We are living through what might be called the human rights revolution. Since the end of World War II, and more dramatically, since the end of the Cold War, human rights have emerged as a fundamental concern of international relations and morality. This is as it should be. While human rights constitute but a part of an adequate theory and practice of international relations and morality, they constitute a core or fundamental part. It is crucial, then, that we properly understand and fully secure human rights.

As with so many other revolutions, the human rights revolution has brought both progress and confusion. It is clear to almost everyone now that there are some rights held by all individual persons, simply by virtue of their being persons, and binding against all bodies politic regardless of their voluntary undertakings, and that the sovereignty of states over their members is accordingly conditional. But the content, nature, and justificatory basis of these rights are not clear. Nor is their relationship to those rights articulated in the various human rights documents and treaties increasingly signed and ratified (though often with significant reservations) by existing states.¹

The Universal Declaration of Human Rights (UDHR) expresses what might be called the cosmopolitan orthodoxy with respect to human rights. According to this orthodoxy, human rights belong to a moral code, thin and surely incomplete, but nevertheless fundamental and binding on all individual persons worldwide, and thus all peoples and states. Human rights are justified in terms of the foundational axiological commitments and basic moral norms belonging to that code. This view fits comfortably with the language and tone of the UDHR. The Preamble to the UDHR affirms the “inherent dignity and [thus] the equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world” and “as a common standard of achievement for all peoples and all nations.”2 And Article 1 states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Taken together, the thirty Articles of the UDHR would appear to entitle all human persons as a matter of basic morality to, and thus to commit all bodies politic to securing, the social conditions essential to any decent or minimally good life.3

There are many species of the cosmopolitan orthodoxy genus. Some assert that human rights depend fundamentally on the theistic underpinnings of traditional natural law theory.4 Others assert that they depend only on a secular conception of the rationality and reasonableness of persons as agents.5 Still others set aside the search for unassailable moral foundations and ground human rights explicitly in liberal aspirations, a liberal project addressed to the conditions of modernity, with its centralized and powerful states and ubiquitous and unforgiving markets.6 But what all species of the cosmopolitan orthodoxy have in common is that human rights are thought to exist and to be derivable independent of and prior to any practical inquiry into the morality of international relations.7 Human rights belong to a fundamental (even if partial or incomplete or minimalist) moral code applicable to all individual persons, a code set out at the level of interpersonal relations and universal in reach. They thus function as an independent and prior moral constraint on international relations. They are, as it were, already in hand

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2 Preamble, Universal Declaration of Human Rights, 1948.
when we take up the practical questions of international morality. Indeed, they are already in hand when we take up the questions regarding the moral credentials of our own domestic political order.

Further, most, if not all, species of the reigning cosmopolitan orthodoxy count all or nearly all the rights set out in the UDHR and subsequent human rights conventions and treaties, as genuine human rights. The upshot is that human rights require something like a liberal democratic egalitarian welfare state.8

With Michael Ignatieff, I suspect that one reason for the dominance of this orthodoxy regarding human rights is the often unacknowledged yearning of many in the West for a new universal creed, a new Catholicism, a secular religion, to replace the more familiar but now no longer plausible claimants to the one true creed or religion.9 That a doctrine or conception of human rights satisfies such a yearning, of course, is not a good philosophical reason, even if it is a psychological or sociological explanation, for endorsing it. But what are the alternatives to (one or another form of) the reigning cosmopolitan orthodoxy?

The standardly mentioned alternatives here, realism and relativism, are sceptical in nature and thus not morally attractive. On the realist view, human rights never amount to anything more than either the self-interested will of the most powerful states or the contingent content of a prudential *modus vivendi* between more or less equally vulnerable states. On the relativist view, the universality of human rights can be purchased only at the price of ethnocentrism, intolerance, moral imperialism, and a failure of reciprocity. Given these as the alternatives, it is no wonder that the cosmopolitan orthodoxy reigns.

But the cosmopolitan orthodoxy has its own difficulties. In particular, notwithstanding the cosmopolitan orthodoxy, the content, nature, and justification of human rights remain as contested, reasonably contested, as ever. Is there really a *human right* to what comes, more or less, to life in a liberal democratic egalitarian welfare state? Are human rights really best understood as part of a universal moral code binding on all individuals and articulable and understandable without any essential reference to international relations? If so, do they belong within that code to its conception of the right or of the good? Where is the line, if there is a line, between human rights as minimal standards the violation of which is simply intolerable and human rights as aspirational political goals

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8 See, e.g., Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge UP, 2004). Gould stands at the frontier of the cosmopolitan orthodoxy, arguing that human rights require not just the liberal democratic egalitarian welfare state, but also the democratization of international institutions, the International Monetary Fund, the United Nations, the World Trade Organization and so on.

or moral targets at which we, as individuals, as states or peoples, and as an international community, ought to aim? How are human rights to be justified in a world divided over moral, religious, and philosophical doctrines as well as conceptions of justice and the good society, institutional history, national self-understanding, and so much else? The failure of those who subscribe to the cosmopolitan orthodoxy to generate any significant consensus on these matters is surely a good reason to search for other nonskeptical conceptions of human rights.

II.

In this article, I set out one such alternative and explore its implications for the content of human rights and for the morality of international relations. It is an alternative—practical, political, and internationalist—according to which human rights make their first appearance within our moral thinking as part of the solution to the most basic problem of international relations liberal democratic peoples or states face: When, if ever, ought we (the members of a liberal democratic people acting as one through our state or government) recognize another body politic as independent and entitled to the same collective self-determination we seek for ourselves? Or to put it differently: When, if ever, ought we (again, the members of a liberal democratic people acting as one through our state or government) regard our relations with other individual human persons as properly mediated, as a moral matter, by a system of political obligations and authority to which they, but not we, belong in some morally significant sense?

The alternative conception of human rights I develop here is one I believe latent within John Rawls’s *The Law of Peoples*. But it is not developed there.10 And while a few readers of Rawls have begun to recognize that Rawls’s departure from the reigning cosmopolitan orthodoxy regarding human rights is perhaps not quite as misguided as many have alleged,12 none so far as I know have set out anything like the following account, either as a reconstruction of

Rawls’s position or as an independently offered candidate conception of human rights.

The account begins with a practical problem. Liberal democratic peoples or states\textsuperscript{13} claim for themselves recognition as corporate moral agents possessed of a right to self-determination. Of course, as corporate moral agents, they understand that their right to self-determination is something other moral agents must be able reasonably to accept. They thus recognize that their right to self-determination is not unlimited or absolute. At the very least, it is limited by the need to preserve the necessary conditions of their own moral status as well as the rights, including self-determination rights, of other moral agents, including other corporate moral agents, within an international moral order.\textsuperscript{14} Because it is possible for a well-ordered liberal democratic state, through the effective union of institutional design with the moral capacities of its members, to determine reflectively what it is it wishes to do or accomplish as a state and how best, both prudentially and morally, to do or accomplish it. This it will do through its institutional officials, and in a liberal democracy, citizenship is the basic institutional office. A well-ordered liberal democratic state, then, is, or may be, like other moral agents. It is, or may be, able rationally to form, revise, and pursue a determinate conception of its own good, and to subordinate the pursuit of that good to the demands of a morality that acknowledges at its most fundamental levels that other moral agents are themselves, just as it is itself, a source of self-authenticating valid moral claims. One of the most basic practical problems liberal democratic states face in international relations, then, is the need to identify correctly, as a moral matter, the other corporate moral agents, if any there be, to whom they must accord the same right to self-determination and non-intervention they claim for themselves, if they are to live up to their own moral nature as reasonable agents committed to reciprocity with others as they pursue their own good within an international moral order.

That liberal democratic states insist on their being recognized as corporate moral agents possessed of a right to self-determination, or, to put it differently, that liberal democratic citizens collectively claim for themselves as members of their body politic a collective right to non-intervention, is a familiar fact. Of

\textsuperscript{13} With Rawls, I prefer the term “peoples” to “states” since the latter suggests a corporate agent \textit{simpliciter} rather than a corporate moral agent. See Rawls, \textit{The Law of Peoples} 23f. But in the text, I shall use the term “states” to refer to “peoples” since it is the more familiar expression.

\textsuperscript{14} That a liberal democratic people or state is a corporate agent or body politic is plain enough. By occupying a territory, taking on a certain degree of institutional structure, and so on, the citizens of a well-ordered liberal democratic state together constitute, or could constitute, a corporate political body able to act in the world. But why think this corporate body politic possessed, or potentially possessed, of moral capacities and thus a moral status?
course, Article 1 of each of the two Covenants affirms the right to self-determination and makes it binding as between ratifying states. But liberal democratic states would insist on it irrespective of these international documents. The French insist on their recognition within the international order and their right to determine for themselves how to organize their own affairs, as do the British, the Americans, the Canadians, the Swedes, the Costa Ricans, and so on. Even if most Americans agreed with the French that the death penalty was morally unacceptable in a modern state, most Americans would insist that the abolition of the death penalty in the United States was something for the American body politic to realize in its own way, on its own terms, and as a matter of its own self-determination. This is not to say that Americans might not through voluntary treaty undertake to yield authority in such a matter to an international tribunal of one or another sort, perhaps a human rights court with the authority to set aside domestic legislation at odds with certain human rights. It is just to say that they will insist that the authority of any such tribunal over their own body politic be rooted in their own voluntary undertaking as a body politic, an exercise of their collective self-determination.

There is nothing peculiarly American about this. All liberal democratic states claim for themselves a right to self-governance or self-determination. Among the most fundamental or basic practical political problems, liberal democratic states face, then, is the identification of other states or peoples entitled, as a matter of reciprocity or reasonableness, to recognition and respect as corporate moral agents possessed of the same right to collective self-determination they claim for themselves. This problem is more fundamental than that being currently worked out within the European Union, namely, when ought a liberal democratic state voluntarily cede some measure, and then how much, of its right to self-determination for the sake of constituting with other liberal democratic peoples a federal union. It is also a problem more fundamental than that of identifying the ideal content of the human rights treaties liberal democratic states (along perhaps with others) ought to commit themselves to as a voluntary act of collective self-determination. The moral force of treaties, their bindingness, depends on their being entered into voluntarily by corporate moral agents recognized as such and possessed of a right to self-determination.

15 See Article 1, “Covenant on Civil and Political Rights;” and Article 1, “Covenant on Economic, Social and Cultural Rights.” It is perhaps noteworthy that the UDHR makes no mention of the right to self-determination (and thus non-intervention). The shape and thrust of the cosmopolitan orthodoxy no doubt reflect disproportionate attention to the UDHR (which one must recall explicitly refers to itself as setting aspirational standards) over and against the two Covenants, the treaties, binding only on state parties that both sign and ratify, implementing the project articulated in the UDHR.
The first practical task a liberal democratic state faces in international relations, then, is the proper identification of other bodies politic, if any there be, morally entitled to the same self-determination rights it claims for itself. This task arises from within the moral perspective of a liberal democratic state as a corporate moral agent. Fundamental to that moral perspective is a commitment to reciprocity. Whatever the conditions or criteria liberal democratic states think essential to their own status as corporate moral agents possessed of a right to self-determination, those conditions or criteria must be ones that other liberal democratic states, or any other bodies politic similarly constituted as corporate moral agents, could reasonably and freely accept.

III.

The question every liberal democratic state must answer, then, is a two-part question. First, by virtue of what is it entitled to self-determination as a corporate moral agent on the international stage? Or, to put it more sharply, when and why does it think other states are morally obligated to refrain from interfering, forcefully intervening, in its own domestic political affairs? Second, could other liberal democratic states (or other corporate moral agents) reasonably accept its answer to the first question just set out?

The answer to this question cannot be that liberal democratic states are entitled to self-determination as a matter of right just insofar as they constitute themselves as corporate moral agents. A corporate agent is a moral agent just in case it possesses, through institutional design, internal organization, and so forth, the two moral powers constitutive of moral agency or status: the power to form, revise, and pursue a determinate conception of its own good, and the power and inclination to do so only on terms fair or reasonable to other moral agents. The problem here is that a body politic might possess these two moral powers as a corporate agent, yet systematically deny fundamental human rights for some targeted minority population within its membership. And no liberal democratic state will, or should, think such a body politic morally entitled to self-determination and non-intervention. South Africa in 1985 possessed as a body politic the two moral capacities or powers just mentioned. Yet it systematically denied fundamental human rights and was accordingly judged, by most liberal democracies, not entitled to self-determination and non-intervention as a matter of first principles of international morality. The diplomatic and economic sanctions it faced were no violation of its rights within the international moral order.

This restriction on a people’s or state’s right to self-determination a liberal democratic people will extend to its own past incarnations. Some present day liberal democratic states practiced slavery in previous centuries, a fundamental and systematic human rights violation aimed at a well-defined target population.
But few, if any, would claim for themselves in those earlier incarnations a right to self-determination and non-intervention. It is not part of the American self-understanding that the United States possessed a right in 1850 to be free of any and all sanction or abolitionist coercive pressure by Britain or France. Yet, in 1850, the United States was constituted as a corporate moral agent, even if not yet liberal and democratic, able through its own internal institutional design to determine a conception of its own good and pursue it reasonably or fairly within the international order. Indeed, it is precisely because it was so constituted as a corporate moral agent that it can be held responsible for the past injustice of slavery. That a state is constituted as a corporate moral agent is a necessary condition of its possessing a right to self-determination. And it may be a sufficient condition of its bearing moral responsibility. But it is not by itself a sufficient condition of its possessing a right to self-determination and non-intervention. This present day liberal democratic states affirm insofar as they are not committed to extending the rights to self-determination and non-intervention they claim for themselves today back to all their past incarnations as corporate moral agents. It follows, then, that they do not regard having the mere status of corporate moral agent as sufficient (though it is surely necessary) to underwrite a right to self-determination and non-intervention in the international order.

But if the right to self-determination and non-intervention does not follow from a body politic’s status as a corporate moral agent, what does it follow from? A tempting answer here is that it follows from a body politic’s securing domestic justice. A liberal democratic state has a right to self-determination, and other states are accordingly morally obligated to refrain from forceful intervention, whether military, economic or diplomatic, in its domestic affairs only when and because it secures liberal democratic justice and thus the rights of individual persons as free equals, giving each his or her due. This is a tempting answer. But it cannot be right.

The reasons for this are several. First, no liberal democratic state lives up to its own conception (or, if we think its own conception deficient, then the true, correct or most reasonable conception) of liberal democratic justice. In any case, liberal democratic states will reasonably divide over the extent to which any one of them lives up to its own (or, again, the true, correct or most reasonable) conception of liberal democratic justice. Second, liberal democratic states are reasonably divided themselves over the demands of liberal democratic justice, over the content of the true, correct or most reasonable conception of liberal democratic justice. They affirm different systems of basic rights and liberties, giving different content and priority to different rights within the overall system. The right to freedom of expression is understood differently in different liberal democratic states. So too is the relationship between church and state, and the right to privacy. Liberal democratic states affirm also different conceptions of equality of
opportunity, economic justice, corrective justice and so on. The right to self-
determination and non-intervention claimed by liberal democratic states cannot
be grounded, then, in their claim to have secured or realized any particular well-
defined conception of liberal democratic justice since that claim is not one that
could be reciprocally affirmed between them. If this was the basis of the right to
self-determination and non-intervention that liberal democratic states assert on
the global stage, either no liberal democratic state would be able to claim for itself
a right to self-determination, or each liberal democratic state would regard itself
as the sole possessor of this right and thus find itself unconstrained in its inter-
national relations by the self-determination and non-intervention rights of other
states. This is not quite realism in international relations, but almost. There is
not much practical difference between a Hobbesian international order of only
corporate agents *simpliciter* and an international “moral” order of corporate
moral agents only one of whom possesses a right to self-determination and
non-intervention.

But if liberal democratic states cannot predicate their claim to a right to self-
determination and non-intervention on having secured justice and therefore given
each of their individual members their due as free equals, perhaps they might
appeal to a weaker standard of justice. A liberal democratic state might assert a
right to self-determination and non-intervention not on the grounds that it meets
the demands of any particular liberal democratic conception of justice (whether
its own or the one true, correct, most reasonable conception) but rather on the
grounds that it meets the demands of a generically liberal democratic conception
of justice, the common ground shared by all liberal democratic conceptions. A
liberal democratic state might insist that it secures for its members enough of
what they are due as free equals to merit as a corporate moral agent a right to
self-determination and non-intervention. It affirms some system of basic rights
and liberties, including some versions of democratic political participation rights,
gives this system high priority in its order of commitments, and secures for all
or nearly all its members the material and economic means necessary to make at
least minimally meaningful use of their basic rights and liberties. It may fail to
deliver justice fully, whether as judged by its own or the one true or correct or
most reasonable conception of justice, but it delivers some appreciable measure
of liberal democratic justice. And while other liberal democratic states may
measure differently the distance between its achievement and what liberal demo-
cratic justice finally requires, all may reasonably accept that it has cleared some
minimal hurdle of liberal democratic justice.

Thus, liberal democratic states might make securing the generic content of
liberal democratic justice that which underwrites their status as corporate moral
agents properly possessed of a right to self-determination within the international
order. This would square nicely with the death penalty and slavery examples
introduced above to highlight widely shared intuitions within liberal democratic states regarding the right to self-determination and non-intervention. Insofar as a state may secure the generic content of liberal democratic justice both with and without the death penalty, the abolition of the death penalty is a matter that lies within the domain of a liberal democratic state’s self-determination. Insofar as slavery is inconsistent with even generic liberal democratic justice, a slave-holding body politic has no right to self-determination and non-intervention.

Further, this approach has the apparently appealing feature that it identifies the conditions that must be met for a liberal democratic state to merit recognition and enjoy a right to collective self-determination within the international order with highly plausible candidate criteria of internal legitimacy appropriate to liberal democratic states. Liberal democratic citizens concerned to set out for their own members the conditions that must be met if their own state is to possess the capacity legitimately to coerce its citizen members to obey the law are likely to point, and reasonably so, to the generic content of liberal democratic justice. Because their state is generically liberal and democratic, at least in its constitutional essentials, they may think it able legitimately to coerce citizens to obey the law, a law presumably always aimed at justice but often missing the mark. Citizens may reasonably disagree over which particular liberal and democratic conception of justice is best. But so long as coercive state power remains constrained by and faithful to some generically liberal and democratic conception, it will be consistent with that which any citizen could reasonably and freely affirm from a position of political freedom and equality. This standard governing the legitimacy of coercive state force within the internal domain of their domestic politics liberal democratic citizens may think the natural standard to invoke when determining whether any other body politic possesses a right to self-determination and non-intervention. Only generically liberal and democratic regimes have, on this view, a right to self-determination and non-intervention.

Finally, this approach will appeal to those who share with the cosmopolitan orthodoxy the intuition that there is a human right to life within something like a liberal democratic egalitarian welfare state. On this approach, nonliberal and nondemocratic states are, in principle, vulnerable to diplomatic sanction, forceful economic pressure, even military intervention. And such coercive efforts within the international order will be justified, if and when they are undertaken, in the language of human rights.

But I don’t think this second and weaker version of the “because we are just” account of why liberal democratic states are entitled to self-determination and non-intervention can be correct either. Suppose it was correct. If liberal democratic states were to take the view that their right to self-determination and non-intervention on the global stage was dependent on their being generically liberal and democratic, then the path to liberal democracy is not one in principle lying
within any people’s or state’s right to collective self-determination. There is some-thing odd about this, since liberal democratic states, at least in the paradigm cases, regard their own liberal democratic domestic orders as their singular greatest achievement, or at least ranked very high among their greatest achievements, as self-determining peoples. Securing liberal democracy at home is a source of their self-respect and pride as independent and self-determining peoples or states. This is a great good for them. To refuse to recognize or accord self-determination rights to all nonliberal or nondemocratic states would be to unreasonably deny to other bodies politic a great good they, liberal democratic states, claim for themselves; it would constitute a failure of reciprocity.

To put it differently, liberal democratic states cannot affirm their own historical self-understandings and the great goods of national pride in their own liberal democratic achievements and so forth and at the same time insist that possessing a generically liberal democratic domestic order is a necessary condition of deserving a right to self-determination and non-intervention as a corporate moral agent in the international order. Affirming the latter entails some rather counter-intuitive results: That neither England nor the United States had a right against coercive intervention, diplomatic, economic, perhaps even military, by other states keen to see that women get the right to vote within a one person, one vote, majority rule system of representative democracy at the start of the 20th century, that certain Church privileges be abolished at the start of the 19th century, and that a national social minimum be established to insure that all citizens enjoy a meaningful opportunity to exercise their political and other liberties in the middle of the 20th century. It entails that bodies politic possessed of a right to self-determination and non-intervention is a 20th century phenomenon, and a still rare phenomenon at that. But this, I submit, is manifestly implausible, both as an interpretation (always normatively charged) of the history of international relations and as a prescription for the international order.

Of course, there are those who insist that there are basic human rights to a liberal democratic order and accordingly that nonliberal nondemocratic bodies politic ought not to be recognized within an international moral order and certainly ought not to be accorded any right to self-determination and non-intervention. There are many problems with such a view. Here, however, the key point is simply that those who hold such a view hold it as a species of the cosmopolitan orthodoxy according to which human rights belong to a fundamental interpersonal moral code articulable and justifiable independent of and prior to any talk of international relations. If we shift our focus to the present context, that constituted by the practical moral problems of international relations faced by liberal democratic states today, the context of the alternative internationalist conception of human rights I want to develop in this essay, then the “because we secure generic liberal democratic justice” account of why liberal democratic states
think themselves entitled to self-determination and non-intervention looks manifestly implausible.

Consider how the cosmopolitan orthodoxy must go. It starts with the perfectly reasonable and sound proposition that all human beings possessed of ordinary cognitive and moral capacities are moral agents or persons with a basic moral status that must be respected. This status is first cashed out in axiological terms. Human persons possess an equal moral worth or dignity. This axiological premise, sound enough if we take it as a specification of the baseline moral status possessed by all human persons, is then transformed into a substantive liberal premise regarding the relationship of any, and thus all, persons to the body politic to which they belong. Persons are said, now, to stand necessarily as free equals in a morally unmediated relationship with the bodies politic to which they belong, unmediated by any antecedent group-based identifications or claims. Thus, we have moved from a thin and perfectly sound proposition about the moral status, or dignity, of all individual human persons to a substantively liberal position regarding the necessary moral relationship of individual persons to their bodies politic. The result reached is that only liberal democratic states respect the moral status, or dignity, of individual human persons.

But this cannot be right. Liberal democratic states no doubt respect the moral status, or dignity, of their citizen members. But it does not follow that nonliberal or nondemocratic states do not. Of course, nonliberal and nondemocratic states do not respect the moral status, or dignity, of their members as free equals standing in a primary and morally unmediated relationship with the body politic to which they belong. But that is a rather different thing from not respecting their moral status or dignity as moral agents or persons. That it is so is evident once one endeavors to connect the idea of moral agency or personhood with the liberal democratic ideal of citizens as free equals. The latter does not follow straightway from the former. Additional premises are needed to make the connection, premises contested between otherwise reasonable and internationally nonaggressive cultures, peoples or states, concerning the nature and structure of social life and moral obligations.

If the foregoing is correct, then from the moral point of view of a liberal democratic state, no scheme of liberal democratic rights, not even a generically liberal democratic scheme, can count as a necessary condition to be secured by any body politic seeking recognition in the international order as a corporate moral agent possessed of a right to self-determination and non-intervention. To be sure, it does not follow that liberal democratic states must reject the notion that their securing a generically liberal and democratic constitutional order at home is a necessary condition of their being able legitimately to use coercive force against their own citizens to secure general compliance with the law. There is no reason to think that a liberal democratic state must invoke the same criteria of legitimacy when
looking inward to assess the moral credentials of its own domestic order and looking outward to determine whether other bodies politic are entitled to a right to self-determination and non-intervention. There are two distinct practical problems or issues here, each addressed by its own conception of legitimacy. Within a liberal democratic state, citizens confront the practical problem or issue of determining when, if ever, they may collectively use coercive force on one or more of their fellow citizens. This is the legitimacy problem as it arises internally within the domestic politics of a liberal democratic polity. This problem is distinct from that faced by a liberal democratic state that has to determine when, if ever, it may use coercive force in its relations with other bodies politic. This is the legitimacy problem as it arises externally in international relations. From the point of view of a liberal democratic body politic looking outward to its relations with other bodies politic, a body politic may be sufficiently legitimate so as to underwrite its right to self-determination and non-intervention in this context while still falling well short in its internal domestic political order of what the citizens of any liberal democratic polity would require to insure the legitimacy of their own collective coercive state action against one another as fellow citizens.

That this is so should not surprise us. Common sense suggests that a liberal democratic state may require a generically liberal democratic constitutional order as condition of its own internal legitimacy, the legitimacy of domestic state action against its citizen members, and at the same time recognize some nondemocratic nonliberal peoples or states as bodies politic constituted as corporate moral agents possessed of a right to self-determination and non-intervention. Suppose France or the United States were to encounter a modern day analogue of the twelfth or thirteenth century Italian republican city states (of, say, Pisa, Milan, Genoa, Bologna, Sienna, or Venice). It cannot be correct that France and the United States ought to refuse to extend it recognition as an independent body politic constituted as a corporate moral agent and possessed of a right to self-determination and non-intervention simply because it is not liberal and democratic. Modern day analogues of the Italian republican city states of the twelfth and thirteenth centuries (or, to invoke another example, of many indigenous North American tribes of earlier and even present times), if any there be, presumably will treat all their members as moral agents. That is not at issue. Assuming they are not aggressive and are otherwise prepared to honor a reasonable international morality, they would seem entitled within a moral international order to the same

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right to self-determination and non-intervention claimed by liberal democratic states.

Liberal democratic states may take this view and still remain fully committed to liberal democratic justice as expressing the demands of domestic justice applicable to all states. For they may think that a full and correct inquiry into the moral relationships between citizens, taken simply as moral agents, and the body politic to which they belong will vindicate the liberal democratic position that citizens ought to be regarded as standing as free equals in a morally unmediated relationship with, and thus as co-authors of, their body politic. Liberal democracies can affirm their own convictions here while allowing that other states or peoples may reasonably see things otherwise, without denying the basic moral agency or status of their citizen members. According some nonliberal and nondemocratic states, a right to self-determination and non-intervention is consistent with a commitment to liberal democratic justice for all, provided one affirms, as liberal democratic states do, that it often takes more than aiming at truth or one’s own convictions regarding justice to vindicate morally an exercise of coercive force.

IV.

So where are we? What the foregoing shows is that from the moral point of view of a liberal democratic state the right to self-determination and non-intervention requires more than mere status as a corporate moral agent and less than a generically liberal democratic domestic order. But we do not yet know what in particular it requires. And thus, our internationalist approach to or conception of human rights has as yet yielded no substantively determinate conception of human rights.

What is needed, I submit, is a fresh start. The question to be answered is this: What is it about a liberal democratic body politic or the relationship of liberal democratic citizens to it, if not the commitment to liberal democratic justice or generically liberal democratic standards of internal legitimacy, that underwrites its status as a corporate moral agent possessed of a right to non-intervention and self-determination?

The answer, I think, is that a liberal democratic body politic is constituted as, and liberal democratic citizens are thereby implicated in, a system of political obligation and authority with at least prima facie moral force. When others, whether other bodies politic or other individual persons not themselves members of the liberal democratic state in question, confront a liberal democratic body politic, they confront an independent and self-contained legal and political (hence normative) system with prima facie moral force. They confront liberal democratic citizens, accordingly, as individual moral agents already embedded within a normative order generative of bona fide, even if prima facie, moral obligations.
It is this, the moral significance of their political-legal order and their status as moral agents within and in relation to that order, that liberal democratic states insist others recognize and respect within the international order. It is this that underwrites their right to self-determination and non-intervention. As moral agents embedded in a morally significant political-legal system generative of *bona fide*, even if *prima facie*, moral obligations, liberal democratic citizens claim for themselves the right to work out the nature and content of that system and their moral relationship to it in their own way and time.

But what could account for the fact that the political-legal system liberal democratic citizens find themselves embedded in is morally significant and the source of *bona fide prima facie* moral obligations? Here, I think, we might profitably proceed by thinking first about what would have to be the case for liberal democratic citizens to have genuine legal obligations, and then asking what sorts of additional facts would make it the case that they also have *prima facie* but *bona fide* moral obligations to honor their genuine legal obligations.

H. L. A. Hart sets out two basic conditions necessary and sufficient for legal obligations, taking “obligation” here in the thinnest normative sense. First, legal rules valid within the political-legal system must be generally obeyed. Second, officials within the political-legal system must accept and honor in their official conduct shared criteria of legal validity.\(^{17}\) Hart goes on to note that there can be no legal obligations in the absence of formal or natural justice, since treating like cases alike is essential to rule-following and rule-following, at least by officials, is essential to legal obligation.\(^{18}\) With respect to substantive justice, Hart argued that a viable legal system must extend a minimum natural law content, securing bodily integrity, freedom of movement and so on, to a large enough portion of the population to secure the stability of the political-legal order.\(^{19}\) But this content Hart thought only contingently necessary (necessary given the contingent facts of the human condition) to a viable legal system and in any case not content that must be distributed equally or even minimally to all. Treating like cases alike and securing formal justice was fully compatible with regarding different classes of persons as constituting different cases. And a political-legal system might be stable without distributing the minimum natural law content of a viable legal system to all subject to the law. For Hart, then, a slave-holding society might be stable and possess a genuine legal system and impose genuine legal obligations.

Now, whether Hart is right here about the nature of legal obligations is not important. What is important is that insofar as what Hart is calling legal


\(^{18}\) Ibid: 159–60.

obligation may arise within a slave-holding society, the mere existence of legal obligations in this Hartian sense cannot underwrite a right to self-determination and non-intervention from within the moral point of view of a liberal democratic body politic. Within a slave-holding society, not all citizens or subjects have a bona fide prima facie moral obligation to obey the law. Certainly the slaves do not. Indeed, they are not even treated as moral agents. Liberal democratic states do not confront the slaves held in a slave-holding society as moral agents already embedded in a normative system of political-legal authority and obligation with prima facie moral force. And they do not even if Hart is correct about the potential existence of genuine legal obligations within such a society.

On Hart’s account, the normativity of legal obligations in their thinnest or barest form ultimately arises out of the internal acceptance by officials within the political-legal system of the complex criteria of legal validity constitutive of the system’s rule of recognition and the other secondary rules (of adjudication, legislation and so on). Strictly speaking, citizens or subjects need not internally accept any laws, not the primary legal rules setting out their obligations to act or not act in particular ways, and not the secondary legal rules governing the creation, enforcement, and adjudication of law. Of course, Hart recognized that a political-legal system would likely prove highly unstable if citizens or subjects did not generally internally accept most of the legal rules, even if they did in fact generally comply with them (perhaps out of fear of sanction alone). More importantly, though, he also recognized that the normative force of legal obligations increased as the percentage of citizens or subjects internally accepting most of the laws increased. The normative force of legal obligations within a political-legal system within which most citizens or subjects do not internally accept most laws and comply with them merely out of fear of sanction is significantly less than if most citizens or subjects do internally accept most laws and comply with them voluntarily as a result of that internal acceptance. In the latter case, the moral agency of citizens or subjects is active rather than passive.

Within a slave-holding society, then, the normative force of legal obligations might be rather high, at least for those citizens or subjects not themselves slaves, so long as most of them internally accept most of the legal rules valid within the system. But this normative force could never, at least from a liberal democratic point of view, rise to the level of prima facie moral force. And that is because within a slave-holding society, the political-legal system is not aimed at the common good of all and embodies no reciprocity at all between officials or the state and those held as slaves. And from a liberal democratic point of view, there can be no moral obligation, not even a prima facie moral obligation, to obey the laws of a legal system that is explicitly and intentionally aimed at less than the common good of all and devoid of any reciprocity between citizens or subjects as moral agents and officials or the state. Such a system is simply incompatible
with the status of persons as moral agents. Of course, citizens, even slaves, may have independent moral reasons for obeying particular laws in a slave-holding society. Citizens and slaves will presumably have good moral reasons not to murder and thus to obey the law proscribing murder. What they do not have in a slave-holding society is a prima facie moral obligation to obey the law as such; they do not have a political obligation to the body politic.

The question, then, is what conditions must be added, starting from Hart’s account of the conditions necessary and sufficient to genuine legal obligations, if we are to arrive at a political-legal system within which all citizens or subjects have at least prima facie but bona fide moral obligations to obey the law, a political obligation to their own body politic. The first and most obvious condition is that what Hart called the minimum natural law content of any viable legal system must be extended to all subject to the law. The legal system must secure for all a basic minimum of bodily integrity, freedom of movement and association, and so on. A legal system that failed to secure this content for all those subject to the law would fail to treat some of its members as moral agents in the most basic sense and thus fail to underwrite for them any political obligations of moral significance. If liberal democratic states predicate their own right to self-determination and non-intervention on the fact that all their members have as moral agents political obligations of at least prima facie moral significance, then liberal democratic states may reasonably refuse to extend that right to a political-legal system within which some members as moral agents have no such obligations.

A second and almost as obvious condition to add is that core features of the rule of law must be secured. Laws must be publicly promulgated, duly enacted, issued in clear and understandable language, consistently administered, nonarbitrary, and so on. A political-legal system not faithful to the rule of law fails to treat all subject to it as moral agents and thus cannot generate for all even prima facie moral obligations to obey the law. Absent the rule of law there are no political obligations of prima facie moral significance.

A third condition to add is that the political-legal system must be explicitly and intentionally aimed, by officials, at the common good of all those subject to it. This it may do, as in a liberal democratic polity, by implementing a conception of justice as fairness that is neutral with respect to determinate conceptions of the good but enables citizens freely to pursue their own determinate conceptions of the good on fair terms with others. But a political-legal system may also aim more directly at the good of citizens by implementing, as in many republican polities, a conception of justice explicitly informed by a determinate conception of their common good. Either way, the political-legal system must over the long term secure the mutual advantage of all social classes or sectors, or at least leave none continually worse off over time while others are advantaged. Again, the reason here is fairly straightforward. No moral agent could have a moral obligation, not
even a *prima facie* moral obligation, to obey the laws of a political-legal system that was either not aimed at the common good of all or not mutually advantageous for all over time. Morally significant political obligations presuppose a body politic constituted as some sort of mutually advantageous system of cooperation.

A fourth condition to add is that citizens or subjects generally, if not universally, internally accept most of the legal rules valid within the political legal system. They comply voluntarily and not merely out of fear of punishment. Where the foregoing three conditions are satisfied, it seems likely that this fourth condition will also be satisfied to some significant degree. But it nevertheless bears bringing out on its own, since the foregoing three conditions do not entail the internal acceptance by citizens or subjects generally of most of the legal rules valid within the system, and their internal acceptance surely increases the normative force attached to their legal obligations, pushing those obligations in the direction of becoming legal obligations they have a *prima facie* moral obligation to satisfy. The more legal rules valid within the political-legal system most if not all citizens internally accept, the more the moral agency of those subject to the law is actively implicated in the political-legal system.

Now, if we take these four conditions and add them to the Hartian conditions necessary and sufficient to legal obligations in the barest or thinnest normative sense, then we have a political-legal system within which (1) officials internally accept and honor the secondary rules governing legal validity within the system, (2) the legal rules valid within the system are generally obeyed, (3) those rules secure for all subject to them the minimum natural law content of any viable legal system, (4) the rule of law is honored, (5) the enforced conception of justice is aimed at the common good of members and is over the long term mutually advantageous for all classes or sectors, or at least is not in the long term disadvantageous to any particular class or sector while being advantageous to others, and (6) the bulk of the legal rules valid within the system are not just obeyed but are internally accepted by the bulk of the population. Such a political-legal system has important and, I assume, obvious morally significant merits. But it still lacks one feature crucially necessary from a liberal democratic point of view for it to underwrite political obligations of *prima facie* moral force on the part of all those belonging or subject to it.

The foregoing conditions may be satisfied within a benevolent absolutism within which there is no reciprocity at all between the rulers or officials and the citizens or subjects. Of course, within a benevolent absolutism, citizens or subjects may be treated reasonably well. But rulers or officials do not regard themselves as in a moral relationship of reciprocity with them as moral agents. They need not justify themselves to their citizens or subjects. They need listen to no dissent. They care for their citizens or subjects as a shepherd cares for his flock.
Now, from a liberal democratic point of view, the “sheep” within such a political-legal system can have no system-specific or system-generated moral obligations, no political obligations, since the system does not recognize them as moral agents at all.

This brings us to a fifth condition to add to the previous four additions to the two Hartian conditions necessary and sufficient to legal obligations. And that is that citizens or subjects have a right to demand of their rulers’ or officials’ justifications for official or state actions, and rulers or officials have an obligation publicly to give such justifications. Further, citizens or subjects must have a right to express their dissent from official or state actions as well as the public justifications given for them. This is essential if the relationship between the ruler and the ruled is to be one within which some minimal degree of reciprocity is secured between moral agents, and thus the status of moral agents as moral agents is secure.

With the addition of this fifth condition, we have, I think, an account of a political-legal system, which from a liberal democratic point of view, realizes the conditions necessary and sufficient to generate for all subject to it at least *prima facie* but nevertheless *bona fide* moral obligations to obey the law, or political obligations of at least *prima facie* moral significance. One need not tender here any particular argument, for example, a consent or fair play or associative duty argument, of political obligation or the obligation to obey the law. The point is that liberal democratic citizens generally regard themselves as having a *prima facie* moral obligation to obey the law of their own liberal democratic polities, they regard themselves as having morally significant political obligations, and this self-understanding is what underwrites their collective claim to a right to self-determination and non-intervention as a people or state. Since the foregoing conditions (or some close approximation) set out the conditions they regard as necessary and sufficient to such an obligation, they are the conditions liberal democratic peoples must be willing to use, if they are to be reasonable, to assess the claims of other bodies politic claiming also a right to self-determination and non-intervention. Whether such an obligation, political obligation, may be philosophically justified is a separate question.

Of course, it remains to be seen whether the foregoing conditions (or some close approximation) might be reasonably accepted by other states, liberal and democratic or otherwise, similarly claiming a right to self-determination and non-intervention.

V.

The conditions set out in the previous section taken together yield a political-legal system that is generically constitutional and republican in form and
substance. This fits what we were looking for. Constitutional republicanism is more demanding than the bare idea or status of corporate moral agency. But it is less demanding than liberal democratic justice, even generic liberal democratic justice. It represents a principled mid-point along a body politic’s possible incarnations, from mere corporate moral agent to liberal democratic polity. What makes it a principled mid-point is that it expresses a commitment to the moral agency or personhood, the moral status, of all members of any body politic entitled to self-determination and non-intervention.

If the foregoing analysis is roughly correct, then from a liberal democratic point of view, no body politic that is not at least generically constitutional and republican in form and substance has a valid claim to self-determination and non-intervention. On the other hand, all bodies politic generically constitutional and republican in form and substance (and nonaggressive, etc.) have a valid claim to self-determination and non-intervention. It would be unreasonable for any liberal democratic people to deny this, since it is by virtue of their constituting themselves as a species of constitutional republic, within which political obligations have *prima facie* moral force for all members as moral agents, that they regard themselves as possessed of a right to self-determination and non-intervention in the international moral order.

From the moral point of view of a liberal democratic polity, a slave-holding society has no right to self-determination and non-intervention. On the other hand, a constitutional republic (in form and substance) with the death penalty, administered within the rule of law, for, say, murder has a right to self-determination and non-intervention. Between these extremes are cases requiring closer analysis. Consider a nonliberal, nondemocratic constitutional republic within which women have no right to vote for office-holders or hold office, but whose interests are otherwise represented to and taken into account by officials, who have the right to dissent, are protected by the rule of law, have rights to physical security and psychological integrity, may hold a variety of jobs, generally accept and voluntarily obey most of the laws of their regime, and so forth. Such a polity may well respect the moral agency or personhood of all women members, even if it differentiates them from men and fails to treat men and women together as free and equal citizens in the liberal democratic sense. If it does, it may thus possess a right to self-determination and non-intervention. But a nonliberal, nondemocratic regime within which women have no right to vote for office-holders or hold office, have no or ineffective rights to dissent, have no status under the law, have no or ineffective rights to physical security and psychological integrity, are largely excluded fully from the public domain, and appear to obey the laws only out of fear of sanction is a regime within which women are not treated as moral agents or persons and are effectively held as slaves; such a body politic has no right to self-determination and non-intervention.
Liberal democratic (and other) peoples may reasonably disagree at two levels with respect to the determination of whether any particular state has a right to self-determination and non-intervention. They may disagree over the facts or how best to interpret the facts regarding the domestic order of a state claiming a right to self-determination and non-intervention. They may also disagree over the criteria to be satisfied by any state claiming a right to self-determination and non-intervention. Both sorts of disagreements are unavoidable, though it is the latter, the philosophical and moral disagreement, that is more fundamental. One advantage of the approach developed here is that it suggests a structured framework for resolving disagreements of the latter sort. Since the question is what are the conditions necessary and sufficient for the members of a body politic to have, as moral agents, political obligations of \textit{prima facie} moral force, disagreement over the list of conditions may be engaged by simply adding and subtracting various conditions from the list presented here (which roughly requires a constitutional republic in form and substance). Different lists of conditions may be tested both against widely held intuitions regarding states, past and present, thought properly possessed of a right to self-determination and non-intervention as well as against various views as to when membership in an association or group generates for a moral agent obligations of \textit{prima facie} moral force.

\section*{VI.}

If a state’s right to self-determination and non-intervention depends on it being in form and substance at least a constitutional republic, if not liberal and democratic, then what specifically are the human rights, from the point of view of a liberal democratic state concerned to identify those states to which it must reciprocally grant a right to self-determination and non-intervention, to which each individual human person is entitled. John Rawls’s position here, I think, hits or nearly hits the mark. So I shall simply set it, or what I take it to be, out. Of course, in my judgment Rawls ends up with the basic human rights he does because he shares the internationalist conception of human rights that I have tried to present and develop here. But that exegetical question is one I have taken up elsewhere.

Rawls identifies eight principles which taken together constitute the law of peoples. Principle number six states “[p]eoples are to honor human rights.” Discussions of Rawls’s position on human rights typically begin with his list of basic human rights in Section 8.2.2.a. of \textit{The Law of Peoples}. These include the rights to life, including subsistence and security; liberty, including freedom from slavery, forced occupation, and coerced confessions of faith; personal property; and formal equality under the law. This list strikes most readers as excessively minimalist. Of course, Rawls begins his list with the words “[a]mong the human
rights are . . .’’ and thus clearly does not intend the list to be exhaustive. Indeed, immediately after introducing his eight principles, Rawls characterizes the principles as incomplete and in need of supplement, interpretation, and explanation. That his Section 8.2.2.a. list of human rights is not exhaustive is confirmed later in Section 10. There Rawls affirms as human rights, in the full and most fundamental sense of the term, the rights specified in or entailed by Articles 3–18 of the UDHR.20 These include, in addition to the rights already mentioned, the central elements of due process and the rule of law (Articles 6–12 and 17), the right to refuse nonconsensual marriage (Article 16), a right against cruel, inhuman or degrading punishment and against torture (Article 5), the right to seek asylum (Article 14), the right to a national identity (Article 15), and the right to freedom of movement (Article 13).

Rawls also affirms those rights that would seem to be entailed, on any plausible understanding, by the rights set out in Articles 3–18. For example, the Article 11 right to be presumed innocent until proven guilty in a public trial with all guarantees necessary for a meaningful defense must surely entail a right against coerced self-incrimination. Absent such a right, the Article 11 right would be of little benefit to those holding it. Thus, it would be unreasonable to suppose that Rawls does not regard the right against coerced self-incrimination to be also a basic human right, notwithstanding the fact that it does not explicitly appear in Articles 3–18 of the UDHR.21 Undoubtedly, careful reflection on Articles 3–18 would generate further examples of additional human rights necessarily entailed by the rights specified in those Articles. Rawls’s list of human rights is, then, rather more robust than many readers have been willing to acknowledge.

Still, there is no getting around the fact that Rawls does not include among his basic human rights a general right to nondiscrimination. Indeed, he excludes from his list of basic human rights the Article 23 right to nondiscrimination in employment and the Article 21 right to universal and equal suffrage.22 But, again, Rawls’s position is not quite what his critics have sometimes claimed. The human rights he does explicitly affirm set important limits to the range of discrimination his

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20 The Law of Peoples, 80.
21 The right to be free of coerced self-incrimination is included, along with other rights essential to the right to be presumed innocent, in Article 14 of the 1966 International Covenant on Civil and Political Rights. I conjecture that by explicitly including in his The Law of Peoples presentation the rights entailed by the rights covered in Articles 3–18 of the UDHR, Rawls meant to direct his readers to the two Covenants, and especially the first Covenant (on Civil and Political Rights), for it is there one finds set out more specifically the essential ingredients of the rights specified in the UDHR.
22 Article 23 is explicitly excluded at The Law of Peoples: 80. Article 21 is clearly excluded by implication since decent peoples need not have representative democratic forms of government making use of universal equal suffrage.
position allows. In addition to those rights already mentioned, Rawls explicitly affirms the rights specified in the conventions on genocide and on apartheid. And he makes it clear that all peoples must respect the rights of minority populations. Further, while he does not think that basic human rights prohibit gender discrimination in political, economic or social life, he does insist that women have a basic human right, *inter alia*, to have their interests represented in consultative political processes and to express dissent.

There is also no getting around the fact that Rawls does not include on his list of basic human rights many of the economic and social rights affirmed by the *UDHR*. He appears purposefully to exclude Articles 24, 25, 26, and 27. He explicitly identifies Article 22 as excluded. In Section 8.2.2.a., the only economic rights Rawls lists as among the basic human rights are the right to subsistence and to personal property. If this were all he said, of course, his would be a pretty thin conception of social and economic rights. But this is not all he says.

Rawls also says that liberal democratic (and other) peoples have a duty of assistance to insure that the basic needs of all individual persons are met and that these basic needs must be understood in terms of the economic and institutional resources necessary for persons to take meaningful advantage of the rights, liberties and opportunities of their society. Now, admittedly, this is not quite the same thing as saying that all individual persons have a basic human right to have their basic needs, as indexed to the rights, liberties and opportunities of their own society, met. But when Rawls focuses directly on the basic human rights possessed by individual persons, he interprets the right to subsistence as a right to a “minimum economic security” including “general all-purpose economic means” sufficient to make “sensible and rational use” of the liberties afforded within one’s own domestic political order. Moreover, he maintains that only those states organized as a mutually advantageous system of cooperation (even if not liberal and democratic) have a right to self-determination and non-intervention within the international order. Thus individuals enjoy not only a right against slavery or servitude, but also a right against systemic exploitation, for systemic exploitation is simply the institutionalized but avoidable failure of mutual advantage. A more charitable reading, then, would have Rawls committed to a human right to an economic and social minimum relative to the domestic order to which one belongs, a minimum (in all cases except perhaps the atypical case of an isolated and

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26 Ibid: 80.
primitive indigenous people) beyond what typically comes to mind when one thinks of mere subsistence.\(^{29}\) This is not so far from the letter or spirit of the UDHR as Rawls’s view might have first appeared. Indeed, Rawls’s central point is powerful: States unable to secure for all their members an adequate minimum (indexed to their own domestic political order) of economic and institutional resources have no right to self-determination and non-intervention against international efforts to deliver necessary aid.

While Rawls does not say as much, his human rights doctrine may be understood as answering to a single basic human interest in recognition and membership as a person or moral agent in a well-ordered body politic or constitutional republic. His law of peoples aims to insure that this interest is met worldwide for all human persons as a matter of right.\(^{30}\) That Rawls does not explicitly ground his conception of human rights in such an interest, that he does not frame it as part of a universal moral code set out at the level of interpersonal relations, ought not to obscure this feature of his view. Rawls’s conception of human rights is generated as part of the answer to, is framed in terms of, the fundamental or first question liberal democratic states face as a practical matter in international relations. It is this, and not any refusal to recognize basic human interests, that explains its alien feel to subscribers of the cosmopolitan orthodoxy.

Of course, from the point of view of those committed to the cosmopolitan orthodoxy on human rights, Rawls’s account of human rights will still appear too thin and minimalist in its content, even if we assume the content to be that given by the sympathetic or charitable reading offered here. But here several points must be kept in mind if we are to be clear about how great the distance is between the view I am suggesting here, and attributing to Rawls, and that of the cosmopolitan orthodoxy currently dominant within contemporary human rights theory and practice.

\(^{29}\) It is tempting here to think that there must also be a basic human right to a rising social minimum over time within the decent or liberal democratic domestic order to which one belongs. After all, well-ordered peoples, decent or liberal, must organize themselves as genuine systems of cooperation and thus secure mutual advantage over time for all classes of participants or members. But affirming a basic human right to a rising social minimum would be largely pointless. Even the slightest rise in a society’s guaranteed social minimum would satisfy its demands. Rawls’s emphasis on genuine cooperation for mutual advantage is better understood in terms of requiring an adequate social minimum and prohibiting such clear failures of mutual advantage as slavery, serfdom, systemic exploitation, and so on. So long as a people secures and maintains over time for all its members a social minimum adequate relative to its decent or liberal democratic domestic order, it secures the basic human rights of its members; the internal distribution of its cooperative surplus is after that point a matter of its own political self-determination.

\(^{30}\) See, e.g., The Law of Peoples, 89, 93, 113.
First, the rights Rawls identifies as basic human rights or human rights proper represent the moral core of each of the six categories of rights listed in the *UDHR* and two *Covenants*. These categories are: (1) rights governing the physical security and psychological integrity persons (e.g., rights against slavery, torture, etc.), (2) rights governing basic freedoms (e.g., freedom thought, expression, movement, etc.), (3) rights governing political participation (e.g., right to dissent, to demand and receive public justifications for state actions, to vote for representatives, etc.), (4) due process rights insuring nonarbitrary state action (e.g., the right to be treated as innocent until proved guilty, etc.), (5) equality rights (e.g., the right to formal equality or equality before the law, nondiscrimination rights, etc.), and (6) social and economic rights (e.g., the right to a minimal level of material well-being, to form trade unions, to a basic education at public expense, etc.).

While the *UDHR* and two *Covenants* include within several of these categories rights Rawls does not recognize as basic human rights or human rights proper, Rawls does include on his own list the morally most fundamental rights within each of these categories. And these rights on Rawls’s list bind all peoples and populations regardless of their consent or voluntary undertaking, something that is not true of the *UDHR* and two *Covenants*.

Second, strictly speaking, the *UDHR* is not a legally binding document even on party signatories and all the parties signatory knew that when they signed. Moreover, the Preamble to the *UDHR* explicitly states that its purpose is to set an aspirational standard to be used in measuring the progress or development of bodies politic, progress or development to be secured at the international level through teaching and education. This is, of course, just how Rawls understands the *UDHR*, even if he also thinks some of its provisions set out genuine or proper basic human rights specifying conditions necessary and sufficient for a state to possess a right to self-determination and non-intervention within a moral international order and thus conditions that may be legitimately secured by coercive

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32 Rights specified in the two *Covenants* binding on state parties by virtue of their consent or voluntary undertaking may over time be so integrated into the general background landscape of international relations that they come within international law to have general force as a matter of customary practice. For discussion, see Henry Steiner and Philip Alston, *International Human Rights in Context*, 2nd ed. (Oxford: Oxford UP, 2000) 69–72. Arguably, many of the rights Rawls identifies as basic human rights have recently become or are likely to soon become part of international law as a matter of general customary practice. That is all to the good and consistent with Rawls’s position in *The Law of Peoples* that irrespective of custom, treaty, and so on, these rights must be secured within any morally acceptable regime of international law.
force within a moral international order where they are absent. Complaints from those who subscribe to the cosmopolitan orthodoxy that the UDHR is evidence of a global consensus regarding minimal standards, and thus any conception of human rights that falls short of the UDHR ought to be rejected, are not well-founded historically or legally.

Third, while the two Covenants implementing the UDHR are legally binding on party signatories, many state parties signed stating explicit reservations to particular provisions, often on just the matters set out above, matters concerning nondiscrimination, universal suffrage, and so on. The practice of signing treaties with reservations is legally recognized and accepted within international law. To get a sense, then, of what is taken for granted in contemporary human rights discourse and practice, it is not enough simply to read the two Covenants, or any particular list of human rights documents (including the UDHR, Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], etc.). The international public political culture of which contemporary human rights theory and practice is a part is vastly more complicated and less unified than any such reading would suggest. Too many subscribers to the cosmopolitan orthodoxy assume a level of international consensus on human rights that is simply not the case.

Fourth, much of contemporary human rights theory and practice is concerned with human rights either binding on particular states because they have already consented to them as such or urged on states as obligations they ought to take on by giving their consent. But Rawls’s concern is not primarily with human rights in this sense, with what we might call the politics of human rights, but rather with those human rights binding on states regardless of and prior to any consent they may or may not give, with those human rights that must be secured for there to be anything like a morally acceptable international politics of human rights within which states morally possessed of a right to self-determination and

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34 For a summary of the legality of reservations within international human rights law, see Louis Henkin, Gerald Neuman, Diane Orentlicher, and David Leebron, eds., Human Rights (New York: Foundation Press, 1999): 307–11. A related practice (insofar as it presupposes a commitment to the self-determination of well-ordered bodies politic or peoples) recognized in international human rights law is the judicially applied “margin of appreciation” doctrine according to which human rights tribunals (such as the European Court) afford state parties a significant degree of latitude or discretion in meeting their voluntarily assumed human rights obligations. For discussion and defense of the “margin of appreciation” doctrine, see Burleigh Wilkins, “International Human Rights and National Discretion,” The Journal of Ethics 6 (2002): 373–82. In general, Rawls would seem to reject these practices as appropriate to his short list of essentially nonnegotiable basic human rights binding on states regardless of their consent, but permit them with respect to the fuller range of human rights obligations voluntarily taken on by states through such consent-giving political processes as treaty-making or customary practice.
non-intervention freely and voluntarily take on various commitments for the sake of membership within certain federative unions and so on.

Two final points. First, Rawls explicitly recognizes the empirical connections between many basic rights. For example, the basic rights to dissent and to freedom of movement are instrumentally necessary as an empirical matter to secure the basic right to subsistence within any developed state occupying a relatively large territory. In this context, Rawls allows that there may be good empirical reasons for affirming either democratic political participation rights or gender non-discrimination rights as instrumentally necessary to the basic human rights he already recognizes. Whether these empirical connections will be vindicated by research and experience, however, remains to be seen. Only time and experience can tell us whether nonliberal, nondemocratic constitutional republics are viable under modern conditions as bodies politic able to meet the conditions necessary and sufficient to a right to self-determination and non-intervention.

Second, nothing in Rawls’s account of basic human rights binding on all states regardless of their consent is at odds with a political commitment to realizing an international order within which a much wider range of human rights are binding on all states by virtue of their consent and ultimately customary practice. One may affirm Rawls’s account and also continue to think it important that liberal democratic and other well-ordered peoples as well as nongovernmental organizations and individuals of goodwill work toward the universal but voluntary affirmation by all states of the two Covenants, CEDAW, and other significant human rights documents without reservation and with meaningful enforcement. To put it differently, the internationalist conception of human rights presented here is fully consistent with the cosmopolitan orthodoxy recast as an aspirational international political goal for liberal democratic states to achieve, through persuasion, diplomacy, cultural exchange and example, and so on within a moral international order.

In the end, Rawls’s conception of human rights, on anything like a charitable reading, yields human rights to all the essential ingredients of a constitutional republic in form and substance. While I suspect that Rawls arrives at this content because he shares the internationalist conception of human rights developed here, that is beside the point presently. The central point is that his view of the content of human rights matches or nearly matches the view to which I think the internationalist approach I have set out leads. The human rights possessed by each individual person do not, when taken together, deliver a right to a life within a liberal democratic egalitarian welfare state. They do, however, deliver a right to a life within a constitutional republic, or some very close approximation thereof.

35 For Rawls’s discussion of these matters, see The Law of Peoples, 109–11, including the notes therein.
VII.

On the internationalist conception of human rights I have presented here, human rights emerge as fundamental elements of a liberal democratic state’s answer to the most basic and pressing practical moral question of international relations: Which other states, if any, are morally entitled to the same right to self-determination and non-intervention it claims for itself? This may seem to divorce human rights from any moral conception of human persons. But it does not. Human rights mark the social conditions, roughly those met by a constitutional republic, that must be secured for persons as moral agents to have political obligations of any moral significance or weight. Liberal democratic states recognize the self-determination and non-intervention rights of those states that secure human rights precisely because by so doing they affirm and respect the moral agency or personhood of those belonging to those states. Were liberal democratic states to predicate the self-determination and non-intervention rights of other states on their being liberal and democratic, they would paradoxically fail to respect the moral agency or personhood of those living within a stable constitutional republic faithful to the human rights set out here. They would be effectively insisting, with the threat of coercive force at least on the table, that those persons adopt a liberal democratic self-understanding of their relationship to their body politic.

The internationalist conception of human rights, then, takes seriously the moral agency of individual persons. While internationalist, it is not at odds with normative individualism.

But is it a conception that other states claiming a right to self-determination and non-intervention could reasonably accept?

It is a conception liberal democratic states could all accept. It secures their status as states entitled to self-determination and non-intervention, remains faithful to their commitment to the moral status of all human persons, roots itself in their own self-understanding of political obligations, and permits the expansion of human rights within positive international law through such voluntary undertakings as treaty-making, the development of customary practice and so on.

It is also a conception that nonliberal and nondemocratic states could reasonably accept. As Joshua Cohen and John Rawls have both argued, there is nothing in this internationalist conception of human rights that could not be reasonably and freely accepted by a nonliberal and nondemocratic Confucionist, Islamic (or, I would add, even communist) state. This is a conception of human rights well-suited for moral service within an international politics marked by peoples reasonably divided over the demands of justice, the nature and structure of the good society, and much else. Of course, some states, slave-holding states or other
despotisms dependent on fear and violence, will reject this, indeed perhaps any, conception of human rights. But that is no objection, since liberal democratic states are not antecedently committed to extending the right to self-determination and non-intervention to all states; they are certainly not committed to extending it to their own past incarnations as something other than constitutional republics. The internationalist conception of human rights, then, satisfies the liberal democratic commitment to a morality rooted in reciprocity between moral agents.

VIII.

I want to conclude with one final thought, a coda of sorts, relevant to both the internationalist conception of human rights offered here and Rawls’s own political philosophy. The thought concerns the family. In *A Theory of Justice*, Rawls famously had agents in the original position represent heads of households and seemed to entrench the family and its structure in the basic social structure those agents were concerned to govern in a principled fashion. This naturally invited criticism. And Rawls appropriately dropped the heads of household view of the parties represented by original position agents and explicitly made the family and its structure an object of contest in the original position and thus a subject of justice. But Rawls never really took the radical bait of calling the family into question across the board and he was always careful to insist that in a liberal society the family ought to be afforded a great deal of internal latitude; families need not all be internally liberal and democratic in order to enjoy a right to self-determination and non-intervention within a liberal democratic polity.

Many of Rawls’s interpreters, even those with strong feminist leanings, were willing to accept this view on the grounds that in a liberal democratic polity the members of nonliberal, nondemocratic, nonegalitarian families have at least a liberal democratic background and political culture to which they might exit. So long as the exit conditions to that culture were meaningfully secured, and so long as life within the family rose above some minimal threshold, the integrity of the family, even a nonliberal, nondemocratic, and nonegalitarian family, might justly, perhaps ought to be, be preserved against coercive state action.

Of course, a liberal democratic polity must provide a liberal democratic background and political culture for all its members, even those belonging to nonliberal, nonegalitarian, nondemocratic families. And this is an important moral advantage of a liberal democratic polity over other kinds of polities. I affirm this whole-heartedly.

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But if this is all that is said a fundamental point about the family is obscured, a point I suspect Rawls would have affirmed. And that is that any decent polity, not just liberal democratic polities, will affirm the integrity, and right to self-determination and non-intervention vis-à-vis the state, of some nonliberal, non-democratic, nonegalitarian families. Families are entitled to self-determination and non-intervention vis-à-vis the state because, or to the extent that, their members are bound to one another in a normative system of obligation and authority with \textit{prima facie} moral force, bound to one another by familial obligations. Liberal democratic polities are not the only polities morally obligated to tolerate at least some families constituted as less than liberal, democratic, and egalitarian. All states ought to tolerate and refrain from interfering in families constituted in such a way that their members are bound to one another by familial obligations with \textit{bona fide}, even if \textit{prima facie}, moral force. Indeed, this is presumably the view being expressed in the relevant articles of the \textit{UDHR} and the two \textit{Covenants}.\footnote{See, e.g., Articles 16.3 and 26.3 of the \textit{UDHR}, Article 23 of the \textit{Covenant on Civil and Political Rights}, and Articles 10 and 13 of the \textit{Covenant on Economic, Social and Cultural Rights}.}

What a liberal democratic people secures by insuring meaningful exit conditions to a liberal democratic background and political culture for members of nonliberal, nondemocratic, and nonegalitarian families is its liberal democratic character. That is no small matter. Liberal democratic peoples can tolerate certain kinds of families without becoming something other than liberal and democratic, without forsaking their commitment to liberal democratic justice. But that they can do so does not address the question of why they must do so. Why do some nonliberal, nondemocratic, nonegalitarian families have a \textit{prima facie} claim to tolerance in a liberal democratic polity? Not because they pose no threat to such a polity, but rather because they confront such a polity as a system of familial obligation and authority with \textit{prima facie} moral force vis-à-vis their members. That they pose no threat to a liberal democratic political order simply allows a liberal democratic polity to avoid the difficult choice of having to choose between tolerating such families and preserving its own liberal democratic commitments.

Something like the same issue arises at the international level. Rawls’s so-called “decent peoples,” essentially nondemocratic, nonliberal, nonegalitarian constitutional republics, have a \textit{prima facie} claim to toleration, and thus to self-determination and non-intervention, in the international order, not because they pose no threat to that order or to liberal democratic polities within it, but rather because they confront liberal democratic polities within it as systems of political-legal obligation and authority with \textit{prima facie} moral force vis-à-vis their members. That they pose no threat to the international moral order (assuming they...
are nonaggressive, keep their treaties, and so on) simply allows liberal democratic peoples to avoid having to choose, as they must when they confront so-called “outlaw states,” between tolerating such decent peoples and preserving an international moral order.

I would not want to press too hard this analogy between a liberal democratic state’s internal tolerance of nonliberal, nondemocratic, nonegalitarian but otherwise decent families and its external tolerance of nonliberal, nondemocratic, and nonegalitarian but otherwise decent bodies politic. The analogy breaks down in important ways. But it holds enough to support the present point: Moral obligations, including morally significant political obligations, arise in a variety of associational or social contexts. And respect for the moral agency or status of others often involves according them the space to work out for themselves the nature and force of those obligations within their overall moral commitments. And this is why all decent peoples, liberal and democratic or otherwise, ought to respect those families constituted in such a way as to give rise to and sustain obligations of at least *prima facie* but *bona fide* moral force, families at a minimum non-violative of the moral status or agency of all their members.

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