

# Does the Existing Human Rights Regime Have Political Authority?

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## I. INTRODUCTION

In this Article I consider whether the existing international legal human rights regime enjoys political authority over sovereign states.<sup>1</sup> In particular, I explore whether, just as states can cite their role as the

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1. There is room to disagree about precisely which institutions should be counted within the international legal human rights regime. I take no stand here on whether the several regional human rights regimes count, for instance, but I presume that this regime includes at least the General Assembly, the Human Rights Council, the Human Rights Committee, the Security Council, the Tribunal for the Former Yugoslavia, the Tribunal for Rwanda, and the International Criminal Court.

primary institutions that protect human rights in order to justify their claim to authority over their citizens, perhaps the current human rights regime might plausibly cite its secondary role in securing human rights in order to ground its authority over these states.

## II. CLARIFYING THE QUESTION

To motivate my central question, let me begin by noting why it is such an exhilarating time to be a student of political philosophy. At its essence, political philosophy is about human nature, the problems to which this nature gives rise, and the institutional structures we should construct to address these problems. Although there have always been anarchists who allege either that human nature creates no problems or that any difficulties can be satisfactorily addressed in the absence of a state, the vast majority of political theorists have been statist.<sup>2</sup> And because virtually everyone presumes that we need states, political philosophers—who have disagreed about human nature and the problems to which it leads—have predominantly debated how the state should be organized.<sup>3</sup> More recently, however, theorists have been alive to the possibility that various problems—even indisputably *political* problems—might be better solved by something other than sovereign states. Among other options, scholars increasingly suggest that various concerns call for regional or global institutions or nongovernmental organizations.<sup>4</sup> In other words, both because some problems—such as climate change—appear to be inherently global and because some domestic governments seem unable or unwilling to perform various functions that a well-run state should, much of the most interesting theorizing in contemporary political philosophy concerns the types of institutions we should design to supplement existing states.<sup>5</sup>

Against this backdrop, consider our desire to reduce human rights violations. There is a massive and ever-expanding body of literature on

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2. See, e.g., Francisco O. Ramirez, *Statism, Equality, and Housewifery*, 24 PAC. SOC. REV. 175, 176 (1981).

3. See, e.g., Theodore J. Biagini, *Machiavelli and His Influence on Modern International Law: Victory Goes to the Swift, the Strong, and Sometimes, the Ruthless*, 37 LINCOLN L. REV. 1, 3–8 (2009–2010) (describing how Machiavelli's beliefs about human nature influenced his beliefs about states); Jeremy Waldron, *Kant's Legal Positivism*, 109 HARV. L. REV. 1535, 1536 (1996) (discussing Kant's beliefs about the state).

4. See, e.g., Christopher C. Joyner, *Redressing Impunity for Human Rights Violations: The Universal Declaration and the Search for Accountability*, 26 DENV. J. INT'L L. & POL'Y 591, 591–92 (1998).

5. See Joyner, *supra* note 4, at 593–95.

how we should conceive of human rights.<sup>6</sup> Rather than wade into that debate here, let me merely *stipulate* that, whatever else may or may not be involved in the human rights movement, at least one central concern of human rights activists has been to design institutions that maximally ensure everyone is protected against the standard threats to living minimally decent human lives.<sup>7</sup> Because states are thought to provide the first line of defense against these standard threats, it is commonly taken for granted that our primary objective should be to construct territorially delineated governments that are principally responsible for protecting the human rights of their constituents. As our experience with rogue and failed states makes painfully clear, however, a state that is both able and willing to adequately protect all of its inhabitants against the standard threats to living minimally decent lives is more the exception than the rule.<sup>8</sup> Given this, the need for a second line of defense is obvious, implicating the desirability of an international human rights regime that can play a supporting role in the global fight to secure everyone's human rights.

But notice: just as our experience with rogue and failed states demonstrates that our pressing need for domestic governments should not lead us to regard all existing states as having authority over their citizens, our desire for an effective international legal human rights regime should not lead us to automatically approve the existing regime. Thus, even if we grant everything I have said about the desirability of constructing an international legal institution that plays a remedial role in the important struggle to secure everyone's basic needs, it does not follow that the existing international regime enjoys political authority. It

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6. See, e.g., Rachel J. Anderson, *Reimagining Human Rights Law: Toward Global Regulation of Transnational Corporations*, 88 DENV. U. L. REV. 183 (2010) (arguing that human rights law should be modified to include laws that regulate modern transnational corporations); Curtis F. Doebbler, *Overlegalizing Human Rights*, 96 AM. SOC'Y INT'L L. PROC. 381 (2002) (arguing against the perception of human rights as "wishful thinking").

7. See, e.g., Jennifer A. Downs, *A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right*, 3 DUKE J. COMP. & INT'L L. 351, 362 (1993); Rajeev Kadambi, *The Idea of Human Rights*, 24 EMORY INT'L L. REV. 949, 953 (2010) (book review).

8. For a list and ranking of "failed states," see *The Failed States Index Rankings*, FUND FOR PEACE, <http://ffp.statesindex.org/rankings> (last visited Mar. 15, 2014). For a description of a "rogue state," see Anthony Clark Arend, *International Law and Rogue States: The Failure of the Charter Framework*, 36 NEW ENG. L. REV. 735, 735 (2002).

is an open empirical question whether this regime is in fact satisfactorily performing the functions that would justify such a claim to dominion.

With this in mind, it is worth evaluating the current regime to see how satisfied we should be with its actual performance. If the international legal human rights regime is doing an adequate job remedying the shortcomings of existing states, then this obviously bolsters its claim to authority. But if the current regime is not satisfactorily performing the requisite functions, then no matter how enthusiastic we are about the abstract idea of such a system, we should think long and hard about what, if any, authority the existing regime enjoys.

Finally, because there is room for different authors to mean various things by *political authority*, let me specify that I am particularly interested to know whether and to what extent states and other actors on the global stage are morally obligated to defer to this regime. The crucial issue is whether even legitimate states have morally weighty reasons to comply with and otherwise support this regime even in cases where they have not voluntarily agreed to do so. For instance, does the International Criminal Court (ICC) have the authority to issue morally binding commands to countries such as the United States, even though they are not state parties to the Rome Statute?<sup>9</sup> Even though the existing regime is a largely voluntary operation that forcibly interferes almost exclusively in illegitimate states,<sup>10</sup> I focus on this question because this regime's political authority becomes a vexing question primarily when it either interferes in the domestic affairs of a legitimate state or demands the support of a party that has never agreed to help out. I say this both because, in my view, at least, illegitimate states lack the right to political self-determination that would ground the corresponding obligation of external parties to refrain from interfering in these illegitimate states' internal matters and because I presume that there is nothing morally problematic about demanding that a state honor its morally valid

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9. See Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute] (lacking ratification by the United States). Because of doubts as to whether there is such a thing as an international legal human rights regime, Daniel Weltman has suggested to me that it would be preferable to replace my more general question about the authority of this regime with a series of more specific questions about whether states must defer to the ICC, the Universal Declaration of Human Rights, the Convention Relating to the Status of Refugees, et cetera.

10. See, e.g., Jack Goldsmith, *International Human Rights Law and the United States Double Standard*, 1 GREEN BAG 2D 365, 372 (1998) ("International human rights law is primarily designed for nations with domestic institutions that do not hold the promise for generating adequate human rights protections."); Amy C. Harfeld, *Oh Righteous Delinquent One: The United States' International Human Rights Double Standard—Explanation, Example, and Avenues for Change*, 4 N.Y. CITY L. REV. 59, 96 (2001) (noting that states generally voluntarily comply with human rights standards).

commitments.<sup>11</sup> Thus, examining the political authority of the existing international legal human rights regime amounts to asking whether it has the moral standing to demand compliance and support from paradigmatically legitimate states such as Norway, New Zealand, and Canada.<sup>12</sup>

### III. IS THE CURRENT HUMAN RIGHTS REGIME ANALOGOUS TO ATHENIAN DEMOCRACY?

For those of us who are both discouraged by the epic failings of existing states and excited about the prospect of providing a second line of defense for the masses of people currently vulnerable to the standard threats to living minimally decent lives, it is tempting to presume that the existing international legal human rights regime must surely enjoy political authority. I want to caution against this temptation. I think that we should take seriously the notion that the existing regime enjoys no more authority than a failed or rogue state. To motivate this line of thought, I propose that the existing international legal human rights regime can be usefully compared to Athenian democracy.

Viewed within its historical context, Athenian democracy was unquestionably a remarkable achievement.<sup>13</sup> Compared with the contemporary tyrannies and oligarchies, Athens was certainly *relatively* democratic,<sup>14</sup> but with the benefit of hindsight, we can now see that it was not really democratic and it did not enjoy political authority. It gave only a relatively small minority of constituents a voice and a vote, and it therefore lacked the moral standing to create laws that morally bound the slaves and other unenfranchised constituents it forcibly excluded from

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11. For a defense of my claim that illegitimate states lack a right to political self-determination, see ANDREW ALTMAN & CHRISTOPHER HEATH WELLMAN, *A LIBERAL THEORY OF INTERNATIONAL JUSTICE* (2009).

12. See *Legatum Prosperity Index*, LEGATUM INST., <http://www.prosperity.com/#/> (last visited Mar. 15, 2014) (ranking Norway, New Zealand, and Canada in the top five prosperous countries based on factors such as wealth, economic growth, and quality of life).

13. See, e.g., Keith Werhan, *The Classical Athenian Ancestry of American Freedom of Speech*, 2008 SUP. CT. REV. 293, 293 (2008) (“The Athenians invented democracy . . . a revolutionary system in which the people of a community . . . held a monopoly on political power . . . governing themselves and their community as they thought best.”).

14. See, e.g., Marci A. Hamilton, *Art Speech*, 49 VAND. L. REV. 73, 82 n.28 (1996).

the political process.<sup>15</sup> Thus, even though so-called Athenian democracy deserves applause for the remarkable manner by which it gave voice and vote to *some* of its citizens, we must regard Athens as lacking in authority because it should be evaluated upon how it treated everyone within its dominion, not just the privileged, enfranchised few.

Does the current international legal human rights regime warrant an analogous assessment? It is worth asking this question because although there is much at which to marvel in its rhetoric, this regime does a terribly uneven job ensuring that humans are not vulnerable to the standard threats against living minimally decent lives. And most importantly, it appears to provide the least amount of protection for those who need it most. To put it in far too blunt and oversimplified geographic terms, the current regime seems to do an admirable job protecting Western Europeans—among select others—but it fails miserably in protecting sub-Saharan Africans—among many others.<sup>16</sup> Thus, just as the Athenian government must be assessed based upon how it treated all of its constituents rather than merely the select few it enfranchised, a human rights regime should be appraised on its global record. It is clearly not enough that the existing regime does an exemplary job protecting Europeans when so many others avoidably remain horribly vulnerable to the standard threats to living minimally decent lives.

Many will be aghast at my accusation that the existing human rights regime does little more than protect Europeans against the standard European threats to living minimally decent European lives, so let me offer at least a quick defense of my stark claim. First of all, imagine that an intelligent alien came to earth on an anthropological mission. If we explained to this alien that we had constructed an elaborate human rights institution to protect, among other things, vulnerable people from standard threats to living minimally decent lives, the alien would undoubtedly be astonished to learn that none of the core human rights documents even mentions anything about reliable access to potable water. Of course,

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15. See, e.g., Kenneth A. Bollen & Pamela M. Paxton, *Democracy Before Athens*, in *INEQUALITY, DEMOCRACY, AND ECONOMIC DEVELOPMENT* 13, 17 (Manus I. Midlarsky ed., 1997) (“[T]he Athenian ‘democracy’ was a democracy only for adult male citizens. Women, metics, children, and slaves were not included.”).

16. See, e.g., Jennifer Myers, *Human Rights and Development: Using Advanced Technology To Promote Human Rights in Sub-Saharan Africa*, 30 *CASE W. RES. J. INT’L L.* 343, 344 (1998) (noting that “[w]hile the majority of the Western world realizes and embraces the benefits of advanced technology, sub-Saharan Africa is still working to provide for the most basic needs, such as adequate health care, food, and sanitation”); *Sub-Saharan Africa*, UNITED NATIONS POPULATION FUND, <http://www.unfpa.org/worldwide/africa.html> (last visited Mar. 15, 2014) (noting that sub-Saharan Africa “faces serious political, economic and social challenges”).

those who seek to defend the current documents against the charge of Eurocentrism could quickly explain that, properly understood, several of the articles in the Universal Declaration of Human Rights should be conceived of as implicitly providing protection against a lack of drinkable water.<sup>17</sup> In addition, one might note that on July 28, 2010, the United Nations General Assembly approved Resolution 64/292, which explicitly “[r]ecognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”<sup>18</sup> Against these responses, however, one might reasonably counter that if potable water had ever been as scarce in Europe as it is in Africa, then you can be quite sure that one of the first articles in the Universal Declaration of Human Rights would explicitly enunciate each person’s right to secure access to an adequate supply of water—and by now, numerous political philosophers would have gotten tenure by writing articles and books on this “basic” human right.

Although there may be other ways in which the language of the core human rights documents would be different if the current regime were not so Eurocentric,<sup>19</sup> the biggest problems with the status quo stem more from its *execution* than its *rhetoric*. Consider the Genocide Convention, for instance. Whatever quibbles one may have about this convention, it appears to have been written in a relatively geographic-neutral manner.<sup>20</sup> Despite this formal neutrality, its principles have emphatically not been applied uniformly.<sup>21</sup> The most spectacular example of this, of course, was the international community’s lack of response to the recent horrors in Rwanda.<sup>22</sup> I appreciate that it can be extremely difficult for international

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17. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 (III) A, arts. 22, 25, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

18. G.A. Res. 64/292, ¶ 8, U.N. Doc. A/RES/64/292 (July 28, 2010).

19. For instance, would the core human rights documents explicitly feature a human right against “preventable infectious diseases” if illnesses such as HIV/AIDS and malaria ravaged Europeans rather than Africans?

20. See Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 278.

21. See, e.g., Beth Van Schaack, Note, *The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot*, 106 YALE L.J. 2259, 2261 (1997) (arguing that the Genocide Convention inadequately covered Cambodian genocide).

22. In 1994, the Rwandan Hutus killed 800,000 Rwandan Tutsis and brutally raped many Tutsi women. See *Genocide in Rwanda*, UNITED HUM. RTS. COUNCIL, [http://www.unitedhumanrights.org/genocide/genocide\\_in\\_rwanda.htm](http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm) (last visited Mar. 15, 2014); *Rwanda: How the Genocide Happened*, BBC NEWS, <http://news.bbc.co.uk/2/hi/world/africa/1288230.stm> (last updated Dec. 18, 2008, 9:53 AM). Many criticize the international

bodies to know in real time whether and how best to intervene in domestic crises around the world, but it is simply unthinkable that the Security Council would have reacted in anything like the fashion it did in Rwanda if this blood had been spilled in Europe, rather than Africa.

Critics have voiced a similar complaint against the ICC.<sup>23</sup> The ICC is precisely the type of supranational institution I had in mind earlier when I mentioned the promising trend of thinking beyond the state. This emerging organization has an unprecedented capability to eliminate the global culture of impunity that has traditionally left masses of folks vulnerable to abuse at the hands of unaccountable tyrants.<sup>24</sup> The most common objection to the ICC, though, is its practice of selective prosecution. In addition to a general concern that charges are being brought against only a tiny proportion of those who violate human rights, critics worry more specifically that defendants will come exclusively from poor, geopolitically insignificant countries.<sup>25</sup> No matter how many human rights are violated in Chechnya or what atrocities occur in Iraq, Afghanistan, or Guantanamo Bay, for instance, there is no way that the court would ever pursue Putin, Bush, or Obama. If the ICC did try to prosecute a military or political leader from a powerful country, it would risk losing the precious geopolitical support it has only recently been able to muster.<sup>26</sup> As a consequence, many predict that virtually all of the future defendants will come from Africa.<sup>27</sup> Thus, despite the impartial rhetoric of the ICC, we do not in practice have a genuinely global court that pursues the very worst rights violators in the world; more realistically,

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community's failure to quickly or effectively respond to the violence. *See, e.g., Genocide in Rwanda, supra; Ghosts of Rwanda: Introduction*, PBS (Apr. 1, 2004), <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/etc/synopsis.html>.

23. *See, e.g.,* Mark D. Kielsgard, *War on the International Criminal Court*, 8 N.Y. CITY L. REV. 1, 9 (2005) (arguing that without additional United States support, the ICC lacks enforcement capabilities and legitimacy).

24. *See* Rome Statute, *supra* note 9, art. 1 (granting the ICC "the power to exercise its jurisdiction over persons for the most serious crimes of international concern").

25. *See, e.g.,* Allison Marston Danner, *Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court*, 97 AM. J. INT'L L. 510, 510–11 (2003) (noting that the ICC is open to the criticism that it is a political institution dominated by politics); Lana Ljuboja, Comment, *Justice in an Uncooperative World: ICTY and ICTR Foreshadow ICC Ineffectiveness*, 32 HOUS. J. INT'L L. 767, 784–85 (2010) (noting that the ICC is hesitant to prosecute more powerful signatories because doing so would undermine the ICC's operations).

26. *See, e.g.,* Ljuboja, *supra* note 25, at 784–85.

27. *See, e.g., id.* at 785; David Bosco, *Why Is the International Criminal Court Picking Only on Africa?*, WASH. POST (Mar. 29, 2013), [http://articles.washingtonpost.com/2013-03-29/opinions/38117212\\_1\\_international-criminal-court-african-union-central-african-republic](http://articles.washingtonpost.com/2013-03-29/opinions/38117212_1_international-criminal-court-african-union-central-african-republic; ICC, A Tool To Recolonise Africa); ICC, *A Tool To Recolonise Africa*, AFR. BUS., <http://www.africanbusinessmagazine.com/special-reports/sector-reports/icc-vs-africa/icc-a-tool-to-recolonise-africa> (last visited Mar. 15, 2014).



we have constructed a regional mechanism largely funded by Europeans<sup>28</sup> that will largely prosecute and punish Africans. And interestingly, when I pressed Fatou Bensouda, Chief Prosecutor of the ICC, on this issue, she did not deny this emerging phenomenon.<sup>29</sup> Instead, she countered that the most egregious human rights violations were occurring in Africa, and so if the ICC did not pursue the African leaders responsible for these crimes, it would be turning its back on masses of African victims. Personally, I have no qualms with this response, but for our present purposes, I wish simply to note that citing Africa's near-monopoly on the worst human rights atrocities merely *confirms* the analogy between Athenian democracy and the existing international legal human rights regime.

Along these same lines, consider the so-called resource curse—the observation that countries regularly seem to do dramatically *worse* if they are rich in natural resources.<sup>30</sup> At first blush, this principle is extremely counterintuitive because one would expect that ample reserves of oil, gold, diamonds, and such would enrich a country, thereby enabling its government to take good care of its citizens. Far too often, however, what actually happens is that the political leaders who have de facto control over these deposits enrich themselves by selling access to these resources to wealthy foreign states and companies.<sup>31</sup> As a general rule, then, citizens should hope that no mineral deposits or other valuable natural commodities exist within their country's national boundaries because one's government is much more likely to attend to the needs and wishes of its own citizens if the international business community takes no interest in the state. When wealthy corporations covet reliable access to a country's natural resources, however, such companies will have the

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28. See, e.g., *The International Criminal Court and the Fight Against Impunity*, EUR. COMMISSION EXTERNAL REL., [http://ec.europa.eu/external\\_relations/human\\_rights/icc/index\\_en.htm](http://ec.europa.eu/external_relations/human_rights/icc/index_en.htm) (last visited Mar. 15, 2014) (noting that the European Union has given strong financial support to the ICC).

29. I asked Bensouda, who was then Deputy Prosecutor, this question after her speech, Fatou Bensouda, *Looking Back, Looking Ahead—Reflections from the Office of the Prosecutor of the ICC* (Sept. 22, 2011), in 11 WASH. U. GLOBAL STUD. L. REV. 437 (2012).

30. On the resource curse, see generally Leif Wenar, *Property Rights and the Resource Curse*, 36 PHIL. & PUB. AFF. 2 (2008).

31. See, e.g., Carter Stewart, *The FCPA Is Just as Relevant and Necessary Today as Thirty-Five Years Ago*, 73 OHIO ST. L.J. 1039, 1042 (2012) (noting that corruption often results in countries' leaders enriching themselves by depleting and selling their countries' national resources).

money either to coopt the existing rulers or replace them with successors who will be more accommodating. It is important to stress, however, that this dynamic would seem to apply principally to countries that lack entrenched liberal democratic traditions.<sup>32</sup> If massive oil reserves were discovered in Germany tomorrow, for instance, few would lose sleep worrying that Germany had just been “cursed” because although we should always be alert to the potential for corruption when the financial stakes are great, Germany’s wealth and political stability protect its citizens from being outbid by external financial interests. In Africa, however, the legacy of European colonization<sup>33</sup>—among other things—has left many countries relatively poor and so politically fragile that we would be right to worry that a typical country might be cursed by a similar discovery of resources.

More depressing examples come from the actual practice of emerging global markets because although it is easy to be excited about the promise of organizations such as the World Bank, the International Monetary Fund, and the World Trade Organization (WTO), these institutions have had at best spotty records.<sup>34</sup> Let me begin with an admittedly stylized example of how things can unwittingly go off of the rails and then follow up with a more general explanation as to why we should be skeptical that things will soon improve for the global poor. First, suppose that a poor African country appeals to the World Bank for funds to feed its subsistence-farming citizens who are starving to death in the midst of a prolonged drought. With the idea that it is better to teach a person to fish than merely give a person a fish, the bank offers to help this country on the condition that it make basic structural reforms designed to insulate it from similar disasters in the future. In particular, imagine the bank insists that this country transition from subsistence farming to cotton

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32. See, e.g., Reagan R. Demas, *Moment of Truth: Development in Sub-Saharan Africa and Critical Alterations Needed in Application of the Foreign Corrupt Practices Act and Other Anti-Corruption Initiatives*, 26 AM. U. INT’L L. REV. 315, 325–29 (2011) (noting that the resource curse hinders sub-Saharan Africa).

33. For a discussion of European colonization of Africa, see John Mukum Mbaku, *Providing a Foundation for Wealth Creation and Development in Africa: The Role of the Rule of Law*, 38 BROOK. J. INT’L L. 959, 967–76 (2013).

34. See, e.g., Sarah Boseley, *World Bank Poverty Drive a Failure, Says Report*, GUARDIAN (July 2, 2003, 9:24 PM), <http://www.theguardian.com/world/2003/jul/03/sarahboseley> (describing the World Bank’s failure to cut malnutrition in developing countries); Jonathan Masters, *The International Monetary Fund*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/europe/international-monetary-fund/p25303> (last updated Oct. 9, 2013) (noting that the International Monetary Fund has been criticized on multiple grounds); Aurelie Walker, *The WTO Has Failed Developing Nations*, POVERTY MATTERS BLOG (Nov. 14, 2011, 10:49 AM), <http://www.theguardian.com/global-development/poverty-matters/2011/nov/14/wto-fails-developing-countries> (listing various ways the WTO has failed developing countries).

farming, which—given the ideal climate and prevalence of inexpensive labor—could produce vast quantities of cotton that could then be sold for money on the international market. The money in turn could be used to buy the various commodities necessary to sustain the domestic population. Because the drought-stricken country is in such desperate need and because the required reforms seem to make sense, it agrees to the World Bank's conditions, forces the subsistence farmers off of their land, and sets up large cotton farms that produce enormous amounts of cotton for sale on the international market. So far, so good. Problems emerge, however, when wealthy cotton farmers in the United States are, predictably, not happy about being undersold by their newfound African competition. The United States cotton farmers will use their wealth and domestic political capital to get massive subsidies from the United States government. With these subsidies, the United States farmers will dump their cotton on the international market at artificially reduced prices so that the imperiled citizens of the poor African country are now left with huge amounts of relatively useless cotton, without the food previously grown by the subsistence farmers, and with a debt to the World Bank it cannot repay.

Unfortunately, this stylized example is indicative of what tends to happen in a global marketplace where the various actors have such dramatically divergent levels of bargaining power. Although I remain enthusiastic about both capitalism and globalization as general, abstract ideas, we should not be surprised that negotiations between extremely wealthy and terribly poor parties will continue to exacerbate the divide between the haves and the have-nots. As Thomas Pogge has emphasized, this is precisely what has happened in recent negotiations within the WTO.<sup>35</sup> In particular, Pogge has called attention to features of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which prohibits the production and sale of generic versions of basic medicines for use in developing countries.<sup>36</sup> As a consequence of this new arrangement, a great deal of avoidable mortality and morbidity in developing countries, which had previously been prevented, is now going untreated merely because the world's poorest countries have no effective choice but to agree to whatever terms the wealthy countries dictate.<sup>37</sup> So, although it may or may not be the case that inclusion in the WTO will pay dividends

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35. See THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS* 21–23 (2d ed. 2008).

36. See *id.*

37. See *id.*

in the long run for even the poorest countries, masses of the world's most imperiled people have recently been made dramatically worse off.<sup>38</sup> They have avoidably become more vulnerable to one of the most devastating threats to living minimally decent lives because powerful corporations in the wealthiest countries have had the clout to dramatically raise the price of admission into the WTO for poor countries and their constituents.<sup>39</sup>

This very quick characterization—some would say “caricature”—of the current geopolitical landscape raises more questions than it answers, but it at least suggests the plausibility of the following assessment of the status quo: Even if we assume for the sake of argument that the existing international legal human rights regime performs superbly as a second line of defense for the constituents of well-oiled liberal democratic societies, it appears to do a very poor job helping those who inhabit inept or tyrannous states. If one begins, as I do, by insisting that such an institution would have political authority only if it adequately performed some vitally important function, this spells trouble for the existing regime because the most important job we want a human rights regime to perform is to make the world's most imperiled individuals less vulnerable. Once one recognizes that this is the particular task on which we should focus, it is hard not to be pessimistic. Indeed, given both that the divide between the global rich and the global poor is widening at an alarming rate<sup>40</sup> and that increased international interaction provides unprecedented opportunity for the rich to exploit their relative bargaining power over the poor, the world's most imperiled citizens may actually be worse off than their counterparts were fifty years ago.

We can recapitulate our argument to this point in four deliberately provocative—and geographically oversimplified—steps. First, the best prospect for establishing the political authority of an institution is to demonstrate that its constituents' compliance is necessary and sufficient for it to perform some vitally important task. Second, the principal function we seek from a human rights regime is to provide a second line of defense for those vulnerable individuals whose states do a poor job of providing a first line of defense against the standard threats to living minimally decent lives. Third, if today's Africans are more vulnerable than their counterparts fifty years ago, then no matter what wonderful

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38. *See id.*

39. *See, e.g., White Man's Shame*, ECONOMIST, Sept. 25, 1999, at 89, 89 (noting that antidumping duties and high tariffs on developing countries prevent them from engaging in trade).

40. *See, e.g., Branko Milanovic, More or Less*, FIN. & DEV., Sept. 2011, at 6, 7; Emma Seery, *Widening Gap Between Rich and Poor Threatens To Swallow Us All*, GUARDIAN (Jan. 18, 2013, 7:05 PM), <http://www.theguardian.com/global-development/poverty-matters/2013/jan/19/widening-gap-rich-poor>.

benefits are being supplied to Europeans, the existing human rights regime is clearly failing in its most important task. Fourth and finally, we therefore must conclude that the existing international legal human rights regime lacks political authority. At this point, then, the analogy with Athenian democracy appears apt.

#### IV. IN DEFENSE OF THE REGIME

What might we say in response to this indictment of the existing regime? The most obvious answer is that my characterization of the status quo is not just “quick” and “provocative” but that it is misleading, if not outright false. It is misleading to characterize the world’s haves and have-nots solely in terms of Europe and Africa when there are masses of relatively poor and imperiled people all over the globe and many of them, in Asia and South America, for instance, have made considerably more progress in the last few decades than the worst off in Africa.<sup>41</sup> Second, even if some of the problems in Africa continue to be especially poignant and intractable, it is simply false to say that Africans are no better off now than they were fifty years ago. It may be true that the economic inequality between Europe and Africa has become far more pronounced and pernicious, but this allows us to draw conclusions about only the *relative*, not the *absolute* standing of Africans then and now. The truth is that although our current scheme for globalizing capitalism has disproportionately benefitted Europeans, it has also been a net benefit for Africans.<sup>42</sup> What is more, as the dividends from research and

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41. See, e.g., Sou Chiam, *Asia’s Experience in the Quest for a Regional Human Rights Mechanism*, 40 VICTORIA U. WELLINGTON L. REV. 127, 137 (2009) (noting that several subregional intergovernmental organizations in Asia have made progress in attempting to protect human rights); Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHI. J. INT’L L. 1, 4 (2001) (“In Latin America during the last two decades of the 20th century there was a rapid shift toward recognizing the legitimacy of human rights norms and an increase in international and regional action to effect compliance with those norms.”); Roda Mushkat, *Globalization and the International Environmental Legal Response: The Asian Context*, 4 ASIAN-PAC. L. & POL’Y J. 49, 59 (2003) (“[Asian countries] ha[ve] been able to undergo industrialization at a pace unseen elsewhere and in many instances ha[ve] attained living standards comparable with those prevailing in leading developed countries.”).

42. See, e.g., *A Hopeful Continent*, ECONOMIST, Mar. 2, 2013, at 3, 3 (reporting that the numbers indicate that “human development in sub-Saharan Africa has made huge leaps”).

development into technology—especially medical innovations—have trickled down to the world’s poor, the link between poverty and ill health has lessened.<sup>43</sup> Thus, even if for the sake of argument we grant that Africans are worse in *relative* terms than they were fifty years ago, which is highly contestable itself, in *absolute* terms, they are both less poor and less imperiled by their poverty than they were prior to the emergence of the international legal human rights regime.

Against this rejoinder, I would emphasize two points. First of all, even if there is *less* suffering than several decades ago, it seems incontrovertible that there is much more than there *should* be, and ultimately—in my view—we must evaluate a human rights regime in terms of the extent to which it eliminates the worst forms of *avoidable human suffering*.<sup>44</sup> Second, the economic and health gains are not necessarily the work of the human rights regime; in large measure, they are the consequence of the gradual process of economic integration that has been designed largely by and for wealthy countries. Much more than initiatives such as the Universal Declaration of Human Rights, the Genocide Convention, or the ICC, economic globalization has produced the meager benefits in Africa.

It would be extremely difficult to pinpoint precisely what benefits flow directly from which interventions, but we need not get bogged down in that debate here because the previous point suggests a much more basic and important counterpoint: Namely, the charge that the current human rights regime cannot take credit for all of the recent gains enjoyed by the world’s worst off highlights the obvious fact that *the current regime should not be held responsible for all that is wrong with the status quo*. Given that the human rights regime is merely one—relatively impotent—actor on the world stage, it seems patently unfair to complain that it has not solved all of the problems that lamentably continue to plague the world’s poor. The crucial thing to remember is that as much as we might like to have a human rights regime that is strong enough to effectively

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43. See, e.g., Global Pub. Health Achievements Team, *Ten Great Public Health Achievements—Worldwide, 2001–2010*, CENTERS FOR DISEASE CONTROL & PREVENTION (June 24, 2011), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6024a4.htm> (“During the previous century, great progress was made in raising life expectancy and reducing mortality among infants and young children through improvements in living conditions and activities to combat major infectious causes of death.”).

44. Students of *World Poverty and Human Rights* will likely recognize Thomas Pogge’s influence here. See POGGE, *supra* note 35, at 25–26. My thinking has obviously been shaped by Pogge’s pathbreaking work in this area, but nothing in this Article depends upon Pogge’s controversial thesis that the global poor are wrongly harmed when an institutional system that foreseeably and avoidably includes human rights deficits is forcibly imposed upon them. See *id.*

help failed states and police rogue states, the existing regime simply does not have this sort of power. And this is for understandable reasons. After all, given that the international legal human rights regime was forged in the midst of states that would never have permitted the emergence of an institution strong enough to effectively restrict the activities of sovereign states,<sup>45</sup> it would have been self-defeating to set out to construct such a powerful organization. Thus, it is no accident that the existing regime principally operates by setting clear human rights standards that each individual country is then exhorted to meet. This more modest objective was rightly adopted as the most effective strategy for a world populated by states that jealously protect their sovereignty.<sup>46</sup> The analogy between the existing human rights regime and Athenian democracy is ultimately revealed to be inapt, then, because even if the inequalities between the institutionally secure and the institutionally vulnerable denizens of today's world are reminiscent of the division between the politically empowered and the unenfranchised in ancient Greece, *the existing human rights regime cannot be held accountable in the same way as the Athenian government*. In Athens, the government was the principal—if not the sole—coercive actor that enforced these dramatically unequal roles,<sup>47</sup> whereas the human rights regime is merely one relatively insignificant component of the existing geopolitical infrastructure.

In light of this, there is room to roundly condemn the government in Athens and yet view the existing human rights regime as part of the solution, rather than part of the problem. Indeed, a defender of the current regime might flip the entire critique on its head and suggest that the inexcusable realities of the status quo merely demonstrate that we should substantially increase the relative power and standing of the human rights regime. To put it bluntly—and optimistically—the idea here is that if only the international legal human rights regime were suitably fortified, it would have the power to ensure that avoidable genocides such as Rwanda's no longer occur; that prosecutors within the ICC are empowered to pursue the worst violators of human rights everywhere; that no country has to

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45. See, e.g., Danner, *supra* note 25, at 516 (noting that the ICC lacks unfettered prosecutorial discretion because “[t]he ability to accuse political and military leaders of serious crimes—and perhaps to try and convict them—is not the kind of power one wants to deliver without any restraints”).

46. I am grateful to Allen Buchanan for impressing this point on me.

47. See *supra* notes 13–15 and accompanying text.

worry about being cursed by its abundant supply of natural resources; and that organizations such as the WTO refrain from imposing TRIPS-like agreements upon vulnerable populations. In the end, then, perhaps our biggest dissatisfaction with the existing human rights regime is its modesty; rather than restrain itself to merely those roles where it can garner a political consensus, it should more boldly demand support and more freely insert itself into any arena in which vulnerable people can be effectively protected.

I have a great deal of sympathy for this response, but notice how dramatically it changes the human rights regime's claim to authority. Rather than allege that this regime is entitled to global compliance because of what it has accomplished or is currently accomplishing and rather than claim that the regime *will be* entitled to support once it begins accomplishing certain vital tasks, the argument now becomes that the existing regime *currently* enjoys political authority *because of what it promises to accomplish in the future*.

Although this type of argument may present more of an uphill battle, it should not necessarily deter those of us who are receptive to the Kantian conviction that we not only have a duty to support existing states, we are obligated to construct states where they are absent.<sup>48</sup> Let me put this point in terms of human rights: If we accept the duty to create a first line of defense against human rights violations where no defense exists, why be suspicious of the claim that we also have a duty to create a second line of defense when the existing first line of defense is functioning so poorly? What is more, the idea that one's current imposition might be justified by future gains is taken for granted in garden-variety domestic situations—as when I permissibly take your boat without your permission in order to try to save a drowning person—so we should not antecedently rule out this type of claim in defense of a political institution's authority.

But even if we should not summarily reject this type of argument, the human rights regime obviously must do more than merely *claim* that it will perform various essential functions in the future; it must at least *offer credible evidence that it will in fact do so*. By way of analogy, the Kantian requirement to help create a legitimate state does not imply that we must support all in the state of nature who allege that they will soon set up a just state; more minimally, it requires one to support only those parties who are sufficiently likely to solve the problems in the state of nature. With this in mind, it is important to recall that I raised concerns about both the core documents and the execution of the existing human

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48. See, e.g., Fernando R. Tesón, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53, 65–66 (1992) (suggesting that Kant believed individuals had positive duties to protect civil, political, and socioeconomic rights through states).



rights regime. For instance, my objection to the scant attention paid to the standard threat posed by lack of potable water is relevant here because it casts doubt upon any claim that the only reason the regime is not presently doing a better job of satisfactorily reducing the worst types of avoidable suffering is because more powerful actors are currently standing in the way of the regime's carrying out its mission. If the language of this regime's core documents exhibits a pronounced Eurocentric bias, then we should not be too quick to accept just any claim that Africans—among others—would immediately receive the attention they so desperately need if only the regime were not boxed in by the current geopolitical structure.

Second, even if one does not share my worries about the language of the defining documents of the human rights regime, there are practical reasons to question any assurances that the human rights regime will be able to buck the trend within international law of ignoring and exploiting the worst off. Problems emerge because the human rights regime's growth will inevitably be incremental if it expands. This observation is significant because, given that this growth will occur in the present context, we should expect the regime to be disproportionately shaped by and for the most powerful countries. For example, the Rome Statute that gave birth to the ICC was dramatically “watered down” in the hopes that this more anemic version might garner the support of the United States, which ultimately declined to come on board even after its representative had successfully lobbied for various concessions.<sup>49</sup> More generally, there is more than a kernel of truth in the charge that the most powerful states are able to exploit their relative strength to ensure that international law is written by and for themselves.<sup>50</sup> And if so, we should worry that any human rights regime that comes of age in the current geopolitical context will be perverted.

For the sake of argument, let us assume that I am right to worry that even if we lend a great deal more support to the human rights regime, this regime will likely remain objectionably biased. Does it follow that we should not support it? Not necessarily. It might be that the existing regime is entitled to our support even if it cannot assure us that it will be properly attentive to the needs of the world's most vulnerable people simply because it provides the best chance for making progress on this vitally important front. It may seem counterintuitive to suggest that the

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49. See Kielsgard, *supra* note 23, at 14.

50. See *id.* at 12–14.

imperative of reducing avoidable suffering requires us to support a regime that can claim neither that it presently does a satisfactory job at this task nor that it will necessarily do so in the foreseeable future. But here we might recall Thomas Nagel's claim that

in thinking about the future, we should keep in mind that political power is rarely created as a result of demands for legitimacy, and that there is little reason to think that things will be different in this case.

If we look at the historical development of conceptions of justice and legitimacy for the nation-state, it appears that sovereignty usually precedes legitimacy. First there is the concentration of power; then, gradually, there grows a demand for consideration of the interests of the governed, and for giving them a greater voice in the exercise of power. The demand may be reformist, or it may be revolutionary, or it may be a demand for reform made credible by the threat of revolution, but it is the existence of concentrated sovereign power that prompts the demand, and makes legitimacy an issue.<sup>51</sup>

With Nagel's point in mind, think again of Kant's suggestion that people in the state of nature have a duty to create a state.<sup>52</sup> If this duty exists, it presumably cannot require only that we support all institutions that satisfactorily perform the requisite political functions because, by definition, there are no such institutions in the state of nature. If there is any truth to Kant's insight, then presumably, people in the state of nature must put their shoulders to the collective political wheel at some point substantially prior to when the dominant institution becomes a perfectly legitimate state. On the other hand, it cannot be the case that a ruthless dictator has the moral standing to demand compliance from those under the dictator's control merely because history indicates that the best chance of getting a legitimate state is for this tyranny to eventually be transformed into a much more benign creature. After all, supporting a tyrant seems to be straightforwardly prohibited for the same reasons we should not serve as an accomplice to any crime. But if there are no authoritative regimes in the state of nature and one is prohibited from complying with any regime that is not yet legitimate, then what does the duty to create a legitimate state amount to in the real world? What does morality demand of those currently living in a failed state such as Somalia or an illegitimate state such as ancient Athens, for instance?

Here is a suggestion: If one lives in a stateless environment or within the territorial confines of an illegitimate state, then one has an obligation

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51. Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113, 145 (2005).

52. See, e.g., Ernest J. Weinrib, *Poverty and Property in Kant's System of Rights*, 78 NOTRE DAME L. REV. 795, 809 (2003) (discussing the Kantian principle that people in the state of nature must enter "the civil condition").

to do one's fair share to help construct a state where none exists or to reform the illegitimate government where a state is present. If this is right, then rather than merely follow the commands of an existing tyrant, one should do one's fair share to try to reform this ruler's practices. So if one lives in a lawless environment in which a number of parties are vying for supremacy, one should do one's fair share to support whichever party is most likely to govern in a just fashion. And if one of the competing protostates seems far more likely to ultimately secure a de facto monopoly on the use of force in the territory, then one should work to ensure that it will ultimately govern as justly as possible. What about the enfranchised Athenians, though; what should they do? Rather than merely comply with the commands of this illegitimate regime, it seems to me that a privileged Athenian should work for reform. There is only so much we can ask of an individual, of course, so we certainly should not conceive of this as a duty to successfully reform that state as a whole, but it does not seem too demanding to allege only that all privileged citizens in Athens have a duty to do their *fair share* to work for reform.

Assuming that this is correct, what does all of this suggest for the case of the current human rights regime? First of all, whatever the defects of the existing human rights regime—to whatever extent it is reminiscent of Athenian democracy—on the spectrum that runs from an emerging warlord in Somalia to a paradigmatically legitimate state such as Norway, the current human rights regime clearly lies much closer to the latter. Even so, both because it is unclear how much of the status quo is the result of the human rights regime—as opposed to entrenched features of the geopolitical landscape that are thus far beyond the regime's control—and because it is not obvious precisely how well a political institution must perform its task in order to be authoritative, it seems to me that reasonable people can disagree as to whether or not the current human rights regime enjoys political authority. If it does have authority, then states and other actors on the global stage must comply with it. Even so, everyone—especially those integral to the regime—has a duty to work for its reform so that it comes to look less and less like ancient Athens. If the existing human rights regime lacks authority, however, then those internal to the practice—among others—obviously have a duty to seek reform. But notice, even if legitimate states have no duty to comply with the regime, they still have a duty to help reform the WTO, the United Nations—especially the Security Council—and such, because even if we are right to be skeptical about how well the human rights regime would

function if it were not obstructed by more powerful forces, it is hard to deny that the world would be a better place if organizations such as the WTO were subordinate to the human rights regime, rather than the other way around.

At this point, a critic might object to my analogizing the duties of privileged citizens in ancient Athens to the obligations of legitimate states in the contemporary geopolitical context. In particular, one might protest that Athenian citizens are plausibly obligated to do their fair share of the political chore only because they have benefitted enormously from the state. Because legitimate states do not stand to benefit to such an extent from an international legal human rights regime whose principal focus would be to provide a secure second line of defense for the denizens of failed and rogue states, however, the principle of fair play does not require these wealthy states to contribute to a global regime in the same way that it binds the privileged citizens of a state to contribute to the maintenance of their own government.

I concede that the principle of fair play may not explain why legitimate states are morally required to contribute to the construction and reform of a more effective international legal human rights regime, but this does not worry me because I am not inclined to invoke the principle of fairness in the domestic realm either. In my view, the best way to account for a citizen's obligation to obey the law is as a samaritan chore. In other words, rather than say that a citizen of a legitimate state incurs political obligations of fairness only because the citizen has benefitted from the state, I believe each of us has a duty to obey the law as a fair share of the larger communal chore of rescuing everyone from the perils of the state of nature.<sup>53</sup> And given that I believe we have samaritan duties to help others when they are sufficiently imperiled and we can rescue them at no unreasonable cost to ourselves, this explains my attraction to the Kantian notion that, in addition to our duties to comply with existing regimes, which may or may not benefit us, we may be obligated to help create a new state when none exists.<sup>54</sup> Thus, I believe that the duties of the residents of contemporary Somalia to create an effective government, the obligations of the privileged citizens in ancient Athens to reform their illegitimate government, and the duties of contemporary Norwegians to obey the laws of their legitimate state all spring from the same samaritan source. And because samaritanism does not require that the rescuer benefit in order for the duty to be triggered, we need not worry about the

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53. I develop and defend this samaritan account of political obligation at greatest length in CHRISTOPHER HEATH WELLMAN & A. JOHN SIMMONS, *IS THERE A DUTY TO OBEY THE LAW?* (2005).

54. See Weinrib, *supra* note 52, at 809.

fact—if it is a fact—that legitimate states do not stand to gain enough to compensate for their contribution to a more effective international legal human rights regime. Let me emphasize: although we are obligated to create, reform, and maintain political institutions precisely because they are capable of supplying precious benefits that would not be available in their absence, we should not conceive of these institutions as merely mutually beneficial arrangements that bind participants only if—and to the extent that—each profits from these institutions.

If my arguments to this point have been sound, then just as privileged citizens in Athens had a moral duty to work to reform their illegitimate state, the world's most powerful states should presumably strive to reform the existing human rights regime. But what about individual citizens? Does the average Norwegian, New Zealander, or Canadian, for instance, have a duty to try to improve the international status quo, or are our political obligations owed at only the national—and perhaps more local—levels? Given that international law is principally made by and for states, individuals are in an important sense removed from the international legal human rights regime.<sup>55</sup> Does this mean that individuals need not work for its reform? Absolutely not. Other things being equal, individuals may be primarily responsible for reforming their domestic governments, but one can acknowledge that we should attend first and foremost to our local institutions and still not commit oneself to the unwarranted conclusion that the international order should be left exclusively to states and their representatives.

To appreciate the plausibility of the idea that individuals may permissibly attend first to local institutions, consider privileged white citizens in apartheid South Africa. If we stipulate that South Africa, during this era, unjustifiably privileged citizens of European ancestry over those of African ancestry to the same extent that the larger international order privileged Europeans over Africans, then I would have no qualms with people who focused all of their energies on the domestic inequalities. After all, these privileged South Africans strike me as more directly implicated in the domestic injustice than in global inequities, and so I

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55. See, e.g., Filip Spagnoli, *The Globalization of Human Rights Law: Why Do Human Rights Need International Law?*, 14 TEX. WESLEYAN L. REV. 317, 320 (2008) (“Traditionally, individuals play no part in international law. From its humble beginnings, international law has been the regulation of relationships between states.”).

would not object to their focusing on these more local problems.<sup>56</sup> I am not inclined to give a similar free pass to the citizens of contemporary Norway, New Zealand, and Canada, however. I appreciate that there is more work to be done in each of these countries. But one can acknowledge both that (1) there is injustice in each of these states and (2) other things being equal, citizens are primarily responsible for reforming their domestic governments, without allowing Norwegians, New Zealanders, and Canadians to ignore global matters, because their domestic issues and the international issues are clearly not equal. The crucial point, I think, is that human rights beget global responsibilities, and so even if those who live in egregiously unjust societies may justifiably take their eye off of the global ball, the citizens of wealthy liberal democratic states must do their fair share to reform the international legal status quo. At the very least, these citizens should pressure their elected leaders and business executives to prioritize reform. To put this last point in terms of the title of this Article, I would say that if the current international legal human rights regime does enjoy political authority, then citizens of powerful states are obligated to lobby their leaders to comply with this regime's commands, and if the existing regime currently lacks authority, then citizens should work directly for reform of this regime and exhort their representatives to work for its reform.

## V. CONCLUSION

A salient lesson of our discussion is the importance of distinguishing between the related but distinct questions of "Should we *support* the human rights movement?" and "Must we *comply* with the existing international legal human rights regime?". Even if reasonable people can disagree about how to answer the latter question, I am convinced that the former question can be easily and emphatically answered in the affirmative. In the end, then, although we may be unable to determine conclusively whether the existing regime functions well enough to enjoy political authority, this should lead to uncertainty regarding only the *content*, not the existence, of our duty to work toward a world in which there are far fewer human rights violations. It seems to me that those of us in wealthy liberal democratic states all have stringent and demanding duties to ensure that many more people are institutionally protected against the worst forms of avoidable suffering. One obvious way to do this would be to work

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56. Thomas Pogge's analysis allows him to offer a straightforward explanation for this conviction. See POGGE, *supra* note 35, at 235. By citing contribution, he could stress that members of an unjust state coproduce the harms that the state inflicts and so have a special responsibility to shut off those harms.

for a stronger international legal human rights regime that is more attentive to the pressing needs of the world's most vulnerable people. The only question is whether this duty must be paid in the currency of compliance with the commands of the existing international legal human rights regime.

In order to motivate this question, I have compared the current human rights regime to Athenian democracy. Even if this analogy is ultimately inapt, it might nevertheless be instructive. To see why, consider what we can learn from another provocative but inapt analogy: the idea that contemporary academia is a caste system. It is not an uncommon notion that the various academic ranks of graduate student, adjunct instructor, lecturer, untenured professor, tenured professor, and such are morally tantamount to different castes. But both because people voluntarily assume these roles and because it is common to progress through these academic stations, this analogy is clearly inapt. Still, the mere fact that there is an initial plausibility to this comparison should give us pause. At the very least, we should carefully consider whether there are compelling reasons for structuring academia in its current form and whether there are ways we can make its various ranks appear less caste-like without sacrificing anything important.

I hope that comparing the human rights regime to ancient Athens is similarly illuminating. Because the analogy is inapt, it does not straightforwardly justify the conclusion that the existing regime lacks political authority. Like the comparison between academia and the caste system, though, this analogy can still be illustrative. In particular, reflecting upon Athenian democracy reminds us that although there is a tendency to be impressed by the remarkable things political institutions might enable us to achieve, states and other institutions that claim political authority must be judged primarily upon the avoidable depths they enable humans to avoid rather than the spectacular heights they allow a select few to scale. Above all, we want states as a first line of defense against the standard threats to living minimally decent lives. And given how regularly states lose their balance, we do not want them operating without a net. In view of the grave importance of providing a second line of defense, the international legal human rights regime *would* have a compelling claim to political authority over sovereign states *if* it satisfactorily performed this vital function. I am confident that the regime is not currently doing enough on behalf of the world's most vulnerable people, but it remains unclear to me how much of the status quo can

fairly be blamed on the existing human rights regime. What I hope this Article sheds light on, though, is the type of reforms this regime must pursue if it is to stake an unqualified claim to a larger, more authoritative role in global politics.