality within, but not without, the boundaries of the state. Begin with a hypothetical case of two autarkic nations.<sup>43</sup> Citizens in each have heard tales of the people beyond the mountains, but there are no links established between the two nations of any sort. In one nation—call it Borduria—advanced techniques of farming and relatively better soil lead to a lush form of life, and soon the nation finds itself with time enough to develop an advanced literature, good universities, and excellent entertainment. In the other nation—call it Syldavia—natural conditions and a lack of technical know-how produce a less abundant crop each year. Syldavia suffers accordingly, given the sheer amount of exertion needed to extract food from the earth. However, no one in Syldavia suffers to any great degree—all have enough food to live a normal and productive life, and no one is in imminent danger of falling into starvation or objectionable poverty. However, their holdings of goods and resources are markedly inferior to those of the inhabitants of Borduria. One day, a party of Syldavians decides to go exploring, and crosses the mountains into the unexpectedly lush fields of Borduria. After a few days of getting to know their hosts, the Syldavians begin to complain. Why, they argue, is it fair that you have more than we do? Surely, the fact that we were born on the other side of the mountain is an accident of fate, and should not be used to justify the fact of an inequality. The Syldavians then suggest that the Bordurians and Syldavians create an international panel charged with maximizing the worst-off representative citizen in the set of individuals who are citizens of either country—whose first recommendation, they expect, will be the introduction of transfer payments from Borduria to Syldavia.

Are the Bordurians bound by the logic of liberalism to accept the demands of the Syldavians? I think not. The Bordurians can perfectly consistently reply that they are concerned with the protection of autonomy, and that this has led them to be concerned with the relative material inequality of those who are coerced through Bordurian private law by the Bordurian government. Otherwise, they explain, some

43. The story here is borrowed in part from James Buchanan, "A Two-country Parable," in Warren F. Schwartz, ed., *Justice in Immigration* (Cambridge: Cambridge University Press, 1995), pp. 63–66.

Bordurians would face an ongoing coercive threat that could not be justified to them with reasons they could not reasonably reject. However, since the Syldavians are not bound by the legal web binding Bordurians—they are not threatened with imprisonment if they fail to pay taxes to the Bordurian government, nor do they find themselves threatened with coercive judgments in the Bordurian courts—the situation as regards the relative deprivation of the Syldavians is a little different. Since the Syldavians are simply less well-off than the Bordurians, rather than below the threshold of autonomous functioning, the Bordurians might quite consistently hold their ground against the Syldavian demands. The Bordurians might be altruistic or decent enough to give some of their wealth to the Syldavians, but that seems to be a matter more of supererogation than of obligation. No obligation exists, on the account given here, to concern ourselves with relative deprivations in the absence of a shared coercive legal system.

This is, of course, a fanciful example, and few have endorsed the idea that simply sharing a world is enough to give rise to egalitarian duties such as a Rawlsian would endorse domestically.<sup>44</sup> The more relevant case, of course, is what happens once widespread links of trade and diplomacy begin to take place between the two nations. Charles Beitz and Thomas Pogge have both argued that a sufficient degree of such links comprises a cooperative scheme for mutual benefit of the sort appropriate for analysis through Rawlsian methods.<sup>45</sup> Let us imagine, therefore, that the Bordurians and the Syldavians have begun to trade with one another, and that after a certain point in the relationship a similar party of Syldavians approach the Bordurian capital with a list of demands. The trade, they note, has advantages to both parties, but the advantages to the Bordurians are larger than the advantages to the Syldavians. After ten years of trading, perhaps, the situation of the Syldavian peasants has improved only slightly relative to the situation of autarky, but that of the Bordurian peasants is much greater than it was in autarky. Surely, the Syldavians argue, this cannot be right. After all, from within the original position, we would not know whether we

44. But see Charles Beitz, "Cosmopolitan Ideals and National Sentiment," *Journal of Philosophy* 80 (October 1983): 591–600.

45. See Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1973), and Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989).

were Bordurians or Syldavians, and we ought therefore to condemn the current social institutions of trade and diplomacy if they allow this degree of material inequality.

The Bordurians, I think, would be quite right to resist this appeal. The original position, they could explain patiently, is not a device to be used every time there is a division of a good—it is designed to demonstrate what sorts of justification could be given for certain forms of coercion by representing the circumstances under which hypothetical consent might be judged. In the present case, there seems to be no coercion going on at all. The Bordurians were no under obligation to begin trading with the Syldavians—indeed, they were under no obligation to do anything with or for them at all, given their morally acceptable situation in autarky. Trade, the Bordurians could note, is a matter here of offers, not of threats. The Bordurians' offer of regular trading routes was not a coercive offer; it did not take away any entitlement from the Syldavians. And the Syldavians' situation before the offer was—*ex hypothesi*—a morally acceptable one, given that it did not involve poverty of the sort likely to violate the principle of autonomy. There was no presumptively wrongful proposal in the Bordurian offer to trade. Neither, I think, are the Bordurians under any obligation to continue trading with the Syldavians since the situation of the Syldavians without trade was morally acceptable. (This is, of course, assuming that the Syldavians have not adjusted their internal economy to render a threshold level of physical functioning impossible to achieve without foreign trade. This might well be a false assumption, in which case things are that much more complex.) All of this, I think, demonstrates that no is coercion present in the international trading relationship here that would require the use of the original position for justification. Brian Barry similarly notes that no degree of economic interaction can form the moral equivalent of the relational web between citizens of a modern state.<sup>46</sup> Barry is not explicit about what

46. Brian Barry, "Humanity and Justice in Global Perspective," *Nomos 24: Ethics, Economics and the Law*, ed. J. R. Pennock and J. W. Chapman (New York: Harvester Wheatsheaf, 1982), p. 233: "Trade, if freely undertaken . . . is not, it seems to me, the kind of relationship that gives rise to duties of fair play. . . . Trade in pottery, ornamentation, and weapons can be traced back to prehistoric times, but we would hardly feel inclined to think of, say, the Beaker Folk as forming a single cooperative enterprise with their trading partners. No more did the spice trade unite east and west."

sorts of relationships he thinks exist in the state, or about how they are morally different from mere trade. The above account can, however, give an explanation for Barry's intuition. What is present within the state, but not without it, is the fact of ongoing coercion. Barry's intuition is, I think, quite correct, and the Bordurians have no reason to give into the Syldavian claims.

Suppose the Syldavians have one final try. Surely, they argue, what matters morally is individual welfare—which we might understand as the number of things we are able realistically to do and to be—and Bordurian laws, inasmuch as they eventually affect what sorts of goods make it to the international market and at what price, affect what options are open to us as surely as that of any individual Bordurian. Why, therefore, do we not deserve a justification in terms we couldn't reasonably reject for the laws of Bordunia? Why do the Bordurians have a say when we do not?

In response, I think, the Bordurian government need only return to the liberal principle of autonomy, and emphasize that relative well-being and relative sets of available options are not necessarily implicated in this form of liberal egalitarianism. We are under no obligation to maximize the world's welfare—or the welfare of any one part of it, for that matter—but we *are* under an obligation to avoid denying the conditions of autonomy to all human beings. We coerce our own citizens, the Bordurians might say, in ways we don't coerce you; that deserves a justification, which we provide by ensuring that Bordurians have the right to political participation and to fair equality of opportunity, and by ensuring a relatively stringent principle of equality among Bordurians. The fact of coercion, and not the effect on welfare, deserves the justification. An analogy might help. When the laws of Borduria imprison a man for stealing, it undoubtedly affects the welfare both of the man and of (let us say) his friends, who will miss his companionship. But the man deserves a different sort of justification from us, since we are carrying through on a threat to remove his ability to pursue his own plans and projects in an autonomous way. The man is affected in a different way than his friends—and it isn't simply a matter of degree, but one of kind. The man is coerced, and if he cannot be given a reason for that fact that he could not reasonably accept, then what is done to him is wrong. The man's friends face no equivalent violation of autonomy, and are therefore not entitled to the same

form of justification. The coercive nature of the laws, and not simply their effects upon welfare, make them a matter requiring justification.

At this point in the story, it seems that my theory would endorse a largely laissez-faire attitude toward global economic relationships. This appearance is, I think, misleading. The implications of a defense of individual autonomy would, I think, mandate a surprising degree of international reorganization and reform, given the current degree of economic destitution at work in the world.<sup>47</sup> While the existence of a coercive network of law is a precondition of a concern with relative deprivation, a concern with absolute deprivation seems not to have any such institutional precondition. If famine and deprivation are remediable, those political institutions that are able to remedy them have an obligation to do so—given the ways in which famine and deprivation deprive individuals of the exercise of their capacities for autonomy. The defense of autonomy would, I think, commit consistent liberals to the defense of a wide variety of other forms of human rights, including rights to be free from some of the more crippling systems of caste hierarchy, and perhaps the right to democratic governance. The precise articulation of what human rights would follow from this conception of autonomy, however, cannot be addressed in the present context. I am convinced, however, that whatever does follow is unlikely to be satisfied by the world we have today.

## VII. CONCLUSIONS

What I hope I have established is that the appearance of inconsistency identified at the beginning of this article is largely illusory. Liberalism can consistently limit its concern for relative deprivation to the domestic arena, and be concerned only with absolute deprivation in the international arena. A liberalism committed to the moral equality of all persons, and to the equal protection of the autonomy of all human beings, may nonetheless treat citizen and stranger differently based upon relevant differences in institutional relationship. The precise metric of egalitarian justice—the way, that is, in which our equal respect for autonomy is manifested—varies depending upon institu-

47. See Barbara Crossette, "Half the World Lacks Sanitation, Says UNICEF," *New York Times*, July 23, 1997, A9.

tional context. A concern for domestic economic equality and international economic sufficiency reflects, I think, a consistent and thoroughgoing concern for the liberal principle of autonomy.

I will close this article with an analogy I hope will prove useful. The denial of the vote in an American election to an American citizen, let us say, would be something the principle I have identified here would condemn; it would be objectionable both through the symbolic insult and stigmatization it involves, and also through the lack of autonomy inherent in facing coercive laws one cannot help create.<sup>48</sup> The denial of the right to vote in American elections to a French citizen living in France, by contrast, has neither of these morally problematic effects.<sup>49</sup> The mere fact of material inequality greater than that allowed by the difference principle, I think, has now been shown to be morally equivalent to the denial of the vote: between people who share a state it is morally prohibited, but it is not a valid implication of liberal equality for those who do not—a conclusion that holds true even if one's citizenship is the result of facts that are, in themselves, morally arbitrary. Material inequality is therefore more like a denial of suffrage than most liberal theorists have previously thought. Both are morally wrong in the context of shared citizenship, but not in themselves of moral concern when they occur between individuals not so situated. Indeed, they are of a piece: Both are justificatory strategies by which the coercive legal system might be justified to individuals. This approach can, I conclude, answer the cosmopolitan challenge given above; it can explain that the borders of the state, while perhaps arbitrary, are not morally *irrelevant*. Rather than putting a feudal privilege back into lib-

48. The denial of the vote in this way, I think, might well be understood as a practice of marginalization—a symbolic statement that the individual denied is not worthy of autonomous deliberation and must accept the values and principles of others in an uncritical way. This notion of the symbolic importance of the vote is discussed in greater detail in Judith Shklar, *American Citizenship* (Cambridge: Harvard University Press, 1991).

49. A similar idea is expressed by Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs* 22, no. 1 (1993): 3–30. Waldron introduces an idea of range-limited duties as implications of natural duties—as, for example, citizens have distinct duties towards only their own state, which result from a general and natural duty to support just institutions. This dovetails nicely with my own idea that an impartial principle can have distinct implications in distinct contexts. Where Waldron and I differ is primarily in theoretical focus. His focus is on the obligation of the citizen toward the state while mine is on what the state must do toward the citizen—and the noncitizen—for its exercise of coercive power to be justified.

eral theory, the limitation of our concern with relative deprivation to the domestic arena reflects the fact that those within face the fact of state coercion in a way that those without do not. We have, I think, arrived at a good way of understanding what we owe both to our fellow citizens and to the world. Work remains to be done on precisely what is owed to the foreign citizens and to the world, but I leave this for another time.