
**THE INTEREST OF THE GOVERNED AND THE
INTERESTS OF HUMANITY: THE MORAL IMPORTANCE
OF BORDERS**

RICHARD W. MILLER*

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INTRODUCTION

For over thirty years, with special intensity in the last decade, a debate over global economic justice has troubled and enriched political philosophy. As in many of the most heated disputes, the participants have lots in common. They think that John Rawls was basically right about the principles that should guide compatriots in judging shared laws and institutions if foreigners are not taken into account. In particular, they agree that these principles should be those that one would choose for one's own political society in something like Rawls's original position, pursuing relevant interests behind a veil of ignorance of one's actual advantages; in substance, these principles should be something like his special conception of justice, in which fair equality of opportunity is required, so far as a prior principle of basic liberty allows, and, subject to the priority of basic liberty and fair opportunity, the lifetime expectations of income and wealth of the worst-off representative individual are to be maximized.

For the purposes of their controversy, the participants also adopt a shared simplifying assumption. Their dispute concerns political duties that would dictate transnational help even if no facts of transnational interaction were relevant beyond the mere fact of global economic interdependence based on commerce. I will call this global situation, much simpler and nicer than our own, the Standard Case.

In this controversy, a broad spectrum of positions are or might plausibly be advanced. At the most cosmopolitan end, some, whom I will call "cosmopolitans of equality," claim that the Standard Case requires a global extension of both the domestic original position *and* the demanding political

* Professor, Department of Philosophy, Cornell University.

duties to reduce inequality of opportunity and promote material expectations of the worst-off that it supports. At the least cosmopolitan end, anti-cosmopolitan in this special context, others refuse to extrapolate either that perspective or those principles and contain strong political duties of concern at the borders. In the Standard Case, they say, transnational political duties of concern are solely shaped by a relatively undemanding duty of general beneficence, dictating responsiveness to neediness as such regardless of relationships and interactions.

This moderateness about beneficence is another feature of the legacy from Rawls whose global part is in dispute. Rawls speaks of “the duty of helping another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself . . . that . . . [holds] between persons irrespective of their institutional relationships.”¹ I will rely on a specification that I have defended elsewhere, the Principle of Sympathy:

one ought to act in ways that express an underlying concern for neediness as such that is sufficiently great that greater concern would impose a significant risk of worsening one’s life if one fulfilled one’s other responsibilities.

Here, “worsening one’s life” involves the failure to pursue, enjoyably and well, worthwhile goals with which one identifies and from which one cannot readily detach.²

Of course, people can, and do, reject both extremes. One ingredient in intermediate positions deserves to be singled out as especially threatening to anti-cosmopolitanism. It might be called “the cosmopolitanism of need.” In this view, the domestic political duty to support measures, compatible with basic liberties, that do what can be done to help compatriots in their efforts to escape from poverty has a worldwide analogue, in the Standard Case, a duty to support measures, compatible with basic liberties, that do what can be done to help the global poor to escape.

Rawls himself seems to be an anti-cosmopolitan. He explicitly rejects the cosmopolitanism of equality and the global extrapolation of the domestic original position. While he acknowledges a duty to help burdened societies provide for the basic needs of their citizens, this duty of assistance seems to lack the urgency and strictness of the commitment to relieve poverty among disadvantaged compatriots in his special conception of justice. More fortunate societies must help burdened societies “eventually” to “secure a social world that makes possible a worthwhile life for all . . . [their] citizens.” This “long-term goal” expresses a “wish” that all live someday in well-ordered societies at peace with one another. But there is no further specification of the demands

¹ JOHN RAWLS, *A THEORY OF JUSTICE* 98-99 (rev. ed. 1999). Like all of the passages from *A Theory of Justice* that will be cited, this is the same in the original edition.

² For defense and further explanation, see RICHARD MILLER, *GLOBALIZING JUSTICE: THE ETHICS OF POVERTY AND POWER* ch. 1 (2010), and Richard Miller, *Beneficence, Duty and Distance*, 32 *PHIL. & PUB. AFF.* 357 (2004).

this “principle of transition” imposes on the better-off.³ It seems to carve out a favored target of beneficence, honoring the value of political goals that impose sterner demands of justice domestically.

Cosmopolitans take Rawls’s position to be a failure of nerve, an unjustifiable refusal to accept radical foreign implications of his domestic arguments. Certainly, his actual arguments about the differences between the domestic and the global are not an adequate justification of what seems to be his outlook, an anti-cosmopolitanism that concedes a duty to help realize the cosmopolitanism of need over the long run.⁴ I will try to fill this gap, sketching a plausible argument for anti-cosmopolitanism that relies on deep and attractive commitments of Rawls’s, especially in his later writings. There are other strands in his dense web of argument, suggesting a general demand to eliminate disadvantages due to brute luck, that might sustain a more cosmopolitan position. Far from relying on claims about domestic justice that are clear and univocal in Rawls’s writings as a whole, a resolution of the cosmopolitanism controversy is, I think, mostly of interest as shedding light on what he should have meant and may have, in the end, in describing justice within borders. The elaboration of strands in Rawls that best sustains his anti-cosmopolitan inclinations resolves disputes over freedom and equality within borders in terms that are less egalitarian and more receptive to libertarian and communitarian concerns than some of his statements suggest and many Rawlsians insist.

In this effort, I will be trying to do to Rawls what David Lyons did for Bentham, in his book, *In the Interest of the Governed*. The book appeared in 1973, when *A Theory of Justice* was the latest thing and the controversy over global justice had not been born. But its combination of subtlety, precision, imagination, and rigorous attention to fundamental questions of deep humane concern yielded insights that cast a bright light on the current controversy. Lyons confronted a familiar universalistic interpretation of Bentham’s utilitarianism that seemed obviously right: one ought to act so as to bring about the greatest happiness among all affected. He powerfully argued that Bentham, instead, required impartial promotion of the interests of the governed: “one ought to promote the happiness of . . . those subject to one’s direction, influence or control . . . rather than [all] those who may be affected.”⁵ In Bentham’s view, on his interpretation, this principle restricts the political obligation to impartially promote happiness to one’s own political community. The option of parochial impartiality that Lyons explored will turn

³ See JOHN RAWLS, *THE LAW OF PEOPLES* 89, 106-07, 111, 118 (1999).

⁴ In *The Law of Peoples*, the section that he singles out as showing why the parties to the domestic and global original positions are not the same turns out to be a quick discussion, begging that question, of tolerance of an imaginable form of decent nonliberal government. *See id.* at 17, 82-85.

⁵ DAVID LYONS, *IN THE INTEREST OF THE GOVERNED: A STUDY IN BENTHAM’S PHILOSOPHY OF UTILITY AND LAW* 31-32 (1973).

out to be a crucial resource for the anti-cosmopolitan position in the current debate. His central criticism of Bentham will expose a limitation of the current debate that is morally toxic unless clearly marked.⁶

I. FUNDAMENTAL INTERESTS AND GLOBAL INEQUALITIES

Assessment of the current controversy might begin by scrutinizing the characteristic argument of strict, egalitarian cosmopolitans. While their ultimate global demands are very far from ordinary political discourse, the argument appeals to widespread condemnation of the wrongs of racist and feudal societies in which people are burdened by morally arbitrary differences. In the Standard Case, people can be burdened (as they often are in the actual

⁶ In this debate, important cases for the cosmopolitanism of equality include Charles R. Beitz, *Justice and International Relations*, 4 PHIL. & PUB. AFF. 360 (1975); CHARLES BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS Part III* (Princeton Univ. Press 1999) (1979); THOMAS POGGE, *REALIZING RAWLS Part III* (1989); and DARREL MOELLENDORF, *COSMOPOLITAN JUSTICE* ch. 3-4 (2002). Grounding this strict cosmopolitanism on nothing more than the Standard Case, Beitz emphasizes that

international economic cooperation creates a new basis for international morality. . . .
Since boundaries are not coextensive with the scope of social cooperation, they do not mark the limits of social obligations. Thus, the parties to the original position cannot be assumed to know that they are members of a particular national society.

Beitz, *supra*, at 373, 376. Similarly, Moellendorf justifies his global extrapolation of Rawls's domestic theory of justice on the grounds that "duties of justice arise . . . when activities such as . . . commerce bring persons into association," MOELLENDORF, *supra*, at 32, while Pogge took "significant global interdependence" to be the basis for bringing Rawls's "contractarian device to bear on the global plane." POGGE, *supra*, at 241.

Anti-cosmopolitanism is defended in Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113, 114 (2005); Richard Miller, *Cosmopolitan Respect and Patriotic Concern*, 27 PHIL. & PUB. AFF. 202 (1998); and MILLER, *supra* note 2, ch. 2. Michael Blake, *Distributive Justice, Coercion and Autonomy*, 30 PHIL. & PUB. AFF. 257, 257-96 (2002), and Andrea Sangiovanni, *Global Justice, Reciprocity and the State*, 35 PHIL. & PUB. AFF. 3 (2007), argue against the global extrapolation of egalitarian standards of justice such as Rawls's and support a global political duty of beneficence instead. But they seem to have in mind a demanding duty to do what can be done to raise all above a threshold of destitution. See Blake, *supra*, at 259; Sangiovanni, *supra*, at 4. While the present Essay draws on my earlier discussions, I hope to better specify the version of Rawlsian domestic justice that is compatible with anti-cosmopolitanism and the implications of extending the domestic original position to the world at large.

While Blake and Sangiovanni seem to be cosmopolitans of need, neither provides a detailed argument for a demanding political duty to do what can be done to eliminate global poverty or a reason why a sufficient justification would not require doing even more for the global disadvantaged. In GILLIAN BROCK, *GLOBAL JUSTICE: A COSMOPOLITAN ACCOUNT* ch. 3 (2009), Brock explicitly defends the cosmopolitanism of need, as against the cosmopolitanism of equality.

I will very briefly indicate, in subsequent notes, my grounds for disagreement with others' contributions to this dispute over Rawls's legacy.

world) by the morally arbitrary fact of growing up in one country rather than another, a fact that lowers their lifetime expectations of success, creating lesser prospects despite equal aptitude and willingness to strive. To avoid unjust discrimination, the strict cosmopolitans say, one must choose what laws and institutions to support according to principles that one would endorse as advancing morally relevant interests behind a veil of ignorance of morally arbitrary features of one's actual situation. This imperative of impartiality is, they say, the justification for reliance on Rawls's domestic original position when the scope of inquiry into justice is restricted as Rawls did in *A Theory of Justice*, conceiving "the basic structure . . . for the time being as a closed system isolated from other societies."⁷ When this stipulation is cancelled, the same moral imperative of impartiality requires conformity to principles that one would endorse in a global version of the original position, in which one chooses in ignorance of the morally arbitrary fact of growing up in one country rather than another. The outcome, they claim, will extend worldwide the demanding principles of equality that emerge from the narrowly domestic position restricted to fellow-citizens.⁸

The final claim in this argument, that globalizing the original position would extend familiar Rawlsian demands for greater equality worldwide, has been less controversial than the claim that the original position should be globalized. I will eventually follow Lyons's Bentham into the latter debate, asking whether there is a basis for global impartiality in the Standard Case. But it is important to question the inference *from* global impartiality, as well, in the spirit of David's tendency to question what others find obvious. The argument against a global extrapolation of the original position is difficult and depends on convictions about fairness and duty that are not shared by all who are sympathetic to Rawls's arguments and goals concerning domestic justice. To clarify what is at stake in this further controversy, one should ask whether the extrapolation of perspective would, in fact, produce an extrapolation of principles. This question will also turn out to clarify Rawls's strategy in his most extensive project in international ethics, the description of a "realistic utopia" in *The Law of Peoples*.

Rawls's domestic demands for equality would not be extended worldwide by a cogent global extension of his domestic original position. New fundamental interests ought to come into play, along with new costs of reduced inequality, radically weakening global egalitarian demands, so that only the cosmopolitanism of need is clearly sustained.

As Rawls insisted, with increasing emphasis over the years, a device of impartial choice that justifies moral principles had better involve pursuit of the right kinds of interests, graded according to their moral importance. If all desires were to count in the choice of principles to govern the basic structure of

⁷ RAWLS, *A THEORY OF JUSTICE*, *supra* note 1, at 7.

⁸ See, e.g., Beitz, *supra* note 6, at 379; POGGE, *supra* note 6, at 247; MOELLENDORF, *supra* note 6, at 79.

laws and institutions, the choice would have to give significant weight to intense desires to dominate or to live off of others. Ignorant of whether one has the integrity to refuse to put one's freedom of religion in jeopardy to bet on a heightened chance of prosperity, one would not make secure protection of this freedom part of the fundamental standard of justice. Still, a humane and respectful determination of the best basic structure must be responsive to interests of those whose framework for self-advancement is set by the basic structure. The fundamental interests, i.e., the interests that have standing in this choice, are the interests that each must treat as important (and equally so) for all in deliberations over relevant principles of choice that express full and equal respect for herself and others. Determining what these interests are requires moral reflection, taking relatively secure specific moral judgments as its raw material.⁹

While Rawls emphasizes such interests in arguing for the priority of civil and political liberties, fundamental interests also set limits to equality, as he, more quietly, admits. As much as Robert Nozick, Rawls insists that a just society must guarantee secure principles of entitlement, extending at least as far as guarantees of personal property. In the original position, the choice of this guarantee would seem to reflect a fundamental interest in advancing the life goals and relationships that one values through one's own efforts. People want to get ahead on their own steam, shaping the contours of their own lives along the lines of what their care about. Those with no such interest in self-reliance lack self-respect, the attitude whose social underpinning is a hallmark of basic liberties for Rawls. In *Justice as Fairness*, Rawls takes the ultimate goal of economic justice to be "to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality" and bases rights to personal property on "fundamental interests" including the interest in "a sufficient material basis for personal independence and a sense of self-respect."¹⁰ Because the interest in self-reliance concerns the goals that determine the contours of a life, not just desires for current enjoyments, its great importance gives strong priority to a system of secure entitlement,

⁹ In explaining the central role of fundamental interests, as opposed to actual desires and inclinations, Rawls notes, "Remember it is up to us, you and me, who are setting up justice as fairness, to describe the parties (as artificial persons in our device of representation) as best suits our aims in developing a political conception of justice." JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT* 87 (2001); see also *id.* 85, 107, 141. In contrast to Rawls's advice to ground fundamental interests on moral arguments, Brock bases her dissent from the consensus that a global original position entails a global difference principle on an empirical finding about the principles people typically favor when instructed to deliberate impartially over principles of justice. While her skepticism about the consensus among Rawlsians is well taken, her reliance on the consensus of experimental subjects leaves it unclear whether their preferences can survive moral scrutiny and how their conclusions could be the outcome of the distinctive process of impartial choice that Rawls prescribes. See BROCK, *supra* note 6, at 54-57.

¹⁰ RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 9, at 139, 144.

through which people are assured that their efforts to acquire material means to their own ends will not be deprived of point and value. Securing gains due to lucky breaks is an inevitable result of such a system, and a price that must be paid to honor those values of self-reliance.

A second fundamental interest that limits the pursuit of greater equality underlies Rawls's insistence on freedom of association. This is the interest in effective engagement in valued relationships, with mutual caring among intimates as its core. Within valued relationships, people committed to self-reliance willingly receive help, but there is no real contradiction, here, since they are committed to ultimate reciprocity. For humane and self-respecting people, effective concern for others in valued relationships is a fundamental interest, perhaps the most important. To insist that laws and institutions thwart core interests in mutual caring among intimates in order to promote equal opportunity or material expectations for the worst-off would be perverse: a violation of what people rightly want to protect, in the name of advancement of their interests. Avoiding this perversion, Rawls insists on protection of nurturance within families (and, implicitly, mutual care among friends), despite the inevitable widening of inequality of opportunity.

With her fundamental interests in self-reliance and association, someone choosing behind the veil of ignorance will require entitlements and protections of association that create significant inequality, and will give priority to greater equality of opportunity over greater equality of outcomes, in the space for equalization that remains. If the original position is extended worldwide, the construal of those interests should also be extended to embrace distinctive relations to one's political society. This extension would further restrict the space for equalization of opportunities and expectations, so that the demands binding the most and the least advantaged compatriots do not bind the most and the least advantaged among humanity as a whole.

Fellow-members of sovereign citizenries typically devote energy and attention, take risks, and make sacrifices in a collective project of advancing prosperity and justice in their territory. The fundamental interest in self-reliance ought to be extended to include an interest in collective self-reliance in these endeavors. Not to want prospects of self-advancement among those with whom one is engaged in the civic endeavor to reflect sacrifices, risks, and choices in this endeavor, as opposed to outside aid, shows a lack of self-respect. In the sparse list of fundamental interests that Rawls takes to be relevant to global justice, this would violate "proper patriotism," pride in one's people's accomplishments, whose expression is a fundamental interest because of its role in "proper self-respect."¹¹

The fundamental interest in mutual concern in valued relationships also has a compelling extension in global justice. Effective engagement with others in shaping beneficial life-long terms of self-advancement, in a process requiring sacrifice and trust, properly gives rise to special mutual concern among

¹¹ RAWLS, *THE LAW OF PEOPLES*, *supra* note 3, at 34, 44.

associates. Loyalty to a shared vital project merits personal loyalty, if the project is worthwhile. So effective concern among fellow-citizens engaged in a joint project of local prosperity and justice should, like effective concern among family and friends, be impartially promoted in the choice determining what global political arrangements are best. Rawls speaks of the mutual concern appropriate to civic association as “civic friendship,” going so far as to say that the right explication of political justification would “specify the nature of the political relation in a constitutional democratic regime as one of civic friendship.”¹² A fundamental interest in friendship is not properly expressed in a policy of leaving a friend in the lurch whenever enticed by the opportunity to help more disadvantaged strangers.

Advancing her fundamental interests in collective self-reliance and civic friendship, someone choosing political principles in the global original position would insist on priority for concern among compatriots, even when foreigners’ opportunities and expectations are less and would be of primary concern if they were compatriots. So choice behind the global veil of ignorance does not extend the domestic political concern for the least advantaged worldwide.

These general global constraints on global concern to reduce inequality also conflict in more specific ways with the extrapolation of the two egalitarian principles, fair equality of opportunity and the difference principle, especially when costs of reducing inequality are taken into account. A proper valuing of self-reliance will channel public efforts to improve inferior opportunities to educational facilities providing means that people subsequently use in pursuing their goals. This is always Rawls’s emphasis in describing what must be provided to make opportunities fair.¹³ But education is expensive. If educational facilities made it equally likely that everyone equally committed to any goal, whatever the social benefit, expense of training, or likelihood of success, would attain it, if equally naturally endowed, the cost would probably be exorbitant, reducing the opportunities of all. In rationing means to reduce inequality of opportunity, intensity of aspiration among those with equal innate endowment is not the right criterion. One’s intense desire to write avant-garde poetry full-time ought to be one’s own responsibility, as the proper valuing of self-reliance requires. So the reduction of inequalities in opportunities to succeed will have to be regulated by some appropriate objective hierarchy of successes. In his reflections on fair equality of opportunity within a society, Rawls assumes that “levels of income and wealth are sufficiently correlated with differences in authority and responsibility. . . . That is . . . those with greater political authority, say, or those with more responsibility in various

¹² JOHN RAWLS, *The Idea of Public Reason Revisited*, in COLLECTED PAPERS 573, 579 (Samuel Freeman ed., 1999). In the first section of *A Theory of Justice*, Rawls notes that “a shared conception of justice establishes the bonds of civic friendship.” RAWLS, A THEORY OF JUSTICE, *supra* note 1, at 5.

¹³ See, e.g., RAWLS, A THEORY OF JUSTICE, *supra* note 1, at 63; RAWLS, JUSTICE AS FAIRNESS, *supra* note 9, at 44.

associations, are in general better off in other respects.”¹⁴ But, however sensible this assumption of correlation is in a modern capitalist society, the fundamental interests in self-reliance and civic friendship would single out responsibility and authority, together with interesting work and “a skillful and devoted exercise of social duties,”¹⁵ as the basic standards of success in the politically relevant hierarchy. This fits Rawls’s emphasis on “offices” and “positions,” not incomes, as the primary topic, at the start of the section on fair equality of opportunity in *A Theory of Justice*.¹⁶

The task of reducing inequalities in opportunity assessed by these criteria, among those with equal aptitude and interest, is primarily local. It can be achieved in a world in which material resources are very different internationally, by affording fair equality of opportunity to reach high grade positions within each society. In advancing her interests in individual and collective self-reliance and in civic friendship, someone choosing political principles behind a global veil of ignorance would take care to insure such internal equalization, even though it will leave intact global differences in resources that would create substantial disadvantages in the pursuit of success within the same society. This emphasis advances those interests because they value access to autonomous productive activity in collective tasks and because unequal access to responsibility and authority creates dangers of subordination and political negligence within a society. In contrast, in the Standard Case, international transfers to reduce additional international inequalities in opportunities (for example, additional international inequalities in opportunities to be an investment banker or to be rich) would have to cope with barriers of geography, society, and culture that are extremely costly to overcome in order to achieve politically unimportant gains in opportunity in ways that do infringe on collective self-reliance and civic friendship.

Costs of equalizing also block the global extrapolation of the difference principle. The moderate close-knittedness of economic fates that keeps its costs to the better-off within acceptable limits within a society is absent in the world at large. As a proposal in the domestic original position, the difference principle at first seems too one-sided. Why insist that the lifetime material expectations of the worst-off representative individual be as great as they can be (if the demands of the prior principles are met), when one may well be in a better-off situation? Rawls’s response was never to dismiss the objection as fundamentally misguided, but rather to appeal to the workings of the prior principles of unrestricted access to occupations and fair equality of opportunity. Laws foregoing small advances for the worst-off will not vastly benefit the better-off because fair equality of opportunity and a free labor market level out large differences, attracting hordes to compete for the better-off positions until the difference is small. He might also have noted that with a

¹⁴ RAWLS, *A THEORY OF JUSTICE*, *supra* note 1, at 83.

¹⁵ *Id.* at 73.

¹⁶ *Id.*; *see also* RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 9, at 43.

high degree of intragenerational mobility due to fair equality of opportunity, greater prosperity in better-off situations increases the chances of lifetime prosperity of those who are currently disadvantaged. The global economy lacks these tendencies. Local ties and the difficulties of acquiring skills, linguistic, cultural, and economic, needed for success abroad make economic fates much less close-knitted globally than locally under any non-exorbitant project for reducing global inequality of opportunity. Behind a global veil of ignorance, a global difference principle will be too one-sided.

Indeed, even apart from the distinctive skewing of concern in the difference principle, a global egalitarian principle regulating lifetime expectations of economic success seems inappropriate.¹⁷ In a choice expressing fundamental interests in self-reliance and association, a principle restricting such inequalities must meet a pressing demand for justification: after guaranteeing equal civil and political liberties and protecting against unfair inequalities of opportunity, why would someone with those fundamental concerns insist on political measures to reduce inequalities of outcomes, even lifetime expectations of successful outcomes? Of course, in our personal lives, greater income and wealth are often useful in pursuit of personal goals. But the outcome of the original position is a set of standards establishing claims, implemented by political institutions, that those represented are to make on one another. Why would someone with appropriately strong fundamental interests in self-reliance and in special concern within more limited associations want to advance her interests through politically imposed transfers from those who have been more successful in self-advancement?

Far from dismissing this question, Rawls responded to it with reasons for political concern about unequal outcomes that became increasingly specific and diverse over the decades. The lists of reasons for “being concerned about

¹⁷ Here, I put to one side the problem of assessing these expectations, which burdens all such global principles. The domestic difference principle requires the maximization of the lifetime expectations of income and wealth typical of those whose expectations are least. For purposes of basic justice within a society, expectations of income and wealth may be a reasonable approximate measure of relevant differences. But in different societies, the same purchasing power can have a very different bearing on what people properly care about, on account of different political choices concerning leisure, public provision, security, employees’ and employers’ prerogatives and the like and different cultural, natural, and demographic situations. That per capita Gross National Income at purchasing power parity in France is a quarter less than in the United States is not strong evidence that people in France are, on the whole, worse-off. Responsive to these dangers, cosmopolitans of equality attend, generically, to material well-being, *see* Beitz, *supra* note 6, at 377, or benefits enjoyed, *see* MOELLENDORF, *supra* note 6, at 83. But it is by no means clear how these assessments can be introduced into demands of justice without introducing irrelevancies, advantages, and disadvantages due to the local setting that ought to play no role in transnational justice. The quality of the local cuisine would be one small example. Presumably, inferiority to food in France is not the sort of disadvantage that counts, in applying a global difference principle.

inequality in domestic society”¹⁸ in both *The Law of Peoples* and *Justice as Fairness*¹⁹ begin by noting the duty to meet “basic needs,”²⁰ relieving “the suffering and hardship of the poor,”²¹ and by noting that this is not, in fact, a concern to reduce inequality, as such. The lists go on to note that when inequalities of income and wealth become too great they contribute to political domination by corrupting democratic governance and encourage attitudes of servility, deference, and arrogance. Here, the interest in self-reliance is well-served, since it includes concerns to avoid subordination and not to live off of benefits of domination. Finally, Rawls notes that “a certain equality, or well-moderated inequality” is needed to insure that “society makes use of fair procedures.”²² His examples are the need to break up monopolies that interfere with “fair, that is open and workably competitive markets,” to eliminate unfair influence of “a wealthy few” in political elections,²³ and to promote fair equality of opportunity. I will subsequently argue that fairness in the promotion of prosperity in the sovereign territory of one’s government deserves special standing as the main basis for reliance on the original position in choosing domestic norms of economic justice. The same interest in fairness in processes providing benefits by political means would play a leading role in choice within the domestic original position, as well, expressing a self-respecting participant’s highest-order interest in cooperating on fair terms.

Other reasons to avoid excessive inequality also accommodate, supplement, express, and implement interests in self-reliance and association. For example, in his later development of the strains-of-commitment argument in *A Theory of Justice*, Rawls proposes that a shared public commitment to the difference principle is a prerequisite for active allegiance to the shared political order on the part of all citizens, advantaged and disadvantaged.²⁴ Taken together, these arguments would not support insistence, in the domestic original position, that the lifetime expectations of income and wealth of the individual with the lowest expectations be as great as possible. But this is not the difference principle. What are to be maximized (within broad limits, as required by further principles and fundamental interests) are the expectations of the “worst-off representative individual”: these might, Rawls speculates, be identified, on further reflection, with the expectations typical of those who can expect no more than unskilled workers, or with the expectations of those with less than half of median income and wealth.²⁵ These would be appallingly blurry depictions of greatest disadvantage as such. But adopting some such broad

¹⁸ RAWLS, *THE LAW OF PEOPLES*, *supra* note 3, at 114.

¹⁹ *Id.*; RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 9, at 130-32.

²⁰ RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 9, at 130.

²¹ RAWLS, *THE LAW OF PEOPLES*, *supra* note 3, at 114.

²² RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 9, at 131.

²³ *Id.*

²⁴ *See id.* at 128-30, 133.

²⁵ *See* RAWLS, *A THEORY OF JUSTICE*, *supra* note 1, at 84.

standard of primary concern in assessing the economic situation of fellow-citizens is attractive as a shared public means of monitoring the vast package of relevant laws and policies to prevent violation of the various specific interests in equality. In effect, the difference principle is a political device for encouraging “the political virtues of mutual trust and cooperation” among fellow-citizens concerned to restrict inequalities for many specific reasons.²⁶

Such reasoning reconciles concerns to reduce inequality of outcome with interests in self-reliance and association. But the underlying concerns are specific to the shared social life of compatriots. Of course, in the real world, excessive international economic inequalities give rise to domination of international organizations by “a wealthy few,” promote arrogance and guarantee that multinational deliberations will be unfair.²⁷ But the Standard Case, in which the only relevant international fact is the mere fact of commerce, excludes these further considerations. (Even when they are taken into account, collective self-reliance, civic friendship, and the normal primary role of domestic processes in shaping lives will block the choice of a basic distributive principle regulating inequalities in lifetime material expectations in the world at large.)

In sum, if the original position is extrapolated worldwide, the cosmopolitanism of equality ought to be rejected as inappropriate in the Standard Case. But the cosmopolitanism of need is quite another matter. The interest in shaping the contours of one’s own life that requires protection of achievements also requires protection against a situation in which one’s life is dominated by a struggle for mere survival, rather than advancement of one’s distinctive life goals. The interest in mutual concern in valued relationships requires protection of one’s efforts to take care of others, but if a dependent could not thrive on the basis of one’s own efforts, the same interest calls for help in nurturance. Sovereign self-reliance and civic friendship may make compatriots the first resort in rising above these thresholds. But it would show a lack of self-respect, an obsessive pursuit of independence detached from the sources of its value, not to seek outside help as a last resort. Thus, fundamental interests that ought to be pursued in a global original position will, unsurprisingly, lead to the choice of principles requiring the relief of abject poverty, even if principles of equality do not globalize. This fits Rawls’s own first priority in social progress, promoting the “effective exercise” of basic liberties, with emphasis on liberties protecting the most fundamental interests, until “all the basic liberties can be fully enjoyed.”²⁸ Far from ignoring material prerequisites, Rawls is receptive to a first-ranked principle of justice requiring “that citizens’ basic needs be met . . . at least

²⁶ See RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 9, at 133.

²⁷ As Rawls emphasizes in *THE LAW OF PEOPLES*, *supra* note 3, at 113-15.

²⁸ RAWLS, *A THEORY OF JUSTICE*, *supra* note 1, at 217.

insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise [the equal basic] rights and liberties.”²⁹

A concern to relieve abject poverty is also required by the Principle of Sympathy, when poverty-relief does not impose a risk of worsening the benefactor’s life if he fulfills his other responsibilities. But a global original position would seem to sustain a more stringent political demand. Behind the veil of ignorance, one must respond to the possibility of lacking resources needed to live a life one could accept while caring about oneself and one’s dependents; so, one would insist on measures that would relieve such destitution even if they deprive better-off people of means of secure enjoyment of a more than minimally acceptable life, based on relatively expensive worthwhile life goals with which they identify. This duty would not be blocked by political responsibilities to disadvantaged compatriots who are less needy than the global poor, since it would have pride of place among political responsibilities.

II. WHAT IS IT ABOUT GOVERNMENT?

The cosmopolitanism of need is vindicated, if political choices in the Standard Case should be guided by principles that would be chosen in a global original position. By the same token, the anti-cosmopolitan position depends on a sufficiently restricted view – Benthamite if Lyons was right – of what makes reliance on something like the original position appropriate when only compatriots are taken into account. According to the shared premise of the dispute, this impartiality is a requirement of right choice in the government of a sovereign territory; but the basis for this impartiality must not extend worldwide in the Standard Case, imposing deeper sacrifices than the Principle of Sympathy demands.

What is it about government that has this special moral power? The aim of monopolizing permission to use force throughout a territory is not enough. If households farming an as yet ungoverned territory organized a force that sought such a monopoly and used it to prevent murder and rape, the better-off farmers would not take on a duty impartially to promote the fundamental interests of everyone in their territory.³⁰ Even protection against theft works no such moral magic, in itself. One might as well claim that a farmer acquires a duty to help the needy even to the serious disadvantage of his household by putting a lock on his granary.³¹ Nor would an isolated step beyond protection against unilateral interference be enough. If a coastal community of farmers

²⁹ JOHN RAWLS, *POLITICAL LIBERALISM* 7 (1993).

³⁰ Cf. Blake’s thesis that political coercion is a sufficient (and necessary) basis for egalitarian demands of a broadly Rawlsian sort. Blake, *supra* note 6, at 281-84.

³¹ Cf. Sangiovanni’s claim that “the state’s capacity to provide the basic goods necessary to protect us from physical attack and to maintain and reproduce a stable system of property rights and entitlements” is sufficient to make economic equality a demand of justice. Sangiovanni, *supra* note 6, at 19.

are only politically united by a public authority that builds and maintains dikes, needed to keep the sea out of their farms, then costs imposed in maintaining the jointly needed dikes should reflect differences in burdens and benefits of participation. If, to cope with public goods problems, tendencies to defer maintenance and needs for coordination, the farmers impose an enduring dike-construction-and-maintenance arrangement on everyone in their community, then the terms for sustaining the project should, arguably, be those that everyone would accept behind a veil of ignorance of their locations, resources, and needs. But even if the worst-off are poor and everyone would be destitute without the dikes, an appropriately impartial choice among rules to regulate the building and maintenance of dikes will not regulate opportunities and life-prospects as a whole. For example, if the dike arrangement frees the poor of all obligations, the better-off have no duty to attend to their disadvantages beyond the demands of beneficence.

To avoid investing too much moral power in this or that element of government, one might start by describing the full array of modern political activities sustaining the original position and then distill their essence. First, consider the sort of political authority that everyone has reason to support in modern circumstances; next, ask how the full range of its activities makes the original position and its demands for equality the appropriate basis for justice; finally, locate the crucial core of this sufficient basis.

At least in modern circumstances, governments properly aim to promote the interests of people in their territory through diverse, shifting, wide-ranging legislation of rights and responsibilities, coordination, maintenance and start-up of all sorts of facilities for transportation, communication, education, research, protection and insurance, and fiscal and monetary policies. A government with this broad authority is in the interest of all. But the particular ways in which this broad authority is exercised can benefit some much more than others. Indeed, while it is in the interest of all to grant their government authority to advance the interests of its citizens, some will lose out in nearly every particular exercise of this authority, because their skills, location, needs, or the goals with which they identify are less well-suited to the generally progressive alternative than to the situation that was changed.

The broad scope of a modern government's proper authority creates a correspondingly broad requirement of fairness that makes the original position, fair equality of opportunity and the difference principle parts of justice. The imposition of political authority is subordination if the imposed arrangements are unfair. If the government confined itself to imposition of obligations needed to sustain a specific public project, such as dike-construction-and-maintenance, then fairness would only require impartial selection among alternative packages of burdens and benefits of the project. But acceptance of an indefinitely extensive authority to advance interests among those who can only leave at great cost, by imposing measures that often burden some without commensurate benefits, requires a correspondingly extensive assurance of impartiality.

One cannot achieve fairness in the general project of betterment through a rule that each contribute in proportion to what she receives. For this would beg the question of the fairness of the public enterprise as a whole. As Rawls insists in response to Gauthier's equation of social fairness with mutual benefit, abilities to contribute and needs and desires determining what counts as contribution and benefit are themselves importantly determined by the selection among opportunities, rights, and responsibilities in the exercise of authority whose fairness is being judged.³² To insure that the imposed arrangements, which deeply shape capacities, needs, and desires, are not imposed unfairly, one must apply principles that would be chosen by all on whom the arrangements are imposed if they advanced morally appropriate interests behind a veil of ignorance of their own capacities, needs, and desires.

Rawls's special conception of justice will be the product of this device for insuring fairness, given the moderate close-knittedness of interests characteristic of modern societies and the fundamental interests pursued. The role of private endeavors in making use of opportunities created by the public enterprise is taken into account by the stipulated fundamental interests in self-reliance and association and the principles to which they give rise. In a political process regulated by those principles, those who hope to get ahead by striving harder will not have cause for complaint when inequalities of opportunity are reduced, since this type of equality is conditional on equal willingness to try. If people are allowed to make important use of lucky breaks, including luck in nurturance in childhood, under rules establishing secure entitlements, they have no complaint against measures that cancel further benefits of luck to achieve a fair distribution of benefits of political cooperation. Reduction in inequality of opportunities that respects fundamental interests in self-reliance and association will, inevitably, leave some people burdened by a residue of inferior opportunity and by inferior bargaining power. Given moderate close-knittedness, a difference principle matched with an appropriate construal of "the worst-off representative individual" will mitigate burdening by this residue while giving adequate scope to successful self-advancement.

Now, for the distillation of the crucial features of this mix. A broad exercise of authority is presupposed, providing facilities and regulations extending far beyond mere protection against unilateral interference. It would be strained to call a narrower public authority a government, but this is just a matter of words. What is important is that the modern governments that are the common topic of Rawls, cosmopolitans and anti-cosmopolitans exercise this broad authority. If the breadth cannot be justified, then contraction, not fair exercise, would be the right solution. So the arrangement must respond to circumstances, including all remotely modern circumstances, in which a sufficiently broad authority is in everyone's interest, among arrangements that

³² See RAWLS, *The Basic Structure as Subject*, in *POLITICAL LIBERALISM*, *supra* note 29, at 269, 277-79.

are fair. While modern governments actually commit themselves to promoting the common good, one would not want to make this commitment a prerequisite for a duty to govern fairly. A tyrant who frankly proclaims that he will use his power to enrich himself wrongs his subjects through unfairness, even if he does not insult them through hypocrisy.³³ So breadth of imposition is what counts, independent of the intentions that accompany it.

While the imposition of a broad and important framework for self-advancement throughout a territory is always in fact backed up by coercion, this is not essential to the grounding of the original position. If the terms of self-advancement were to be sustained solely by everyone's commitment to a sufficiently extensive lifelong covenant, in which each gives up legitimate prerogatives of self-government on condition that others do the same, insistence that all observe an unfair covenant would be unjust and impartial reflection on lifelong prospects, guided by appropriate fundamental interests, would be the appropriate test of fairness.³⁴ Arrangements depending on enduring collective self-imposition of constraints count as imposed, a source of self-inflicted domination (like a contract to enter into slavery) if they are unfair.

Finally, while actual modern government – perhaps all government worthy of the label – involves territorial sovereignty, this is not essential. What is essential is that the imposition have a deep impact on the lives of those who remain subjects and that there are deep costs of leaving its sphere. A framework for self-advancement imposed among a nomadic band could sustain the original position.

One can sum up the crucial argument as an application of a democratic imperative: if an imposed arrangement does not provide fair terms of cooperation, then those who take part in the choice of what to impose have a duty to end this subordination, even if they will lose benefits that are important in the pursuit of worthwhile goals. After all, it is wrong to insist on continued benefits due to unfair subordination of others. Because it can require choices that pose a significant risk of worsening one's life, the democratic imperative can cut deeper than the Principle of Sympathy. The domestic original position implements the democratic imperative in a situation in which fairness must reflect the deep, broad, lifelong shaping of capacities, needs, and desires by an imposed framework whose depth, breadth, and endurance serve the fundamental interests of all. To assure that capacities, needs, and desires are shaped through a fair process, those who help to impose it must insure that it conforms to principles that impartially advance the fundamental interests that all share, despite their different capacities, needs, and desires. The domestic original position is a device for establishing this impartiality.

³³ Cf. Nagel's attempt to limit obligations of distributive justice to situations in which a government claims to rule in the name of its subjects. Nagel, *supra* note 6, at 128.

³⁴ So coercion is not a necessary basis for Rawlsian justice, as Blake proposes.

In the Standard Case, no arrangement is imposed across borders. In actual global commerce, unequal bargaining power due to the incapacity of the desperate to hold out for better terms may lead to economic subordination. But the Standard Case only includes relationships implicit in the mere fact of global commerce, not such further, morally relevant facts. Of course, in all commerce, people wish that they had more to offer. But no one has taken advantage of others' fear, ignorance, or frailty to diminish their capacity to advance their projects, in this simpler, nicer version of the global economy. By the same hypothesis, the capacities, needs, and desires of people in different countries have not been shaped by arrangements imposed on all. In this world, the democratic imperative provides no basis for a global original position or, indeed, any duty of transnational concern.³⁵

III. TWO COSMOPOLITAN RESPONSES

Of the several responses available to cosmopolitans, two are, I think, especially revealing. One is to abandon the charge of inconsistency, conceding that there are grounds for the domestic original position that do not globalize in the Standard Case, while pressing the positive argument that a global extrapolation of the domestic original position is needed to avoid unjust discrimination between people on the basis of morally arbitrary features. Even if global arrangements are not imposed in the Standard Case, it remains true that we do not deserve our initial advantages, including growing up in a rich country. It might seem to follow that we must be willing to give up benefits depending on these advantages.

However, undeserved initial advantages, say, from especially beneficial upbringing or early environment, are not, just by that token, illegitimately provided. People can rightly refuse to give up benefits from their making good use of undeserved advantages that did not result from unfair impositions.³⁶ While Rawls may originally have been drawn to the alternative argument, he was wise to subsequently leave it behind, in favor of appeals to free and equal citizenship.

The other cosmopolitan response seeks to expose an unfair imposition in the Standard Case, even when the Principle of Sympathy is observed. As Henry Shue emphasizes in *Basic Rights*, commerce entails exclusive property rights, coercively enforced against all potential takers. In the Standard Case,

³⁵ Even if one adds immigration restrictions to the Standard Case, nothing like the cosmopolitanism of need will result. If the restrictions keep outsiders from joining the civic enterprise through policies that would worsen the lives of members, they are justified defense against intrusion, like a nomadic band's refusal to take in outsiders whose joining would be burdensome. Exclusion from access to natural resources is another matter, but it does not play a large independent role among factors in international inequality.

³⁶ One might make a further claim that David Schmidtz incisively develops and defends in *How to Deserve*, 30 *POL. THEORY* 774-99 (2002): in making good use of initially undeserved advantages, someone can, eventually, come to have deserved them.

foreigners are prevented from coming and taking. If they are desperately poor and cannot meet basic needs of themselves and their dependents, their coming and taking luxuries, comforts, even resources that would be used for worthy cultural goals, to relieve this desperation is not wrong as such, Shue plausibly claims.³⁷ So, it might seem, a global system of commerce in which dire poverty is bound to persist and could be relieved by such transfers *is* a form of subordination which wrongly relies on fear and weakness to keep people from what they need.

An adequate answer to this powerful argument makes use of the morality of protection that libertarians celebrate and exaggerate. People may, without wrongdoing, act to prevent others from unilaterally interfering with their innocently going about their business in pursuit of legitimate interests, even if they do not offer the others an arrangement that they could willingly support. When the others are would-be rapists or murderers, coercive protection is clearly permissible. But, on reflection, such protection seems acceptable when the others are desperately poor people who do no wrong in trying to take, provided that the terms of the protection are compatible with the Principle of Sympathy. In the past, poor pastoralists have sometimes raided better-off agricultural communities to relieve dire poverty in times of famine. One can accept that their conduct is morally permissible under the circumstances without also condemning the farmers for defensive measures needed to preserve their more comfortable way of life. In protecting their standard of living, they refuse to take on a burdensome responsibility, independent of what they have done or received, to help others cope with their own independent dire burdens. They offer fair terms of interaction if they offer to exchange their commodities with what the herders have to sell and to provide help and refuge of nonburdensome kinds, on the understanding that nothing more will be given or taken. So the democratic imperative is satisfied when they fight off the hungry pastoralists. Still, their offer can reasonably be rejected by the herders, as imposing a constraint that they could not self-respectfully impose on themselves. In this case, a fair offer is fairly rejected.

IV. CURRENT JUSTICE AND REALISTIC UTOPIA

Of course, the absence of terms that all can self-respectfully uphold marks a gravely flawed interaction. Far from refuting Rawls, this observation helps to justify his use of a distinctive original position to develop norms for a global ideal in *The Law of Peoples*.

To properly value cooperation, one must have an aspiration to an ultimate stable international order based on shared norms for international political conduct that members of every political society can willingly endorse while regarding their fundamental interests as no more or less important than those of people in other societies. This aspiration entails willingness to contribute to progress toward the favorable circumstances that are preconditions for its

³⁷ See HENRY SHUE, BASIC RIGHTS 124 (2d ed. 1996).

fulfillment. The reconciliation toward which it strives is not available so long as people in some societies are so needy that they would reasonably support norms of aid that people in other societies would reasonably reject. Stability based on self-respectful support also presupposes that political societies are sufficiently well-ordered that there is no reason to seek disruption from outside. However, the long-term goal is not just the achievement of those preconditions, but the achievement of the global political life that they make possible, in which a global form of civic friendship is realized through adherence to international norms that everyone can self-respectfully, willingly endorse. One can specify this goal by asking what norms would be endorsed in these favorable circumstances by representatives of all people in all the well-ordered political societies, seeking to advance their fundamental interests behind a veil of ignorance of advantages and disadvantages. If the previous arguments against the cosmopolitanism of equality are right, the determinative interests in these favorable circumstances are interests in collective self-reliance and civic friendship.

This device for identifying an ultimate global aspiration is equivalent to an original position in which representatives advance the collective interests in the perpetuation of local justice and in political independence of members of well-ordered political societies. This is just the new version of the original position that Rawls deploys in *The Law of Peoples* to specify the norms of international relations among governments in the world that ought to be our active hope, a “realistic utopia,” as he puts it. His strategy does not ignore the ultimate moral importance of individuals and their interests, as cosmopolitan critics have charged. Rather, it affirms the proper role of certain social interests of individuals in shaping a certain aspiration to a better social world.

V. BEYOND THE STANDARD CASE

Given the shared focus on the Standard Case, the anti-cosmopolitans have won. But the nice features of that situation make it a fantasy. The more extensive the responsibilities created by actual activities missing from it, the shallower the victory.

The duty of special concern for compatriots reflected a democratic imperative to replace domination with fair cooperation. Mere commerce triggers no complaint of domination. But beyond the Standard Case, the imperative may generate vast, unmet responsibilities. Even transnational buying and selling can have further features requiring correction to establish cooperation on fair terms. Arguably, transnational manufacturing is often a vehicle of domination in which employers take unfair advantage of urgent needs of the desperately poor that weaken their bargaining power. In addition, setting the framework for commerce and much else besides, a coalition of developed countries led by the United States has, arguably, used developing countries' desperate needs for loans and markets to steer their course of development, without equal regard for the interests affected by this domination. Directly and by sponsorship, the United States has, in recent

decades, engaged in violence that has killed millions and wrecked the lives of millions more, without the informed consent of innocent victims of this destruction and, arguably, without a morally adequate effort to make good the damage. People in developed countries, especially the United States, continue to be the per capita leaders in the spewing of greenhouse gases, arguably evading their fair share of burdens of cooperation in reducing the global harm.

The extent to which people and governments in developed countries take advantage of people in developing countries, the extent to which they wreck their lives and the nature of their duties of repair are not obvious. Because of this need for inquiry, at once moral and empirical, the global poor are ill-served by the cosmopolitanism controversy itself. One side push radical and general demands that will never gain political traction, appealing to foundations that cannot support the demand, if my arguments are right. The other side insist (correctly, if my arguments are right) on the severe limits of transnational duties of concern in a world that is utterly different from our own. Meanwhile, in the current academic division of labor, the study of relationships of power in the real world that might sustain a finding of vast moral irresponsibility remains the task of people professionally trained not to engage in moral judgment.

Before the dispute over Rawls's legacy got started, David Lyons made this point precisely and prophetically. On the whole, his book on Bentham is suffused with respect for the complexity of a philosopher who is often dismissed as simple-minded. But he has a central objection to the position he reconstructs, which is a charge of excessive simplicity. It is "excessively narrow," he notes, to divide ethics, as Bentham does, into just two spheres of direction, influence or control: personal self-government and control by a government of its political community.

[I]nfluence outside government can be very wide and in any case effective enough to warrant comparison with the influence that government enjoys over its subjects. In such cases, and to the degree that such influence is exercised, one would expect Bentham's position to be that one ought to serve the interests of those subject to one's "direction."³⁸

A vast moral territory to which David Lyons pointed, in between mere commerce and full-fledged government, is the proper sphere of the democratic imperative in international affairs. The exploration of global justice needs to follow his guidance. Otherwise, it will not carve global injustice at its joints.

³⁸ LYONS, *supra* note 5, at 95.