

2011

## Universal Jurisdiction and the Enforcement of Human Rights

Ralph Gustav Steinhardt  
*University of Redlands*

Follow this and additional works at: [https://inspire.redlands.edu/cas\\_honors](https://inspire.redlands.edu/cas_honors)



Part of the [Philosophy Commons](#)

---

### Recommended Citation

Steinhardt, R. G. (2011). *Universal Jurisdiction and the Enforcement of Human Rights* (Undergraduate honors thesis, University of Redlands). Retrieved from [https://inspire.redlands.edu/cas\\_honors/17](https://inspire.redlands.edu/cas_honors/17)



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 License](#)

This material may be protected by copyright law (Title 17 U.S. Code).

This Open Access is brought to you for free and open access by the Theses, Dissertations, and Honors Projects at InSPIRe @ Redlands. It has been accepted for inclusion in Undergraduate Honors Theses by an authorized administrator of InSPIRe @ Redlands. For more information, please contact [inspire@redlands.edu](mailto:inspire@redlands.edu).

**UNIVERSAL JURISDICTION AND THE ENFORCEMENT OF HUMAN  
RIGHTS**

Tavi Steinhardt

Honors Thesis  
Department of Philosophy  
University of Redlands  
April 15, 2011

### Universal Jurisdiction and the Enforcement of Human Rights

Can laws transcend national boundaries? Are some legal standards binding on all nations, and if so, who is responsible for their enforcement? Such transnational standards, in some form, seem to be a necessary part of any answer to the problems of our century, many of which cannot be adequately addressed without a high degree of international cooperation. Enforceable laws will necessarily be part of the institutional framework guiding and facilitating that cooperation, and so some entities will have to claim universal legal jurisdiction. Without limits, however, the concept of universal jurisdiction may conjure ominous images of a single global state, wielding ultimate unchecked authority over all nations—it is necessary to determine strong criteria for the delimitation of universal jurisdiction and the legitimacy of coercive transnational legal structures. These criteria should find a way to protect national sovereignty and territorial integrity without crippling the attempt to enforce universal standards of justice.

Briefly, let me begin by making clear what I am not talking about: first, I am not talking about treaties or voluntary operations. In the case of an international treaty, consent has been given and a legal contract established—ultimately, these are not coercive standards, since any coercion used in enforcing them derives its legitimacy from express prior consent. Similarly, privately-funded development projects, NGOs, etc., can promote and defend whatever standards they like since they generally operate at the pleasure of the host state. The question I am interested in is whether or not certain rights and standards can be defended *with or without* prior consent in the form of a treaty or other arrangement.

I am also not talking about natural or moral duties or principles of full justice. There are many duties that go beyond the requirements of law—we might try to persuade others to fulfill them, and we might reward states and individuals who do, but we cannot necessarily use coercion against those who do not. I am discussing only the duties that can be enforced by coercive means.

The criteria we could use to determine whether or not transnational coercion is appropriate in response to a given injustice are of several species, including but probably not limited to: 1) the sort of right being violated; 2) the internal structure of the state or entity responsible; 3) the severity of the violation; 4) the likelihood that the violation will continue or be repeated; and 5) the strategic context, comprising economic, political, military, geographic, cultural, and countless other considerations. It seems to me that the first two types of criteria are the ones that lend themselves to philosophical analysis. The others, especially the last, must be decided on something like an *ad hoc* basis.

Many recent theorists of international justice focus on the second criterion: for them, the question of whether or not we can intervene against another state is a matter of the internal structure of that state. This kind of criterion, which I will refer to as *systemic*, examines the offender; certain kinds of governments, for the theorists I will examine here (primarily Martha Nussbaum), have sovereign protections, while others do not. It is an oversimplification to say that Nussbaum fully condones intervention in the absence of domestic legitimacy, but her theory of international coercion follows a line of this sort. An alternative kind of criterion deals with the nature of the specific infraction, and I will

call these *act-based* criteria. Both US foreign policy and United Nations policy follow criteria in this category, which examines offenses rather than offenders.<sup>1</sup>

In short, the problem of universal jurisdiction is being described in two different ways. For Nussbaum, the issue is whether or not a certain state has sovereignty over its own affairs. If it does, then coercion from the outside is generally not acceptable; if it does not, then the international community has all the justification it needs to step in. (This does not mean that foreign powers necessarily *should* intervene; only that they would be justified in doing so.) For the policies of the US and UN, however, the internal structure of the offending state is less important than the offense being committed; sovereignty is assumed as a default, but will be suspended in certain severe cases. What I would like to show is that, in order to make a coercive legal structure that is justified and legitimate, it will be better to use a chiefly act-based approach, albeit one that does not eliminate systemic criteria from consideration entirely. I want to show that the internal structure of the offending society, while important, is less important when it comes to the justification of universal jurisdiction than the ends toward which intervention is directed. A just suspension of national sovereignty should be defined as one that has a just and effective purpose, not solely as one directed against an illegitimate state.

The argument will fall into three parts. First, I will examine the question of national sovereignty and the protections of states against international intervention. After arguing for the use of act-based over systemic criteria, I will move to the next second step in the discussion and ask what sort of act-based criteria are best to use. What sort of acts should we identify as those that compromise the sovereignty of states in which they are committed? Or, to put it differently, what universal rights are to be protected coercively (by military intervention or something similar)? Third, by examining some current policies, I will show that there are existing legal norms to which we can turn in realizing the concept of universal jurisdiction as I will describe it; it is not necessary to reinvent the wheel, and a legal framework is already in place on which to build.

### PART I: SOVEREIGNTY

Because Martha Nussbaum's approach is the one on which I will draw most heavily, I should begin with a brief summary of some of her ideas. In *Frontiers of Justice*, Nussbaum attempts to address the shortcomings of Rawlsian contractarianism, namely its failure to account for the entitlements of the disabled, foreign nationals, and nonhuman animals. In all three cases, Nussbaum argues that the old model of society as a collaborative effort undertaken for mutual benefit is insufficient. It fails, Nussbaum says, to address the moral claims of those less powerful than ourselves, those who cannot provide us with mutual benefit in the usual sense. Her alternative is the "capabilities approach." Nussbaum lists ten universal human capabilities, and argues that in each case, "a life without the capability in question...is not a life worthy of human dignity."<sup>2</sup> Under

---

<sup>1</sup> Of course, any approach that "examines offenders" implies that there is an offense being committed, so I should clarify: the offenses that are relevant in the systemic approaches are long-term, structural, and often not traceable to specific actions and orders. The absence of a free press, for example, is indeed an offense, and in many cases a grievous one, but it is an offense that is built into the structure of the society at hand, and so it is a systemic criterion. By contrast, an order to fire on civilian protesters or an invasion of a neighboring state would fall into the "act-based" category.

<sup>2</sup> Nussbaum, Martha. *Frontiers of Justice*. Cambridge, MA: Harvard University Press, 2006. p. 78.

Nussbaum's theory, human beings are, at a minimum, entitled to a life in which their capabilities are not artificially stunted.

Entitlements derived from innate dignity are an appealing basis for a theory of justice. The intuition that human beings have an inherent moral worth is a common theme in religious and philosophical traditions, and has a certain aesthetic quality not shared by the idea that human cooperation is for the purpose of mutual benefit only. But there is an important gap in this otherwise compelling theory. Noah Feldman points out that:

the capabilities approach differs from the contractarian in that it does perhaps a better job of telling us what people outside the contract are owed morally – but it does not tell us why or even if we would be justified in coercing other people to give them their due.<sup>3</sup>

Nussbaum herself acknowledges something along these lines: “the requirements at the world level are moral requirements, not captured fully in any set of coercive political structures.”<sup>4</sup> Nussbaum's “capabilities approach” is a compelling vision of justice and human rights, but it is unclear how such a vision might be realized.

It may rightly be argued that to critique Nussbaum from the perspective of practical applicability is to submit a round theory to a square test. There is a problem of incommensurability here, and it may seem that I am asking an ideal theory to pass assessments of enforceability that it was not intended to pass. Nussbaum makes a strong distinction between justification and implementation, and does not want to argue that all reforms that can be justified in accordance with her capabilities approach should therefore be coercively implemented.<sup>5</sup> I should make it clear that I am not so much critiquing Nussbaum's theory as seeing how far it will stretch. The hope is not to show flaws in what she has written, but to ask in what respects it is translatable into a different kind of theory. Because Nussbaum's capabilities approach provides so promising a vision of international justice, I want to know the extent to which it *can* be implemented.

### Nussbaum on Sovereignty

Nussbaum clearly agrees with the principle that injustice does not always justify intervention. There are some injustices against which we can intervene and others we should address by means of persuasion. For Nussbaum, the principle we should use to determine the differences is a “threshold of legitimacy”<sup>6</sup>—there is a level of democratic accountability that protects the state against outside intervention, in the absence of which intervention is justified.<sup>7</sup> I want to show that there are other reasons to refrain from intervention, even in cases where no threshold of legitimacy is met.

*Frontiers of Justice* presents a complex view of national sovereignty and territorial integrity, simultaneously offering strong arguments for both universal jurisdiction and robust sovereignty. Nussbaum clearly wants her standards of justice to be universally applicable and (perhaps) universally implemented, which entails limitations on the assumed sovereignty of leaders. For justice to be served, universal standards must

<sup>3</sup> Feldman, Noah. “Cosmopolitan Law?” *The Yale Law Journal*, vol. 116, no. 5 (March, 2007). p. 1041

<sup>4</sup> 2006: 315

<sup>5</sup> 2006: 80

<sup>6</sup> 2006: 259

<sup>7</sup> 2006: 255

supercede national sovereignty in some cases, and for Nussbaum there is no reason why the sovereignty of illegitimate rulers should be protected.

Nussbaum is, however, careful to build strong protections of sovereignty into her work—she certainly does not advocate the abolition of the protections of sovereignty and territorial integrity. Rather, she argues that these protections should be derived from respect for the dignity of individuals, and thus her protections of sovereignty are limited by the idea of a threshold of legitimacy. She rightly acknowledges that sovereignty is not a free-floating right of some to exert power over others; but it is still important as an expression of the right to social self-determination, and therefore must be protected.<sup>8</sup> Nussbaum is careful not to say that the collective has in itself a right to self-determination—she sharply criticizes the analogy between peoples and persons and questions whether the former have any of the autonomy and provisional inviolability that she affords to the latter. Instead, she wants sovereignty to be acknowledged only as a corollary of the individual's right to political participation and self-determination. Thus, sovereignty as a matter of principle only protects states that pass a certain “threshold of legitimacy”; if a state does not pass this test of accountability, then it forfeits sovereignty derived from the right to self-determination and is subject to intervention. Naturally, the threshold is weaker than the standards of full justice, but still strong enough to ensure that sovereignty only protects rulers whose power is an expression of the political will of citizens. We should refrain from intervening coercively *only* if the state is above a certain threshold of democratic legitimacy<sup>9</sup>—if it is not, then the only reason not to intervene is a pragmatic one based on the specific context of the case at hand (realities on the ground might force foreign powers to refrain from intervention in some cases, even when such intervention is justified from an ethical standpoint).<sup>10</sup> In short, Nussbaum argues that the criteria for affording strong protections against intervention and those defining basic domestic legitimacy are essentially identical.

One possible counterargument might begin by following Rawls's approach and assigning certain rights to peoples as peoples, analogous to those granted to persons as persons.<sup>11</sup> Several problems, however, exist with this approach. First, to afford rights to *peoples* does not entail giving any rights to *states*; second, as Nussbaum argues, the language of peoples is unnecessary and potentially problematic. For Nussbaum, “respect

---

<sup>8</sup> 2006: 256

<sup>9</sup> 2006: 258

<sup>10</sup> Given the Nixonian/Kissingerian flavor of this line of thinking, questions of *realpolitik* may appear to be inappropriate in a discussion of ethics. It is not clear to me that this is the case. The protection of one's own power may be a just priority *if* one anticipates that that power will be put to ethical use in the future. The accretion of power may be a just act, or at least a prerequisite for just acts, as when a morally laudable non-profit organization engages in fundraising. Many wonder, for example, why violence against demonstrators in Bahrain in 2011 did not draw the same reaction from Western powers as violence against demonstrators in Libya—it seems that the justification for intervention in Libya should, *mutatis mutandis*, be applicable to Bahrain. The decision not to make strong moves against the state of Bahrain was undoubtedly influenced by the presence of the US 5<sup>th</sup> fleet, based at NSA Bahrain on the south of the island. If the United States had pushed the Bahraini government and lost its ability to project power in the Persian Gulf, thus potentially magnifying Iranian influence in the region, would this have been the correct ethical move? There is at least some cause for doubt here, and with it comes the possibility of a kind of ethical realism in foreign policy.

<sup>11</sup> Rawls, John. “The Law of Peoples.” *Critical Inquiry*, vol. 20 (1993). p. 48.

for nations derives from respect for persons,”<sup>12</sup> and not from any sort of group rights. I will summarize Nussbaum’s argument for this conclusion later on, in the conversation about Rawls’s two-stage contract.

For now, let’s accept Nussbaum’s argument and concede, against Rawls, that peoples do not have rights as such. It does not follow from this that democratic legitimacy and sheer *realpolitik* are the only reasons for respecting sovereignty. I would suggest that in addition to an expression of their collective political will, the state is often (as the nation is by definition) an expression of collective *identity*. Nussbaum is skeptical of this idea, in part because it seems to rely on the Rawlsian idea of a people—that is, a group sharing a basic conception of the good. Nussbaum points out that many states—India is a good example—comprise such a vast diversity of ethnic and cultural groups that no such common identity can be said to exist for the citizens of the state as a whole.<sup>13</sup> Their collective protections against intervention are based on the right to self-determination and “the desire of human beings to live under laws they give to themselves,”<sup>14</sup> not on their identity as a people.

But identification with the state does not necessarily entail the notion of a “people” with which Nussbaum is so uneasy. National identity might exist in a pluralistic society like India, even if India does not constitute a “people” in the sense that, say, France does, since France has a certain historical, linguistic, and ethnic unity that India does not. Indeed, if states and nations become less and less coterminous (as a result of migration, persistence of colonial boundaries as state boundaries, etc.), then a kind of national identity might have to emerge around political—rather than linguistic, religious, or ethnic—ties. Something like this has occurred in the United States, and in many other postcolonial countries. Furthermore, the linguistic and ethnic homogeneity of many of the old nation-states, France included, appears to be in decline as immigrant communities burgeon and begin to flex their political muscles. The national identity of these states may soon become more political and less linguistic/religious/ethnic. In other words, they may lose their status as a people in the Rawlsian sense while still retaining a collective identity strong enough to command respect for state sovereignty.<sup>15</sup>

Any state, then, *might* have a certain claim against intervention based on identity rather than legitimacy. As such, violations of its territorial integrity may turn out to be assaults on the dignity of individual citizens, even if the state has no democratic legitimacy at all. I do not intend to ventriloquize hypothetical foreign populations by suggesting that they either do or do not *want* intervention by foreign powers against their non-democratic governments—clearly, opinions on this matter will vary from person to person and case to case. Furthermore, it is entirely possible that some states do not have

---

<sup>12</sup> 2006: 296

<sup>13</sup> 2006: 244

<sup>14</sup> 2006: 262

<sup>15</sup> It is possible that this reading of the Rawlsian concept might be inadequate: in the politically-defined collective, there is still a shared conception of the good, albeit one that is far thinner than in an ethnically-defined collective. Do the political collectives then constitute peoples? The problem with this line of thinking is that a loose enough definition of “shared conception of the good” might force us to conclude that all of humanity constitutes a “people” in the Rawlsian sense, thus rendering the term useless. We are probably better off sticking to a stricter definition of the sort that Nussbaum employs.

recourse to identity-based protections on their sovereignty.<sup>16</sup> I am only suggesting that we cannot rule out the possibility that intervention itself, regardless of the domestic legitimacy of the state being intervened against, could be inconsistent with respect for human dignity, especially in the absence of some specific, compelling, and exigent *act-based* justification.

So there may be a need for strong protections on national sovereignty and territorial integrity, regardless of the state's internal structure and the question of whether it meets any "threshold of legitimacy." Systemic criteria, therefore, do not get us very far when it comes to questions of policy and implementation. Moreover, if we follow the thread of the act-based criteria, both families of criteria begin to converge. If violent suppression of dissent (as in Libya) is grounds for intervention, then a certain threshold of democracy is implicit in that principle. The specific terms of the threshold might be: *mass violence is not to be used in suppression of the freedom of expression*. Thus, the state would not be able to use the full force of its coercive weaponry in silencing its citizens, and a threshold of democracy would be established by a principle of intervention whose only basis is the nature of crimes, not the legitimacy of the offending state. It would be possible, in that case, to derive something like a systemic criterion by following an exclusively act-based line of thinking.

## PART II: RIGHTS

Once it is established that act-based criteria are better as guides for coercive policy than systemic criteria, we can move into the question of what specific act-based criteria we should turn to. What acts, perpetrated by or within a sovereign state, are so egregious as to justify a suspension of that state's sovereignty? Put another way, what violations of human dignity are so severe that they override the assumed sovereignty of leaders and the territorial integrity of countries? The question of when sovereignty can be justly suspended is the question of what rights can be coercively enforced.

In line with Nussbaum, I want to reiterate the distinction between rights that can be justified (universal entitlements in which I believe and that I want to see respected) and rights that can be enforced (universal entitlements that *must* be respected, and whose violation is grounds for punishment and/or intervention). In this case, I am discussing enforceable rights. My strong support for a universal right to basic education, for example, does not constitute grounds for coercive enforcement, and so I will leave that right to one side unless further argument can be marshaled in support of its inclusion. As we will see, the list of legal rights must be thin, and composed chiefly of negative rights.

### The Normative Criticism

It is necessary to first spend some time addressing a common argument that is leveled against the idea of universal rights. This is the charge of ethnocentrism, or what development theorist Bonny Ibhawoh calls the "normative criticism" of aid, development, and human rights projects. In brief, the idea is that a principle of tolerance requires that we refrain from imposing Western standards on foreign cultures. Normative standards, be they with respect to human rights, economic development, political legitimacy, social justice, or anything else, are vehicles for the export of Western values systems, and—in

---

<sup>16</sup> In Taiwan, for example, where citizens generally do not identify as part of the People's Republic of China, the PRC government lacks this kind of sovereign protection



the more extreme variants of the theory—weapons of neo-colonial oppression. The normative criticism would cut off the enforcement of human rights at its root; by questioning the universality of those rights, it questions the justification not only for the enforcement of rights through coercion, but the use of persuasive means as well.

The normative criticism is an expression of the principle of cultural tolerance, and has a certain appeal as a check against the tendency toward neo-colonial paternalism. Many of colonialism's brutal depredations (indeed, many of humanity's depredations simpliciter) have been justified by appeal to universal morality and/or a paternalistic project of "improvement" by means of subjugation. Proponents of the normative criticism see it as a restraint on this kind of thinking. Unfortunately, the normative criticism—and the principle of moral tolerance of which it is an expression—has a tendency to indiscriminately obstruct all moral, political, economic, and social action that crosses cultural borders. Ideally, we would find a justification of international action and even international coercive institutions that does not leave the door open to cultural steamrolling, whether willful or simply misguided.

While this criticism has fortunately begun to fall out of favor in academia,<sup>17</sup> it may still find purchase as an implication of John Rawls's theory of international justice. We will see later that something like the normative criticism is invoked to defend Rawls against critics who see him as overly protective of unjust social systems abroad. David Reidy, for example, argues that any restrictions on sovereignty more stringent than Rawls's are an ethnocentric projection of our own values on other cultures.<sup>18</sup>

I think, though, that Rawls's protections of unjust foreign societies stem less from a relativistic "normative criticism" line of reasoning and more from the fact that Rawls's project in *The Law of Peoples* is better read as a practical theory than a strictly moral one. It is important to distinguish between the question of whether universal rights can be recognized at all and the question of whether they should be enforced. The normative criticism addresses the first question; I think Rawls addresses the second, and I will expand on this idea later on. For now, I want to address the normative criticism in its pure form, not as an implication of Rawls's work.

### **Responding to the Normative Criticism**

Responses to the normative criticism may take one of two forms. We can argue that ethnocentric ideas are not necessarily invalid as such; or we can argue that there is, in fact, nothing ethnocentric about recognizing and enforcing universal human rights. The former species of argument is shared by a number of philosophers and political theorists, particularly those who have emerged recently as a counter to the "antidevelopment" theorists. An example is Alison Renteln, who suggests that "perhaps a commitment to another value such as egalitarianism or humanitarianism or some other should take precedence over tolerance."<sup>19</sup> She acknowledges that relativistic approaches like the normative criticism have their merits as a way of challenging the self-naturalizing

<sup>17</sup> see, e.g., Ibwaoh, Bonny. "Human Rights INGOs and the North-South Gap: the challenge to normative and empirical learning." in Daniel A. Bell and Jean-Marc Coicaud, eds. *Ethics in Action*. New York, NY: Cambridge University Press, 2007; Renteln, Alison Dundes. "Relativism and the Search for Human Rights." *American Anthropologist*, vol. 90, no. 1 (March, 1988). pp. 56-72.

<sup>18</sup> Reidy, David. "Rawls on International Justice: A Defense." *Political Theory*, vol. 32, no. 3 (Jun., 2004).

<sup>19</sup> 1988: 63

tendency of our values, but argues that we should not let such approaches imply moral equivalency of all values. Cultural and ethical relativism, says Renteln, are theories of valuation which help us to see that our beliefs and values are products of our cultural upbringing; tolerance on the other hand is a value judgment in itself which holds all moral systems to be equal. Tolerance, therefore, is a culturally specific system of valuation that should not be made to apply in all cases—the normative criticism, ironically, is an *expression* of ethnocentrism, rather than a restraint on it.

Even if this argument is not accepted, however, there is another species of argument that justifies the institution of universal human rights and provides a defense against the normative criticism. Nussbaum avoids the criticism entirely by pointing out that the concept of universal rights deriving from inherent human dignity is not a uniquely Western invention. India, as she points out repeatedly, has an ancient tradition of employing such concepts.<sup>20</sup>

Nussbaum's argument may be elucidated by connecting it to the Rawlsian ideas of public conceptions of justice, comprehensive doctrines, and overlapping consensus. Comprehensive doctrines are moral, philosophical, or religious worldviews—it is assumed that a variety of these will exist in any given society.<sup>21</sup> Public conceptions of justice are, Rawls says, not to be derived from these doctrines, but rather from an “overlapping consensus” to which all citizens can reasonably be expected to assent. To put the normative criticism in Rawlsian terms, we might suggest that one comprehensive doctrine (Western liberalism) is imposing itself on others, and thus that universal rights, which are a part of Western liberalism, cannot be part of the public (in this case global) conception of justice.

This would be a misreading of Rawls. Rawls does not argue that comprehensive doctrines cannot be part of public reason; instead, he argues that each comprehensive doctrine will support the decisions of public reason in its own way, provided the public justification was based on an overlapping consensus. So the comprehensive doctrines are not only permitted, but expected to be a primary source of support. Individuals will look to their comprehensive doctrines to reinforce and encourage allegiance to the public principles to which they are expected to submit.<sup>22</sup> Similarly, in the international case, comprehensive doctrines of justice and proper social order may lend support to an emergent global overlapping consensus without dominating it. Nussbaum can be read as arguing that the Rawlsian overlapping consensus already exists with respect to universal rights. The comprehensive doctrine (or family of doctrines) called Western liberalism has reasons to support a principle of universal respect for the innate dignity of all human beings, but this does not mean that such a principle is unique to that one doctrine.

Recent events in the Middle East and North Africa have lent further support to the idea that an overlapping consensus already exists with respect to human rights and human dignity. The uprisings of the Arab Spring have been characterized by the explicit use of the language of universal human rights, and many of the attendant demands for reform have been articulated in language strongly reminiscent of Nussbaum's work. One witness, speaking from Benghazi, described conditions under Muammar Gaddafi as unfit

---

<sup>20</sup> 2006: 254; 279

<sup>21</sup> Rawls, John. *Political Liberalism*. New York, NY: Columbia University Press, 1993. p. 36.

<sup>22</sup> Rawls, John. “Justice as Fairness: Political, not Metaphysical.” *Philosophy and Public Affairs*, vol. 14, no. 3 (Summer, 1985). p. 247

for a decent human life<sup>23</sup>—her words could have been lifted straight from the pages of *Frontiers of Justice*.

There is, then, a fair empirical argument to support the idea that a thin overlapping consensus already exists in the world, or at least that the notion of universal rights is not *solely* a Western concept. The questions of whether these rights derive from individual or societal claims, and of whether they are to be understood as duties or entitlements first, persist, but at the very least we can say that all societies should recognize that human beings have basic obligations in their treatment of each other. Thus, some set of basic universal human rights exists. We can lay to rest the majority of arguments deriving from the normative criticism and proceed with the more difficult and inevitably more controversial task of enumerating and enforcing those rights.

In abandoning the normative criticism, it is my hope to begin the process of developing a theory of cross-cultural ethics that does not rely on any principle of moral tolerance at all. While such principles have their uses, as I have already acknowledged, they also tend to legitimize unjust structures as “cultural expressions,” and impede the project of expanding justice in favor of certain iniquitous historical conventions. The principle of tolerance, for example, might remind us that Western liberalism is one of the few doctrines in the world that accepts homosexuality as an equally valid sexuality and exhort us not to impose our standards of sexual decency on societies that reject and punish homosexuals.<sup>24</sup> What we are really being asked to do is abandon justice in favor of tradition. Furthermore, this sort of thinking often leads us to consider foreign traditions only in light of the interpretations that are most current with ruling elites. Some in the West, for example, have wondered whether Western feminism is appropriate for export to Islamic societies in which gender roles are understood differently. This discussion completely ignores and even invalidates indigenous Islamic feminisms such as that of Lila Abu-Lughod, Ziba Mir-Hosseini, and countless others, thereby lending support to the patriarchal systems with which Islamic feminists contend.<sup>25/26</sup> In order to try to avoid all of these paralyzing, patronizing, and often patently Orientalist modes of thought, it would be best to drop the concept of moral tolerance and attempt to find another basis for cross-cultural respect and deference. In what follows, I will attempt to abandon the language of tolerance without losing the advantages we gain by its use.

### **Nussbaum and Rawls: What Rights should be Enforced**

Once the normative criticism is dealt with and we have concluded that universal human rights should be recognized, we can turn to the question of what they are, and when and how they should be enforced. In particular, I want to focus on two questions: the degree to which we need to exercise caution in enumerating universal rights; and the question of whether systemic injustices such as the absence of democracy should be described using rights language. This issue is a point of tension between Nussbaum and Rawls, and ultimately I will conclude that Rawls comes closer to providing enforceable

<sup>23</sup> “Eyewitness Account from Benghazi” Al Jazeera English. 19 February 2011, 4:26pm.

<sup>24</sup> see Ibwaoh 2007: 92 for examples

<sup>25</sup> Abu-Lughod, Lila. “Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others.” *American Anthropologist*, vol. 104, no. 3 (2002). pp. 783-790.

<sup>26</sup> Mir-Hosseini, Ziba. Muslim Women's Quest for Equality: Between Islamic Law and Feminism. *Critical Inquiry*, vol. 32, no. 4 (Summer 2006). pp. 629-645.

principles. If Nussbaum's theories are to be implemented, we will need to retain a few Rawlsian concepts that she wants to leave behind.

### **Rawls's Theory of International Justice**

The basic outline of John Rawls's theory of international justice, contained in *The Law of Peoples* (published as an article in 1993 and in 1999 as a book) is an additional contract following the domestic contract famously outlined in *A Theory of Justice* (1971). Rawls has us imagine that representatives of all societies, with their differing internal structures, meet in an appropriate original position; the theoretical contract to which all such societies would assent is Rawls's idea of a just global society. In this theory, societies with their different domestic institutions are analogous to persons with different comprehensive doctrines. Rawls takes seriously the analogy between persons and corporate entities such as states, to the point that many of the critics of *The Law of Peoples*—including Nussbaum—argue that it is overly aggregative and does not show sufficient respect for individuals.<sup>27</sup>

In describing his contractarian approach to international justice, Rawls opts for a two-stage contract rather than the global contract favored by writers such as Charles Beitz and Thomas Pogge. Under the latter model, the parties involved in drafting the social contract are a global sample—they represent all persons, without regard to geographic or social distribution. Just as considerations of class, gender, race, etc., are removed under the original position in *A Theory of Justice*, so too are national considerations removed under the global contract.<sup>28</sup> In Rawls's model, by contrast, there are two separate contracting stages: first, the members of each society meet in an appropriate original position to decide on principles to order their own society; then, representatives from each society meet to decide on a contract that will guide their international "society of societies."<sup>29</sup>

In the interaction between those societies, a duty of non-intervention is incumbent upon all as an expression of tolerance for the plurality of ways in which society may be ordered. We are required not to coercively rectify systemic injustices (that is, deviations from our own standards of justice) in other societies. Western liberalism is not a norm that is to be exported and made binding on all societies. Intervention, then, is to be reserved for the case of "outlaw societies." For Rawls, outlaw societies are of two kinds: they either a) "recognize no conception of right and justice at all," or b) are dedicated to a comprehensive doctrine that recognizes no limits on itself.<sup>30</sup> It seems that the definitive characteristic of an outlaw state is its failure to recognize rights—either the territorial rights of neighboring states, or any rights of anyone at all. In response to such states, a just liberal state has little choice but to operate according to a *modus vivendi*, which may, regrettably, involve coercion and even war.<sup>31</sup>

Between the two-stage contract and the idea of outlaw states, we can see an important theme emerge in Rawls: it seems that, for him, the reform of internal

<sup>27</sup> Reidy 2004: 293.

<sup>28</sup> see Beitz, Charles. *Political Theory and International Relations*. Princeton, NJ: Princeton University Press, 1979; Pogge, Thomas. *World Poverty and Human Rights: Cosmopolitan Responses and Reforms*. Cambridge: Polity, 2002.

<sup>29</sup> Rawls 1993

<sup>30</sup> 1993: 60

<sup>31</sup> 1993: 61

institutions is not an appropriate goal for any coercive intervention. Clearly, the two-stage contract protects domestic institutions, even if these may not meet our own standards of justice. The concept of outlaw states, similarly, implies that intervention is an appropriate response to violent and aggressive acts rather than unjust structures.<sup>32</sup> This, I will argue, is one of the principles that we must retain from Rawls if Nussbaum is to provide a basis for designing legal structures—my hope is that we can retain it while abandoning the principle of tolerance on which it seems to rest.

### Nussbaum's First Criticism: The Thin List

Nussbaum offers two major criticisms of Rawls on the issue of universal human rights. While his theory of international justice ensures the existence of basic rights, (a) it provides too thin a list of rights,<sup>33</sup> and (b) they are not adequately protected by his two-stage contract.<sup>34</sup> In short, Nussbaum argues that Rawls is being overly cautious in enumerating his rights.

Nussbaum's first point is that Rawls "explicitly omits more than half the rights enumerated in the Universal Declaration [of Human Rights (1948)]."<sup>35</sup> The rights omitted by Rawls include rights to education, free speech, and equal protection under the law. Only the most basic rights—life and security, rule of law, minimal freedom of conscience (note that this does not necessarily entail freedom of expression), emigration, etc.<sup>36</sup>—are identified as universal. For Rawls, a more comprehensive list of rights is not to be imposed on foreign societies.

Against Nussbaum's first criticism, one possible defense of Rawls comes from David Reidy. Reidy argues that any theory of rights more robust than Rawls's is an ethnocentric projection of our values on foreign societies,<sup>37</sup> and that Rawls's caution is well-placed as a defense against the normative criticism. By keeping the list of rights short and not enforcing any that do not intersect our thin global overlapping consensus, we prevent ourselves from overstepping our boundaries and forcing our values on others. We have seen, though, that there are problems with the normative criticism, and so in keeping with my broader project, I will attempt to make an argument that does not rely on the concept of moral tolerance.

Other than Reidy's line, there are two reasons why any list of rights that is to be legally enshrined and enforced must be thinner than the list of rights we might recognize as part of a moral doctrine. First, a legal set of rights must be simple, feasible to implement without excessive cost, and unlikely (as far as possible) to produce conflicts between competing and incompatible entitlements. Second, the necessary moral consensus can only emerge around a thin list.

---

<sup>32</sup> It could be argued, of course, that the first type of outlaw society is subject to the coercive *modus vivendi* as a result of its structure—the absence of any recognition of the rights of citizens certainly is a kind of systemic injustice. But if the structure of the state lacks any considerations of justice, it seems to be something more than that. Inevitably—indeed, almost by definition—such a state would commit acts of unrestrained violence against its citizens. We could, then, say that the purpose of intervention is to prevent such acts of violence, not to reform a deficient structure.

<sup>33</sup> 2006: 247

<sup>34</sup> 2006: 253

<sup>35</sup> 2006: 248

<sup>36</sup> 1993: 57

<sup>37</sup> Reidy 2004: 311

The first point, the principle of simplicity, includes the need to attach duties to all legal entitlements. This will entail moving away from Nussbaum, who makes a strong case for the priority of entitlements to duties. She points out, among other things, that entitlement is a fairly stable and distinct matter: human needs remain more or less the same over time, whereas duties must respond to vagaries of circumstance and shifts in power, which entail shifts in responsibility. For Nussbaum, it does not make sense to talk of a duty that is not derived from an entitlement.<sup>38</sup> On the conceptual question, Nussbaum may be right—all duties probably are *ultimately* derived from entitlements. As a matter of law, however, this does not seem to be a feasible approach. The very idea of enforcement clearly requires that we speak in terms of duties, whether positive or negative. Enforcement entails coercion, and it is of course absurd to talk of coercing people whose entitlements are not being met; the only people who can be coerced are those who are failing to meet a clearly defined duty. Thus, any notion of entitlement that is to be implemented as an enforceable legal institution must be defined in terms of specific duties and responsibilities to be met by specific persons.

One of the major challenges we will face in translating Nussbaum's theory into something more practicable is translating entitlements into specific, enforceable duties. The list of rights defended by the law must therefore be quite thin, like Rawls's, even if the list of justifiable rights is more like Nussbaum's. Furthermore, because the imposition of negative legal duties requires far less justification than the imposition of positive duties, and because positive rights entail positive duties, the list of legal rights should be composed primarily of negative rights. In more concrete terms, we might say that a right not to be hacked apart with a machete (negative right) entails a clear negative duty: you are obligated not to hack me or anybody else apart with a machete. A right to basic education (positive right), on the other hand, is less clear when it comes to the issue of duty: who is responsible for providing that education? Who should build the school, write the books, teach you, verify the quality of your education, etc.? A legally-enforceable list of rights must consist only of negative rights, except in the case of positive rights with defined, feasible duties attached.

The second reason for keeping the list of legal rights thin is because moral consensus can only materialize around thin principles. Rawls argues that overlapping consensus can emerge only around thin principles, and that these will need reinforcement by the thickness of the comprehensive doctrines that are more fully integrated into the lives of individuals and peoples.<sup>39</sup> So if we want our principles of justice to be accepted across cultures and eras, we should keep the list of rights short. This begins to sound like the normative criticism ("we must be careful not to impose our standards on those with whom we disagree"), but with an important difference: the normative criticism as described by Rawls derives from a commitment to universal tolerance and questions whether or not we can coercively enforce our standards in other countries at all. This second justification for a thin list of rights starts from the proposition that we *can* enforce some standards, and only urges caution in choosing which standards to enforce. Moreover, this caution derives more from the concept of enforcement itself than from any principle of tolerance for those who fail to meet universal standards. The fact that we

---

<sup>38</sup> 2006: 278

<sup>39</sup> Rawls, John. "The Idea of Public Reason Revisited." *University of Chicago Law Review*, vol. 64, no. 3 (Summer, 1997). p. 612

seek moral consensus does not mean that we always tolerate those with whom we disagree.

### **Nussbaum's Second Criticism: The Two-Stage Contract**

Nussbaum's second point, that the two-stage contract does not adequately protect individual rights, is probably correct when it comes to ideal theory, but difficult to translate into an enforceable policy. She argues that if questions of internal systemic justice are the subject of the first contract (domestic), but not the second (international), then a morally arbitrary line is being drawn: "if the corporatist tradition [i.e., one antithetical to individual rights] happens to dominate in a separate state, it gets to prevail; if it is but one element in a liberal state, it does not prevail."<sup>40</sup> For Nussbaum, the accident of *where* a particular doctrine happens to be in the majority has nothing to do with its status from the perspective of justice.

One could, of course, respond to Nussbaum by invoking the principle of tolerance. Reidy makes just such a move by arguing that the individualistic notion of human rights "arises out of and would appear to presuppose a certain sort of institutional background."<sup>41</sup> To impose the conception of persons as free and equal, for example, on those who do not already recognize it is therefore a violation of the liberal commitment to reciprocity and mutual reason. Reidy would respond to Nussbaum's point about by arguing that when we discuss justice at home, we are doing it against the backdrop of a Western intellectual tradition. When we protect non-liberal, corporatist, or any other doctrine that does not meet our standards, we are doing so out of respect for cultural difference.

I think this response depends on too strong a principle of moral tolerance, one that has the potential to impede human rights projects, obstruct cross-cultural political action, and slow the pursuit of global justice. Instead of pursuing Reidy's line, let's accept Nussbaum's argument as is. She is probably right that the geographic distribution of a doctrine says nothing about whether or not it is just. But the accident of distribution is hardly a peripheral issue when it comes time to apply our principles of justice in the formation of real-world policies. We can accept Nussbaum as a matter of ideal theory while applying Rawls as a set of practical guidelines.

It might be best, in fact, to read Rawls as working toward a theory of just foreign policy *given* the fact that certain states will not be ordered according to liberal standards of justice, rather than an ideal theory of global justice. In other words, Rawls might be examining principles of justice for foreign policy within one society, not principles of justice for the whole world. This is evidenced by the fact that Rawls explicitly addresses questions of non-ideal theory and, more importantly, would help to explain why Rawls uses a two-stage contract rather than a global contract. Nussbaum and Reidy both think that Rawls opts for the two-stage contract out of a liberal desire to tolerate non-liberal doctrines; maybe the real reason (or a further reason) is because the two-stage contract more adequately represents a world in which other doctrines exist whether we like them or not. The two-stage contract would thus be a better tool for evaluating foreign policy decisions within a given society, albeit less useful for deriving principles of ideal global

---

<sup>40</sup> 2006: 254

<sup>41</sup> Reidy, David. "Rawls on International Justice: A Defense." *Political Theory*, vol. 32, no. 3 (Jun., 2004). p. 308

justice. Even if this was not his intent,<sup>42</sup> it might be a useful interpretation of Rawls: it not only provides a defense against Nussbaum's critique, but also divorces Rawls's theories from the general principles of moral toleration to which he may have been committed.

The two-stage contract allows systemic injustices (violations of our own systemic criteria, we might say) to persist in a way that Nussbaum finds unacceptable; but maybe we can make sense of the value of this approach by referring back to her own strong distinction between justification and implementation. While the sort of systemic injustices that are allowed to stand by the two-stage contract might be subject to moral condemnation and persuasive rectification, they are not to be rectified by coercion.

From this discussion, I conclude that the criteria delimiting sovereignty should be act-based rather than systemic; that the acts whose commission compromises sovereignty should be understood as violations of enforceable rights; that the list of enforceable rights should be a short list of negative rights, around which some basic moral consensus can emerge; and that coercion and intervention are generally not to be used to reform unjust social structures. In drawing these conclusions, I have had no recourse to the principle of moral tolerance.

### **PART III: POLICY AND APPLICATION**

With my arguments laid out, I would like to briefly discuss some of the current policies that we might use to build a legal structure of the sort I have described. So far, I have made only a philosophical argument. But given that my project is to describe a legally-enforceable system of global justice, a version of Nussbaum's theory that works as a guide for policy, it seems necessary to make the case that mine is not a free-floating ethical theory. Rather, it can be grounded in existing policies and legal concepts and thus potentially enforced in the real world.

The most pertinent legal concept is the *responsibility to protect*, a slightly vague term that has found expression in several forms, as Carsten Stahn points out.<sup>43</sup> In brief, the responsibility to protect describes a legal duty on the part of states and the international community to protect all people against genocide, mass rape, and other grievous and violent offenses against their basic rights. If such a responsibility exists, it provides precisely the sort of legal mechanism that would be necessary to enforce universal rights in the way I have described.

#### **Responsibility to Protect**

From its origins in a 2001 report of the International Commission on Intervention and State Sovereignty,<sup>44</sup> the phrase has come to occupy a slightly ambiguous space in the legal literature—neither a fully enforceable policy nor a mere rhetorical device. Stahn highlights the ambiguity in this idea by analyzing four legal articulations of the responsibility to protect that differ in certain key respects. From the common elements of all four, we can say that the responsibility to protect describes a three-tiered obligation on the part of states: first, states have the responsibility to protect their own citizens; second,

<sup>42</sup> Certain passages, (e.g. (1993: 56) suggest that Rawls was trying to build a strong principle of tolerance into his theory.

<sup>43</sup> Stahn, Carsten. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *American Journal of International Law*, vol. 101, no. 1 (Jan., 2007). pp. 99-120.

<sup>44</sup> International Commission on Intervention and State Sovereignty. "The Responsibility to Protect." 2001.



if the state fails to protect its own people (or, *a fortiori*, if the state itself is responsible for the violence), responsibility shifts to the UN Security Council, which is then obligated to intervene; third, (this third step is controversial and not included in all versions of the concept), if the Security Council fails to intervene, individual states must act, as cooperatively as possible, without UN support.

With or without its third tier, the responsibility to protect fits elegantly with the theory of global enforcement that I have developed: it identifies specific cases, based on act-based criteria, in which the sovereignty of states is compromised and universal jurisdiction established for the purposes of coercive intervention. Furthermore, the responsibility to protect entails only a responsibility to interrupt ongoing violence, not a responsibility to protect *all* rights of *all* people through the weapon of law. As I have argued, it is generally desirable to allow systemic change to emerge from within, rather than imposing it coercively; consideration of the violence in Iraq following the forcible ouster of Saddam Hussein supports this principle, as does, inversely, the largely bloodless ouster of Hosni Mubarak in Egypt. The responsibility to protect follows the same line: coercive enforcement of human rights is only justified with respect to those violations that take the form of ongoing violent crimes; systemic or institutional violations of rights should be rectified by the use of persuasive means and the cautious encouragement of reform-minded domestic movements.<sup>45</sup> If it should emerge as a strong legal norm rather than a vague-yet-fashionable diplomatic and political term, the responsibility to protect would be just the sort of tool we need to implement and effectively enforce a set of universal human rights.

### Libyan Case-Study

Finally, I want to elucidate my conclusions by briefly applying them to a real-world case. Given the timing of this writing, it is natural to turn to the 2011 revolution in Libya. The question I want to address is: can the Libyan campaign of Spring 2011 be understood as a coercive enforcement of human rights standards as defined by the responsibility to protect? Do the actions of NATO, the UNSC, and the rest of the coalition pass the test I outlined in sections I and II?

UN Resolution 1973, which authorized the use of “all necessary measures,” with the exception of an occupation force, to protect civilian populations in that country, was adopted on the 17<sup>th</sup> of March, 2011. Days later, French pilots flew the first sorties in the implementation of a policy that will ultimately (at the time of writing it appears inevitable) lead to the end of Muammar Gaddafi’s rule. How does this intervention fare under the criteria outlined above? Given the facts of this case, we can construct a “sample justification” for the Libyan intervention based on the principles for which I have argued. To reiterate, these are: 1) act-based criteria rather than systemic; 2) short list of enforceable rights, primarily composed of negative rights; 3) the objective of intervention is the cessation of violence, not broader reform.

---

<sup>45</sup> Having brought up the example of Iraq, I should briefly acknowledge the possibility that a justification of military action in that case could have proceeded along similar lines. Saddam Hussein’s acts of genocide in Iraqi Kurdistan, his invasion of Kuwait, the use of rape as a tool of the state, and other acts of violence could have constituted a strong case for intervention on a human rights basis. If the justification for invasion had been based on human rights and the responsibility to protect rather than shoddy intelligence and a questionable doctrine of preemptive war, a different kind of conversation might take place about the Iraqi example.

The Libyan intervention clearly satisfies the requirement of act-based criteria: direct orders were given to fire on civilians and even bomb them in their homes, and these offenses have nothing to do with the structure of the state. Of course, the Gaddafi regime would also meet systemic criteria for the suspension of sovereignty, since it failed to meet even the most basic standards of accountability to its citizens. Furthermore, the Libyan state operated on an unrestrained system of fear and bloodshed that vividly illustrates Rawls's first variety of outlaw state, i.e. one that recognizes no moral restraints on its own actions.<sup>46</sup> Because either species of criteria could provide an argument for intervention, the first principle is clearly met.

The second principle is also met, since it is obvious that the rights being violated by the Libyan state are of the most basic and negative sort. It strikes me as fairly uncontroversial that our list of enforceable rights should include the right of innocent civilians and children not to be bombed in their homes by their own government. Consensus would almost certainly emerge in support of this right, and the duty entailed by it—governments should not deliberately bomb their own citizens—is quite clear.

The third principle presents a more complex problem, and so it is worth spending some time on it. Does the Libyan intervention meet the standard of appropriate goals? That is, was it aimed at ending ongoing violence rather than re-shaping Libyan society? If rectification of systemic injustice (i.e. regime change) is not a legitimate goal for international intervention, even in the absence of minimal democratic legitimacy, then didn't the coalition overstep its bounds in, for example, bombing Gaddafi's compound in Tripoli?

It does seem clear that NATO and the coalition of states acting under the mandate of Resolution 1973 have adopted an end to the Gaddafi regime as one of their goals. Indeed, it is difficult to imagine an end to the intervention without Gaddafi's ouster. This element of the intervention would not be justified by my principles for the enforcement of universal human rights. But it is possible that strikes against the regime itself did not *need* to rely on a human rights argument. A declaration of war against Libya could have been justified by a principle of self-defense, since Gaddafi made explicit threats against his neighbors before the air strikes began.<sup>47</sup> Once the Libyan state made threats against air and sea traffic outside its own territory, it forced the hand of the international community and provided valid grounds for forcible regime change. In the sample justification that I am offering here, the initial no-fly zone and concomitant strikes against ground targets would be justified on human rights grounds; subsequent strikes against Gaddafi's military and against Gaddafi himself could be justified by a reasonable principle of self-defense. This has, of course, *not* been the justification offered: no declaration of war has been made, the United States Congress has not been consulted, and the Libyan intervention has continued without open dialogue concerning its objectives, limitations, and the rationale for its undertaking. I am only arguing that intervention in Libya *could* have been justified under a set of principles like the one I have developed.

---

<sup>46</sup> see "Libya: A State of Terror." Al Jazeera English, 3 March 2011. While the Gaddafi regime was nominally dedicated to Islamic principles, its interpretation of those principles was such that it easily met the Rawlsian standard of nonrecognition of moral restraints.

<sup>47</sup> Black, Ian. "Gaddafi Threatens Retaliation in Mediterranean as UN Passes Resolution." The Guardian, 18 March 2011

These comments may bring me further into my case-study than it is wise to venture. I think it is clear that the theory of intervention that I have developed would support swift and decisive intervention against Libya. Did the delay, which made intervention less effective, also constitute an unjust abdication of the responsibility to protect? Does the disparity between high-profile intervention in Libya and the relative absence of international action against ongoing violence elsewhere—in Syria, for example—point to a kind of unequal protection under the law? If the security council had failed to adopt Resolution 1973, would individual states then have had legal standing to act on their own, in accordance with the third link in the chain of responsibility to protect? All of these questions I will have to leave unaddressed.

### Works Cited

- Abu-Lughod, Lila. "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others." *American Anthropologist*, vol. 104, no. 3 (2002). pp. 783-790.
- Beitz, Charles. Political Theory and International Relations. Princeton, NJ: Princeton University Press, 1979.
- Bishara, Marwan. "West Overzealous on Libya." Al Jazeera English, 18 March 2011.
- Black, Ian. "Gaddafi Threatens Retaliation in Mediterranean as UN Passes Resolution." *The Guardian*, 18 March 2011
- "Eyewitness Account from Benghazi" Al Jazeera English. 19 February 2011, 4:26pm.
- Feldman, Noah. "Cosmopolitan Law?" *The Yale Law Journal*, vol. 116, no. 5 (March, 2007). pp. 1024-1070.
- Ibwaoh, Bonny. "Human Rights INGOs and the North-South Gap: the challenge to normative and empirical learning." in Daniel A. Bell and Jean-Marc Coicaud, eds. Ethics in Action. New York, NY: Cambridge University Press, 2007.
- International Commission on Intervention and State Sovereignty. "The Responsibility to Protect." 2001.
- "Libya: A State of Terror." Al Jazeera English, 3 March 2011
- Mir-Hosseini, Ziba. Muslim Women's Quest for Equality: Between Islamic Law and Feminism. *Critical Inquiry*, vol. 32, no. 4 (Summer 2006). pp. 629-645.
- Nussbaum, Martha. Frontiers of Justice. Cambridge, MA: Harvard University Press, 2006.
- Pogge, Thomas. World Poverty and Human Rights: Cosmopolitan Responses and Reforms. Cambridge: Polity, 2002.
- Rawls, John. "Justice as Fairness: Political, not Metaphysical." *Philosophy and Public Affairs*, vol. 14, no. 3 (Summer, 1985). pp. 223-251.
- Rawls, John. "The Law of Peoples." *Critical Inquiry*, vol. 20 (1993). pp. 36-68.
- Rawls, John. Political Liberalism. New York, NY: Columbia University Press, 1993.
- Rawls, John. "The Idea of Public Reason Revisited." *University of Chicago Law Review*, vol. 64, no. 3 (Summer, 1997). pp. 765-807.
- Renteln, Alison Dundes. "Relativism and the Search for Human Rights." *American Anthropologist*, vol. 90, no. 1 (March, 1988). pp. 56-72.
- Stahn, Carsten. "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" *American Journal of International Law*, vol. 101, no. 1 (Jan., 2007). pp. 99-120.

