Fairness Among Countries

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Abstract: Global Climate change raises an interesting collective action problem for international political theory. How can countries be trusted to comply with a scheme that is costly-but-fair, if compliance is not in their rational interests? Parties might commit to a *reasonable* scheme, one that is in the common interest, with costs minimized and allocated fairly; such commitment is not irrational if others (whose rational interests are immediately served) can be trusted to comply when costs/benefits change. However, commitment cannot also signal trustworthiness. John Rawls' *The Law of Peoples* cannot produce a global climate change treaty, the attempt may even cause a breakdown of peaceful cooperation. Even if an ideal Rawlsian statesman signed such a treaty, his citizens have reason to disavow it.

This paper offers a solution. Commitment to an ongoing international organization, with binding authority, is committing to a fair stream of collectively-fair decisions. It succeeds not because it is a 'global basic structure' of trade and contract law, but because it is an international holding environment, where dissent can be contained until it is resolved. Otherwise compliance is irrational, for individuals and for their statesmen.

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I. Introduction

Global warming poses an interesting, and underappreciated collective action problem. Negotiators must devise an international agreement that satisfies enough countries to be effective – a familiar costly public goods problem. Each negotiator is also an agent for a demanding domestic constituency, authorized to negotiate an agreement that directly benefits their country, not the world. To limit emission of greenhouse gases, countries not only must sign an agreement, but enforce its provisions – they must comply in practice, not merely on paper. If there is nothing to compel each country to abide by the terms of an international agreement, then other countries (seem to) have no reason to trust one another not to renounce the treaty whenever it proves costly at home, whether or not negotiators are themselves sincere or trustworthy.

The combination of vertical constraints within each country, horizontal constraints between countries, and the need to include countries whether or not they are governed justly, leads to a situation where reasonable considerations (of what is fair) are not decisive, and each country's rational interests are both decisive and divisive. Under such conditions, even just countries give one another good reasons for distrust and conflict, even violent conflict. Cooperation is irrational under such second-order analysis, and the usual simplifying assumptions won't help.

For example, John Rawls' program for international agreement, crafting treaties as needed to solve coordination or collective action problems, limits interaction to well-ordered societies. They recognize one another easily, trade only among themselves and form defensive alliances, under an umbrella called the Society of Peoples. Membership in the SP indicates

trustworthiness, willingness to operate according to reasonable interests, for the common good, even where selfishly pursuing the state's rational interests would be more popular domestically; this makes it easy for members to coordinate mutually profitable agreements. He believes these, and humanitarian relief, describe all treaties required of just states in an unjust world.(Rawls 1999)

In this paper, I argue that they do not. (1) There are some matters on which well-ordered states require cooperation from badly-ordered ones, so that (2) willingness to negotiate does not indicate well-ordering or even good faith. I conclude (3) membership in the Society of Peoples plays a different role in securing agreement than is commonly thought. For addressing this kind of international problem, then, *The Law of Peoples* offers inadequate guidance. I suggest how to fill the gap in theory with a Rawls-like approach (albeit one he rejected).

This paper first explores the gap in political theory, then summarizes the relevant aspects of global climate change and emissions reduction. Next it states the fairness problem. Then I suggest an institutional solution whose role is social-psychological, not purely coordinative. I describe two additional benefits and conclude.

II. Global / International Justice: What's Missing?

There have been two notable attempts in the last quarter-century to draw out implications of a theory of constitutional democracy for the wider world. Although agreeing on the content of justice within a society (i.e. that justice applies to the whole of each scheme of social cooperation) (Rawls 1971), Charles Beitz and John Rawls offer very different visions of the international realm.

Beitz offers a theory of global justice (1979b). He examined the global web of trade, travel, immigration and diplomacy, concluding that individual countries cannot be treated in

isolation because each depends too much on external relationships, economic ties and histories of conquest and development (pp.141-149). A very rich and very poor country should not consider democratic equality only within their respective borders, because that neglects the scheme of social cooperation in which they are embedded (esp. pp.121-123).

> When, as now, national boundaries do not set off discrete, self-sufficient societies, we may not regard them as morally decisive features of the earth's social geography. (p.176)

There are no reasonable grounds for giving countries exclusive title to resources found within their borders, especially when we reflect on the accidents and unjust wars that produced those boundaries (pp.8, 136-143, 161). The many injustices committed by actors not under the control of any government, also require some collective regulation (pp.143-154) as a matter of justice, not charity (pp. 172-176).

This does not require world government, but can be ensured by separate countries committed to justice. A country's sovereignty depends on its demonstrated commitment to justice whose subject is the 'global basic structure,' but he does not describe institutions and rules that would be just, or any constraints on them.

Twenty years later, Rawls offered his own description of how justice is properly extended to the international realm; *The Law of Peoples* (Rawls 1999) rejects Beitz' internationalization of distributive justice (§16.2, pp.115-118), but endorses his conditions under which a country[1] is just enough to be (in Rawls' words) well-ordered (citing Beitz 1979, pp.121; Rawls 1999, p.38n44).

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[1] It should be noted that Rawls is very concerned about the words we use to distinguish countries. He chooses 'peoples' or 'societies' to emphasize that they are not the usual post-Westphalian sovereign 'states' or 'countries' (and certainly not 'nations') as words with too many uncooperative and bloody associations. (He would reject Sen's characterization of his theory as 'national particularism' because the word 'nation' has the wrong connotations.) I find that, in my writing, it is distracting and unpleasant to use only the words 'people' and 'society' (this implies no criticism of Rawls' own writing). Accordingly, I rarely use the word 'people' except

Rawls asks how a just society should treat other states, knowing they are not all just, and given that the others are not inclined to collaborate closely on decisions affecting wealth and resources. In fact, given the vast differences in beliefs and practices, he believes many people will want to preserve their own country's shared practices more than they would want to share wealth or govern countries in common. He allows them autonomy as long as they cause no human rights violations at home or abroad. He agrees with Beitz that distributing the fruits of shared social cooperation would require shared democratic decisionmaking, but disapproves strongly.

Just societies practice some variety of liberal democracy and some demanding form of distributive justice. Decent societies are relatively just: everyone enjoys many political and civil rights, all basic human rights, rule of law, political stability and distributive justice. However, decent societies disdain political equality, perhaps on religious grounds. Decency requires a great deal of respect even to the least-respected, and real concern for their welfare. If some people suffer poverty, abuse or severe neglect because of their subordinate roles, their society is 'burdened' (by unfavorable traditions and bad government) not decent. A burdened society has the potential to become just or decent, if its practices are reformed accordingly. There are also outlaw states, with leaders uninterested in reform or good governance; they brutalize citizens, steal funds, and/or threaten other countries. Last is benevolent despotism, a regime that governs effectively, treating all citizens well, but at the whim of a dictator who might change his mind. Burdened, outlaw and benevolent despotisms are badly-ordered societies, just and decent are well-ordered (see esp. Introduction, p.4; §8.1, p.63).

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when quoting Rawls or referring to more than one person. I also use 'society' 'state' and 'country' interchangeably. Similarly, Rawls rejects the word 'sovereign' because in the real world it includes the right to go to war when the state alone decides it is justified. When I describe a Rawlsian society as 'sovereign' or 'nearly sovereign' I mean that it has all the usual immunities except for the aggressive ones.

A well-ordered society accepts certain principles (§1, §3, §4 esp. p.37): it respects human rights including subsistence and personal security, and is willing to secure them for all people everywhere; it will only go to war to prevent extreme violations of human rights, in self-defense or defense of its allies. Well-ordered societies abide by their treaty commitments, are economically self-sufficient in sustainable ways, and when they make war, they abide by specific rules (§13-14).

They treat one another as independent, free and equal members of the international order – never using size or power to gain advantages over other just-or-decent countries. Being well-ordered makes a country nearly sovereign[2] – no other may interfere with its domestic governance, not even to help it become even more just. However, well-ordered states work together to help the badly-ordered to reform, and to provide material assistance for people in countries that do not guarantee them means of survival due to poverty, ineffectiveness, indifference or malice. This "Duty of Assistance" is primarily political; material redistribution is limited to necessities (§15-16). If international trade has some unjust consequences – systematic exploitation, unfair opportunities – then, Rawls says, well-ordered societies would revise the terms of their treaties so as to restore justice. They would do this spontaneously, out of their commitment to fairness as embodied in fair background conditions (§4.5 p.42*n*52) and voluntary cooperative organizations (p.43).

The former is a theory of global justice, while the latter describes a just foreign policy.[3] That is, Beitz asks what individuals (and groups) would think about the international regime

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[2] Though Rawls rejects the word 'sovereign' – see footnote 1

[3] Amartya Sen describes the two models as Global Universalism vs. National Particularism. He argues that the former is too ambitious and uninstitutionalized, while the latter is restrictive and separatist, the correct (in his view) middle ground allowing for institutional ties to one's nation and non-national or transnational groups (identities) (Sen 2002).This paper offers something similar, but usefully different.

that he describes, holding they would think discrimination based on citizenship or residence was unjustified. Justice must be global, but not qualitatively different from justice within a country. Rawls instead recognizes that international institutions usually affect individuals through the mediation of national governments, and that individuals in well-ordered societies have more direct, formal means of influencing their own government than of others. This asymmetry of power and influence is critical: it is unwise to require important things of people without power or voice to change the requirements – citizens and foreigners are differently situated, though neither is more important (Rothkin 2004; Blake (forthcoming)).

Rawls oversimplifies by assuming that well-ordered societies will recognize one another, and easily agree on which are eligible to be members of the Society of Peoples; in reality, they cannot be sure of the exact parameters of well-ordering, and can expect to disagree about which states meet the conditions even without deception This leaves them with good reason for suspicion – a badly ordered society has great incentive to pretend to be well-ordered, and to fake insult at being questioned.

There is a weak and a strong understanding of this objection. The weak form notes that in the real world, no countries meet the conditions for just or decent societies. If we extrapolate for purposes of choosing foreign policies for wealthy constitutional democracies, there is no uncontentious place to draw the line between well- and badly-ordered. Any attempt will be considered political, and be second-guessed.

The strong form notes that the definition of well-ordered is not objective, but intersubjective and always revisable (though it contains objective minimal conditions that many real governments cannot meet). It can reliably exclude some, but may include too many or too few. This does not mean that there is no such thing as a badly-ordered society besides whatever

members agree amongst themselves to exclude (as argued in Jones 1996; and rebutted in Rawls 1999, §10.2; Beitz 2000). Rather, it means that even members will continue to question whether they follow the standards they think they do. Ideally this means they will police their own actions, but in practice, it means they will question each other's actions, and be tempted to suspect the motives of any member with questionable actions.[4]

Either way, membership is not a badge of reliability and trustworthiness, which depend on other members' views of the available evidence.

Next I describe relevant features of global climate change, and show it constitutes a collective action problem that generates good reasons to doubt other countries' motives, and thus their well-ordering and general trustworthiness. It is not only hard to reach agreement, any attempt may leave countries more suspicious and quicker to insult than before.

III. Global Climate Change

According to the Intergovernmental Panel on Climate Change (IPCC), the release of carbon dioxide, methane, nitrous oxide, and various halocarbons, from combustion, industry and even high-intensity farming has increased enormously in the last century. This has increased the average global temperature, raised sea levels, extended the range of tropical diseases and storms, altered rainfall (and agriculture), to name a few effects. As climate change proceeds, it is likely to have more adverse consequences, though the impact will vary from place to place.

[4] The strong form argues that the category "well-ordered" inextricably combines fact and value judgments, as in (Putnam 2002(2004)). As such, we can expect parties to revisit their judgments as they collect new experiences. This problem is particularly acute because deliberations are simultaneously about which states are well-ordered and which states are party to the deliberations (or which states' opinions are trustworthy). .

Because the gases persist in the atmosphere for many years,[5] past emissions continue to warm the planet; reducing current emissions is thus urgent. The atmosphere mixes globally: emissions from one country travel all over, and cause systematic changes worldwide, though different impacts in different places. For example, rising temperature melts polar ice, raising sea levels everywhere, but local geography determines whether an area will flood. Rising temperatures cause more storms, but the location and timing of each storm is unpredictable – all are at (varied but) higher risk, not all are hit.

Countries have emitted unequal quantities of greenhouse gases for different lengths of time. They vary in ease of installing cleaner technologies, mandating and enforcing pollution controls. They are not equally able to absorb the costs of, e.g. storm damage, desertification and disease. As climate changes, populations are increasingly forced to migrate within and between states, leading to disease, crowding and violence.

In sum, individual polluters cannot be linked to individual effects, and while risks are spread widely (but not uniformly), actual devastation is much more discrete. Countries vary tremendously in all aspects of: damage, causes, vulnerabilities, adaptability and actual experiences; they are linked by nonlinear, global interactions of factors that are difficult to measure accurately (Schelling 1992; Cannibal and Winnard 2001; Singer 2002). All of these make the collective action problem more difficult:

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[5] The consensus of the Intergovernmental Panel on Climate Change on persistence of greenhouse gases varies with some key assumptions, on existing levels of other gases, possible carbon sinks, and the like (IPCC 2001). In a useful summary, CO_2 lasts from five to 200 years (there are different ways in which it leaves the atmosphere), Methane remains for 12 years, nitrous oxide lasts for 114 years, and some halocarbons persist for centuries or millennia; see Table 1 of the Technical Summary, available online and for download at: http://www.grida.no/climate/ipcc_tar/vol4/english/086.htm There is an excellent discussion of the physics, economics and politics of the question in (Schelling 1992).

> The burden to be shared is large, there are no accepted standards of fairness, nations differ greatly in their dependence on fossil fuels, and any regime to be taken seriously has to promise to survive a long time (Schelling 1997, p.10)

Countries' fates are linked, even if all prefer national autonomy.

In 1994 the United Nations Framework Convention on Climate Change began to address anthropogenic climate change with the Kyoto Protocol. Its objective is to reduce emissions to a sustainable level (compatible with food security and development) that avoids the worst disasters. Three commitments guide its efforts: equity in sharing common but differentiated responsibilities; precautionary action given seriousness of the risks; cost-effective sustainable growth and development. Wealthy states were obliged both to cut pollution and to subsidize efforts of poor countries ((UNFCCC), Depledge et al. 2003, p.6).

We cannot make the usual simplifying assumptions of international theory to understand climate change treaties. Because the problem is urgent, we cannot wait until all states have just governments. The world needs widespread compliance, by citizens, not mere agreement by leaders; backroom or elite-driven politics is insufficient. The risks are high for all, but not equally high, and some countries are better able to absorb their own costs than others. The risks are probabilistic, but some of the costliest damage occurs discretely, which entices free-riders.

IV. Fairness, Reasonable and Rational Interests

Recall that being well-ordered means countries treat each other fairly, even when they could drive a harder bargain. Their standards of fairness are appropriate for well-ordered peoples' diversity, and are "effective in shaping the larger schemes of their cooperation," (§1.1, pp.11-12; also §4.4-4.5, esp. p.40-42).

Fair, in this context, means that each country offers reasons that they sincerely believe other states could accept, reasons that treat them as equal parties, though differently situated. Doing so embodies proper respect for other societies; to do otherwise would not be consistent with their own democratic (or decent) domestic institutions (§3.3, p.35). This balances the conditions of reciprocity between citizens within a well-ordered society against the conditions of reciprocity between countries (§6.3, p.57), and is meant to ensure that a people keeps its treaty commitments even when it "might profit by violating them," (§3.3, p.35).

Fairness through reasonableness seems to rule out the possibility of a country acting for its own rational advantage without regard for others, as that would not a be reason others could believe treats them equally.[6] There is another possible source of discord, however, if (1) more than one proposal would treat other countries fairly as equal partners, and (2) countries face drastically different costs and benefits under each proposal.

If there are several plans, equally reasonable but unequally rational, and if none is Pareto-superior (rationally), then reasonable considerations cannot be decisive. Especially if the reasons appeal to hard-to-compare qualities, humans are likely to use rational payoffs to choose among the equally-reasonable schemes. This rationalization need not be malicious or devious. It is, however, dangerous, lacking the stability and solidarity-building qualities that Rawls relies on to support a peaceful world order.

The point is, there may be more than one reasonable proposal. We need further means to choose among them, in a way that respects well-ordered peoples as equal partners,

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[6] It is, of course, a realist reason that other countries might find quite plausible, useful or the best they could expect. Such considerations treat all *other* countries as equally other, but not as equal parties with the initiator. An international order of this kind might be stable and peaceful, but not for the right reasons. Rawls argues against this sort of state-first politics in §2 and §5.

demonstrating that the choice is not *post-hoc* rationalization of power politics. To illustrate, here are three reasonable approaches with widely asymmetric costs and benefits.

1. Climate change is urgent because of historical carbon emissions from, and deforestation in, the developed world. Its industries and vehicles caused most existing damage, and will linger to cause more. Backward-looking reasoning holds countries equally responsible for all pollution they have ever produced, leaving the richer, developed states with the biggest financial burdens today.[7] One such treaty mandates contributions to a common fund in proportion to past pollution. The money could be used to compensate countries for catastrophic damage, and for investment in cleaner technologies and carbon sinks. Payments are calculated to encourage adopting cleaner technology and limiting emissions to some sustainable level.[8] The costs of damage would be borne by all polluters everywhere, constituting fairness.
2. Because pollution has only recently been recognized as a problem, it is not fair to hold countries responsible retroactively. Forward-looking reasoning defines the problem as reducing future emissions to minimize further damage. It treats countries as equal parties to the agreement, equally responsible for their own future emissions. One forward-looking treaty might set a global emissions cap, share it equally among countries, and let them trade pollution rights. Less developed countries gain something

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[7] A more strident BL argument holds that between industrialization and empire-building, the developed world has polluted far more than its fair share – others could not match their levels without worldwide catastrophe. This constitutes theft, first of opportunities for development, and second of health, forests, water, arable land, and stability through damage from climate change. This would be used to justify punitive damages against the culpable parties (countries, corporations, or their inheritors), either financial or demands for apologies or more extreme national humiliation. Similar complaints do arise in politics, but my argument doesn't require BL reasoning to be limited to this extreme understanding of liability.

[8] There are questions about whether country caps should be simply equal or normalized *per capita*, or to land area (and given that population and territory change over time, which moment determines the cap). Because these issues are common to all three lines of reasoning, I bracket them here.

valuable to exchange, and could use the revenue to develop more cleanly; richer countries pay a premium to continue their above-average energy consumption, avoiding sudden deprivation. Countries remain political equals, in different circumstances.

3. The problem is purely political: a classic tragedy of the commons requires global cooperation. All countries are equal parties to negotiations, fairness means no countries get special deals or retroactive condemnation (absent reasonable justification). Narrowly interpreted, the problem does not exist until countries agree on it, so they cannot be held liable for polluting prior to agreement. This leads to a more-nearly-equal distribution of emissions (permits or reductions) today, whether per country, person or acre is left to negotiators. On a broader reading, free and equal negotiators may consider special needs, forward and backward-looking arguments when allocating permits. If negotiations were not coercive, and all countries were genuinely respected as equals, then any solution they derive would be fair and just, whatever it contains.

Countries can easily tell which rewards them the most, and the differences will be large.

Well-ordered societies acknowledge that, in the thin sense Rawls demands, all of these can be fair: each could be offered sincerely as fair and equal treatment. They could also be self-serving or even exploitative, couched in the language of reason. An indisputably well-ordered society gets the benefit of the doubt. Real countries don't; their judgments of one another's justice-or-decency depend in part on their perceptions of dishonesty and hypocrisy. For Rawls, judgments depend on how visibly a state follows its reasonable interests when tempted by

rational ones; this demonstrates commitment to common good. He gives states no way to judge where professed commitment to reason might be all talk.[9]

The problem is more difficult because within each society some people are reasonable, others are openly selfish, others deceive themselves. Before they can form opinions on each proposal, they can guess which serves their rational interest. This colors domestic debate about which treaty to design and who should negotiate; it thus colors reasonable deliberation in the Society of Peoples.

This will make the Society of Peoples unstable. Under those circumstances, a well-ordered society's representatives could not guarantee compliance from their citizens, whose obligations to support treaties made in their name are predicated on the representatives acting in certain ways. Citizens might choose to comply with treaties anyway, for honor, solidarity, guilt, altruism, etc., but we cannot count on that.

In sum, fairness describes a process, in very general terms; it doesn't tell us anything about the content of the outcome. If people can pick and choose among equally fair schemes as their rational interests change, claiming to be reasonable, then none have reason to accept a fair scheme that is not in their immediate rational interests. We need something besides fair reasons (that serve one's self-interest) to demonstrate credibly a commitment to reciprocity.

V. Fairness and Thinness

Some believe that Rawlsian reasonableness is limited (and may provoke conflict), because his notion of fairness (or reasonableness) is too 'thin' to support the kind of cooperation he wants. Rawls himself suggests there can be no 'thicker' norms of fairness until

[9] Peoples can avoid this by explicitly advocating a scheme that is not in their rational interest, deliberately to signal well-ordering and initiate mutual trust. The altruist state would have to trust others blindly, hoping to stimulate honesty. Such social cooperation does occur, but is supererogatory.

peoples first have both substantial experience trusting one another, and great statesmen to inspire greater fellow-feeling for foreigners. Eventually, through small steps of cooperation, the Society of Peoples will become more cosmopolitan in sentiment. Perhaps climate change treaties are impossible early on, when many countries are not well-ordered. What is the "International arena is too thin" argument?

In one version, thin norms indicate agreement on general concepts that are made explicit, in incompatible ways, by the various groups. For instance, all countries agree that they all should be treated as equal partners, but disagree over criteria entailed and forbidden; this suggests strategies for reconciling disagreement over the details (Sunstein 1995). Alternatively, thin global similarities are secondary to the various thicker local meanings, not logically prior. Consensus around thin concepts is by analogy, not homology, so thicker concepts need bear no relationship to one another but coincidence (Walzer 1994). Promoting peace (or cooperation) requires papering over many differences, working together on concrete projects, and hoping practices evolve to be more alike, rather than turning policy disagreements into wars over fundamental norms (like fairness, justice and reason) (Ignatieff 2001).

In another version, the notion of 'thin reasonableness' is simply mistaken. Within a country, public reason is confined to specific subjects of common interest, to enable an overlapping consensus on public policy among people who disagree on more-deeply-felt matters; too much pluralism shrinks the space for public reason (Kelly 2001). But this strategy fails, issues of potential consensus are not easily distinguished (say, by subject matter), nor is it clear what fair adjudication might rely on – nothing is gained by restricting the scope of public reason (Benhabib 2002, ch.5 (quote from p.111)).

To some degree, pessimism about human judgments are borne out by the experimental literature on fairness, agreement and perceptions of justice. Prior commonalities – evidence of a shared goal – can encourage parties to trust one another, creating opportunities for stakeholder involvement and the development of cooperative means towards a common goal. Parties judge whether the process is fair (and whether the other participants are fair) from evidence collected throughout – fairness is context sensitive (Earle 2004, summarizes the recent literature). Such malleability is not consistent with Walzer's view that thick culture is more real than the thin illusion of correspondence. Once developed, a new shared conception can be as compelling and deeply held as earlier local ones.

In sum, cooperation has to be built, slowly, and cannot be imposed by mere act of will. Rawls holds out hope for cooperative intentions manifested in equal respect, but relies on the statesman to shepherd citizens along. I now explore what it means to build cooperation, and what it requires.

VI. An Institutional Context of Fairness

It can be reasonable for members to abide by (1) binding decisions (2) made through procedures that all agree in advance are fair.[10] Agreeing to be bound by future decisions constitutes agreement that the procedures are fair. This makes it reasonable to expect others to comply in future, despite rational temptation to defect. Fair procedures don't guarantee that each decision will be fair, or seem fair to all parties, but it gives everyone reason to trust that, over time, net costs and benefits (and mistakes) will be distributed fairly among participants. They give rational 'cover' for continued participation on reasonable grounds, even when the

[10] There are many notions of fairness on which there is consensus – fair reciprocity, for example. Justice within society typically presumes such agreement is part of a constitution (Rawls 1971; White 2003).

reasonableness of any one decision is disputed. Principals have reason to comply with decisions that hurt them, if made by their agents through fair procedures, rather than to recall the agents and disavow the agreement.

This is a promising strategy for a global collective action problem requiring both cooperation among countries and compliance from their citizens. Can it be made to work?

In a just domestic society, people are (thought to be) obliged to comply with collective decisions, even ones with which they disagree, because otherwise a large, complex society could not be managed effectively. Even if one denies an obligation to obey laws, there are good reasons to comply with decisions made on one's behalf, under appropriate constraints. Any one decision is unlikely to be bad enough to make the inconvenience of unanimous agreement worthwhile. So the convenience and efficiency of delegation, and the complexity of society, form a powerful motive for authorizing representatives to choose among (acceptable) alternatives, while restraining their abilities to abuse this authority. If done well, citizens have very good reason to presume that laws merit compliance, so they allow considerable room for government to set policy within its jurisdiction.[11]

We accept decisions as fair enough if they are made via a procedure designed not to produce systematically unfair policies, and if each policy outcome is not itself blatantly (or excessively) unfair. That is, the procedures are constrained to produce results that are just (or decent) enough, often enough, that the public has good reason to accept each one, if it is, on its face, fair. People are also free to offer reasons against each rule, giving the rest good reason to

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[11] This argument does not depend on obligation to obey the law, for two reasons. First, so that it will generalize easily to an international realm, without a single body of law, that generally fails to meet domestic conditions for obligation (e.g. reciprocity, community, or consent). Second, with Flathman and Simmons I'd prefer something weaker than obedience – such strong reasons to comply that we expect compliance. This does most of the same work, but accommodates civil disobedience more elegantly (Flathman 1998; Simmons 1993; Simmons 1996).

reconsider it carefully, and perhaps refuse to comply even before it is revoked. Fair procedures don't guarantee fair decisions, but they are a powerful heuristic that citizens can use to make everyday political judgments.

What constraints does fairness require? One is accountability: there must be adequate channels for appealing laws and judgments, punishing abusers of office, removing incompetent officials, promoting new candidates for office. These deter, correct and punish unfairness. Another constraint is that decisions should be justified through public reason, not merely proclaimed or imposed. This implies transparency, giving citizens enough information that they can evaluate arguments and policies, to hold officials accountable. Another is that no subgroup should be systematically on the losing side of policy arguments; this gives everyone reason of reciprocity to comply with rules they might prefer to oppose.[12]

The heuristic changes the unit over which fairness is evaluated, from each decision or law to the ongoing process of accumulating decisions and laws – the institutions. People might disagree about whether each act is fair, but compliance is justified because (1) the past and future stream of decisions is fair enough, on balance, to compensate for expected disappointments, (2) safeguards are good enough that disappointments themselves are not intolerably unjust and (3) safeguards give members tools to reverse injustices. The worst that could happen (under these semi-ideal conditions) is perpetual interest-group infighting, alternating victories and defeats often enough to justify continued compliance to the overall

[12] This is not an absolute requirement, for one can imagine groups of people so committed to intolerable policies that well-ordered society could not accommodate them; they would lose, systematically, in crafting public policy. (They could not systematically be burdened with taxes, loyalty oaths or the like, but their subculture would not have equal chance to flourish.) The hope is that though these groups have some unreasonable views, they also have some reasonable ones – perhaps on mundane matters of administration – and the reasonable set is large enough to ground a norm of reciprocity and shared community welfare. Alternatively, one might hope that the group members might grow more reasonable over time (Rawls 1971; Rawls 1993; Rawls 1999).

structure of law. A happier possibility is a rich participatory democracy, with reasoned public deliberation on how to advance each person's interests equally and respectfully.

The strategy applies to well-ordered institutions, not only democracies or governments.[13] It is not merely high exit costs, or police coercion that drives individual members to comply with the law. Compliance is justified by their own experience that rules are made fairly, with their interests in mind, with their participation, in democratic or decent institutions.[14] But this means that a body can have authority, and have its decisions routinely accepted, even if it has very little direct power to coerce member states or individuals.

Why is this important? Rawls does not want the Society of Peoples to be a government because governments tend to use their limited coercive power to acquire more, without consent of the governed. He believes that without external checks, world government would turn tyrannical, or, if given too little power, would be ignored (Rawls 1999, §4.4, p.41, p.41n50). But if we can separate a government's coordination and administrative functions from its power to coerce compliance, then we can prescribe extensive coordination and administration with little fear of tyrants.

This involves a two-level justification. Rules, laws and ordinary administrative interpretations of them are justified procedurally. If they are made through fair, legitimate procedures, if the decisions are not manifestly unfair, and if no one has raised a serious, reasoned challenge to a decision, then all are justified in expecting others to comply with it.

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[13] That is, governments are the ultimate coercive legal authority over their territory; they are to be considered legitimate and sovereign, if they administer that authority in certain ways, i.e. democratically or decently. But other organizations can be well-ordered – clubs, parties, religious communities, professional organizations, charities and regulatory bodies can be constituted to be accountable, transparent, participatory and based on reasoned argument. Conversely, government bodies with very little power, small town government, for example, can be highly coercive without being democratic or effective.

[14] Although to fully justify coercion, a body may have to be democratic (Blake 2001; Franck 1992; Fung 2003; King 2003; Miller 1983).

Any reasoned challenge must be addressed, publicly, and if a rule cannot be justified explicitly, it might no longer be legitimate.[15] Because procedural trustworthiness is strong ground for compliance, Society of Peoples can be, like a regular government, the legitimate administrator of its rules. If appropriately constituted (e.g. with distinct internal bodies), it can be the legitimate legislator as well. Make it well-ordered, and its actions are *prima facie* justified and fair.

However, for use of coercive power on a large scale, *prima facie* legitimacy is not enough. It requires something much more demanding, such as broad consensus among members, and a good argument that all lesser means of achieving compliance have been exhausted.[16] This suggests criteria for deciding whether to comply. One is ease of reversibility: coercion that doesn't ruin the party punished can be reversed on appeal, so its dangers are limited. Coercion that involves catastrophic consequences – for example, wars, financial ruin, mass migration, some environmental disasters – should meet the higher standard.

At both levels of justification, people need a shared background against which arguments are made and decisions taken.[17] If that included a single criterion of fairness then justification would not be destabilizing. People might not agree on a plan, but they would agree on the problem definition and scope. Their preferences would conflict intelligibly, and they could negotiate respectfully. This is in part why imaginary equals would agree in Rawls'

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[15] Discussed in (Rawls 1999; Soper 1984)
[16] The standard to which UN and NATO military action is now held (though my argument doesn't rely on this characterization).
[17] They require some common factors: ability to communicate, similar-enough idea of their common task, etc.

Original Position – it presumes they agree on fair principles and know that specific disagreement doesn't indicate others' hidden unfairness.[18]

Unfortunately, we have no single set of principles. Rawls argues that the facts of global pluralism are such that there is not such a set, although it is possible to reach agreement on something thinner – reasons all believe all could accept as treating them as equal partners; Jeremy Waldron agrees (Waldron 2000). Hilary Putnam argues persuasively that there simply is not one uniquely best way to describe even facts about the world that would lead to consensus. Moreover, we can't describe facts without presupposing some things about the value of that information, or uses to which it might be put (Putnam 1993; Putnam 2002(2004)). Fortunately, with a good choice of 'shared background' within which members state their needs and goals, and present proposals for cooperation, countries can make peaceful cooperation more likely.

VII. International Holding Environment

The shared background is what psychologists call a "holding environment" – a social space safe enough that participants can experiment with new relationships and rule changes, secure that undesirable results can be reversed. They can innovate and explore alternatives before committing to either a definition or a treaty. For example, representatives of countries could negotiate under backward-looking reasons to see if there could be a consensus on which

[18] A similar idea has been asserted in defense of toleration of authoritarian groups – the claim is that the subordinated believe their lack of power is natural, right and fair, making the group is just. Its has been widely criticized: empirically these groups are not monocultures, individuals do want things that look very much like basic human rights (or basic capabilities), despite leaders' denials that are often responses to citizens' attempts to acquire these for themselves (Benhabib 2002; Doppelt 2002; Kymlicka & Norman 1994; Kymlicka & Shapiro 1997; Marcuse 1965; Nussbaum 1999; Nussbaum 2000; O'Neill 1993; Philpott 1995; Scanlon 1979; Sen 1999; Shachar 2001; Wolff 1965).

histories are relevant, without committing to that approach (Winnicott 1982; Shapiro and Carr 1991; Jaggar 1998; Van Buskirk and McGrath 1999).

An organization's justice depends on its details, but what Rawls calls its "stability for the right reasons" is, I claim, its function as holding environment, a continuing arrangement with agreed-to-be-fair procedures for developing and regulating interaction. It indicates trustworthiness, encourages trustworthiness (e.g. by defining fairness, balancing outcomes), and reveals treachery. By decoupling trustworthiness from commitment to reason, problems and proposals, it allows disagreement on one without voiding agreements on others.

The international arena needs some sort of holding environment to help countries address tragedies of the global commons and other hard choices. If we had one unambiguous set of principles all considered fair, then we could use reason to devise policies consistent with those principles, much as Rawls does analytically, at a much more abstract level. But not only do we not have one set, we cannot have comprehensive fair principles needed to disambiguate emerging issues and crises, unless they are formed (thickly) through the sustained interaction possible in a safe space. Unlike an original position, knowledge and reflection are not prior to experience – parties likely had no opinions about pollution until they began to see it as a problem requiring collective action.[19]

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[19] This may remind the reader of pragmatism or discourse ethics; Habermas contrasts his "ideal discourse situation" with Rawls' (domestic) original position:

> Under… an inclusive and noncoercive rational discourse among free and equal participants, everyone is required to take the perspective of everyone else…; from this interlocking of perspectives <u>there emerges an ideally extended we-perspective from which all can test in common whether they wish to make a controversial norm the basis of their shared practice; and this should include mutual criticism of the appropriateness of the languages in terms of which situations and needs are interpreted. In the course of *successively* undertaken abstractions, the core of generalizable interests can then emerge step by step.</u>
>
> Things are different when the veil of ignorance constrains *from the beginning* the field of vision of parties in the original position to the basic principles on which presumptively free and equal citizens would agree, notwithstanding their divergent understandings of self and world (Habermas 1995).

Two elements are essential for the international holding environment. First, everyone tests controversial ideas that might ground shared practices, considers modifications and alternatives before adoption, without jeopardizing their commitment to work together. Second, different situations arise and are addressed over time. New proposals are reconciled with the stream of past and future agreements, seeking both to balance costs and benefits across many issues (to share them more fairly than is possible within single issues) and to keep all agreements consistent with one another.

Parties try to keep the whole scheme just, though it is not constructed or designed as a whole. This involves justifying the whole project (including the latest element) to each other, regularly. This reinforces the holding environment by signaling commitment to consistent, just relations. It helps resolve contradictions and answer objections, giving concrete reasons for cooperation. The procedures and organization of such an international body would be relatively fixed; this adds stability and predictability, and makes it safe for parties to expect and plan for subsequent negotiations (Hampshire 1996).

If it is reasonable to value such context, on Rawls' definition of reasonable, then it is reasonable to want the Society of Peoples to be a holding environment. So that its credentials of competence and durability remain valid, it needs ongoing, visible tasks. It should administer treaties, consider exceptions and complications in light of the stream of decisions, and of other treaties. It would be larger, more powerful, with broader responsibilities than Rawls allows.

Rawls says there are two types of tyranny to avoid: well-ordered societies should reject world government, and they should not cooperate with, or preserve, badly-ordered governments that do not reflect collective decisions of their citizens (are not self-determining). While

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absolute rejection is untenable, the next two sections describe how well-ordered societies could minimize both.

VIII. Limit Potential for International Abuse

Rawls tries to limit international authority to preserve well-ordered societies' autonomy, thinking relative isolation expands the range of domestic deliberation. Actually, appropriate interaction expands the set of possible outcomes, giving citizens more policy options. He makes the "Society of Peoples" several agencies, each with a limited mission, composed of representatives of well-ordered peoples. For instance, one is an analog of the World Bank, while another resembles the General Agreement on Tariffs and Trade (Rawls 1999, §4.4, p.42n51).

Consider GATT, a treaty to harmonize international trade, to benefit all members. Although there were many rounds of renegotiation and discussion, member countries were not bound by decisions – each country could reject the treaty whatever its representatives promised. Threat of exit was not uniformly credible, making countries even less equal.

Unlike its successor, the World Trade Organization, GATT could not arbitrate trade disputes or enforce its decisions; it could only facilitate Pareto improvements in international trade. The WTO's task is harder, with potential costs to members who violate its rules. It has more power, and being unelected (and including badly-run countries), it has great potential to become arbitrary, tyrannical or merely unfair to countries and individuals.

Like the GATT, the various Societies of Peoples are *ad hoc* committees deputized to negotiate treaties and perhaps monitor countries' adherence. Without saying so, Rawls implies that most negotiations are not binding, so members have a right to refuse to sign each treaty. This preserves as much room as possible for domestic debate and re-interpretation minimally

constrained by the outside world, as long as those plans are sustainable and not aggressive. His Societies have no responsibilities for interpretation or conflict resolution, and cannot act as holding environments able to contain disagreements peacefully.

The problem is, ties this weak actually make the international regime less trusting, because they don't allow countries to agree on how to apply concepts like fairness and equality. With too much freedom to interpret these for themselves, each society has no basis for understanding why others would interpret differently, save self-interest or malice. A conflict over a narrow policy may be interpreted as evidence that the other party is not committed to fairness. Citizens of one country may take disagreement to indicate that they would be foolish to comply with a disputed rule, even if they had previously agreed to do so.

Without the right supporting institutions, any conflict can potentially destroy the entire regime of cooperation via uncertainty, even among parties with a history of trust and mutually-profitable cooperation. They might transcend distrust with faith in other states' fair-mindedness, but that is too much to expect; in the real world, where countries are sometimes duplicitous, we should not rely on such gallantry becoming routine.

Because the WTO can judge whether countries violate an agreement, countries recognize its decisions as binding, even though it cannot punish directly. That makes tyranny less likely – it coordinates but doesn't implement, which means it must persuade some key members to apply sanction. It couldn't become a tyrant without help; This applies to the Society of Peoples too. The European Court of Justice has evolved into a check on member states' laws, though it has no monopoly on the legitimate use of force.[20]

[20] It works by giving political cover to officials in each country who then work democratically to effect changes domestically (Alter 1998).

We also limit the potential for abuse by ensuring that these Societies of Peoples are appropriately well-ordered. That is, organizations committed to member participation, and reason over coercion, would have internal procedural safeguards against concentration and abuse of power. (Rawls too directs the Society of Peoples to be well-ordered, composed only of well-ordered societies, but apparently believes that these measures are insufficient.)

Recent work in democratic theory offers more hope, by describing what constitutes democracy within bureaucratic institutions. The authors argue institutions are democratically legitimate if: they are deliberative, accountable, transparent, participatory, inclusive (in specific ways); focus on the appropriate subject, against a background of guaranteed human rights, including subsistence, security, speech and opportunities to challenge decisions; they include stakeholders, not merely residents of fixed geographic units (Sunstein 1995; Alter 1998; Dorf and Sabel 2000; Cohen and Sabel 2003; Fung 2003; Fung 2003).

I claim that the components of democratic legitimacy also limit the potential for tyranny.[21] The literature suggests Rawls' pessimism can be replaced with cautious optimism and careful design. Organizational responsibilities should be clearly delineated, hierarchically and laterally, and we need to give content to principles like accountability and participation. We care less about the process or quality of deliberation than the choice of umbrella authority under which it should take place.[22]

By insisting that the representatives to international bodies genuinely (transparently, accountably, etc.) represent their peoples we also limit the risk that agency bureaucrats develop

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[21] Democratic experimentalists have not yet shown enough for my purposes. They want to establish that nontraditional interpretations of democracy are coherent, and that they exist (spontaneously) in various real institutions. They have not shown that such institutions themselves are stable, successful, scalable and not-corruptible. Thus I say 'limits the potential for tyranny' and not 'prevents tyranny' – though their criteria should at least make the institutions tamper-evident.

[22] Although deliberation is said to link democratic legitimacy and obligations to comply with law, (King 2003). I am not concerned here with compliance so much as limiting the potential for abuse.

their own interests in opposition to those they represent.[23] Theorists must balance the risks of tyranny against the likely consequences of perceptions of others' bad faith (conflict, renouncing treaties), and the costs of climate change itself. I simply disagree with Rawls over which are worse, but within a framework derived from his.[24]

For now, I accept Rawls' claim that a world of just but separate states, coordinated rather than unified, can itself be just, and allow everyone to prosper, if only we get the details right. I turn to the detail of how to cooperate with badly-ordered societies without helping the leaders avoid reforms.

IX. Limit Domestic Abuse

There are two levels at which a body constructing a Kyoto-type treaty should be democratically legitimate (as described in the previous section). First (as Rawls explains), each country should be represented and treated as an equal, without regard to its wealth or military power.[25] This is a condition that any self-respecting society demands for itself. Countries are the units represented because they alone bear legitimate power of coercion and enforcement. If individuals were directly represented in their national governments and in parallel in international organizations, then it would be easier to ignore (or overrule) each country's

[23] Although one expects some emergent solidarity whenever individuals work closely together, it need not work against the principals.

[24] Contrast this with a more sweeping internationalism: Alan Buchanan argues that Rawls is wrong: representatives of peoples, aware of world history, would choose democratic institutions with substantial binding authority. The global basic structure is pervasive, limits domestic autonomy, and can be made more just, or less. Given the choice, well-ordered peoples would choose justice. It is not clear how activist such institutions would be, though Buchanan thinks peoples would redistribute wealth, to provide global equality of opportunity (Buchanan 2000). I would not take so many decisions away from well-ordered societies and give them to a democratic super-state-like body.

[25] There is a further question about the best way to represent countries as equal partners, given their vastly unequal populations, wealth, land area and vulnerabilities. It is not obvious whether equal treatment would give one vote each to China, Nigeria and Switzerland, or if not, which should dominate. It seems solvable, e.g. the EU has (so far) addressed it peacefully. I do not discuss it here.

internal deliberations, and treat the international as a super-state-like entity. That would not guard so well against accretion of power by the global body.

Second (as Rawls does not explain), for widespread legitimacy and compliance, it is important that these country-diplomats actually represent all of the people in their charge; they must be agents of the society, not merely of its government or elite interests. If some segments of humanity are not represented, not only will they have cause for resentment and incentive for noncompliance, all people everywhere have reason to distrust a scheme that is demonstrably not well-ordered. Just and decent societies ensure universal representation through free and fair elections, and also as described by democratic experimentalists – e.g. stakeholder consultation, decisionmaking through deliberative consensus.

It is essential to gain the compliance – not merely signatures – of all countries that can emit GHG's, or global emissions will rise, even if many cut production. This cooperation sits uneasily with *The Law of Peoples*, because working with an outlaw government legitimizes its leaders to the international community and within the outlaw state. Rawls emphasizes that well-ordered societies should work together to reform outlaw (and burdened) societies (§13.3, p.92-3). He gives no practical advice, and notes that success rests on luck more than policy. There is real tension between the pressure to isolate and shame outlaw governments, and the desire to make improvements by bribing officials with money or international recognition.

This tension is less significant where near-universal consent is required. Isolating outlaws completely is not compatible with limiting otherwise-lucrative practices, so unless all countries become well-ordered in the next few years, some cooperation with badly-ordered governments will be necessary. *We should therefore find a way to minimize the shadow of legitimacy that follows being seen to consult and cooperate with the outlaw leaders.*

This could be done in two parts. First, design an international agency with a narrow mandate. Composed of representatives of all countries (not only the well-ordered), it hosts construction of a climate-change treaty, and then administers and interprets it so that it is applied consistently everywhere, in ways all can find reasonable. It has little power to enforce its decisions directly – perhaps it could levy fines. Major sanctions would be applied by other countries, thus they would have to agree on penalties. This wouldn't prevent abuses of power, but it would limit the agency's own power.[26]

Second, if there were real individual-level democratic (or decent) choice of every country's representatives, then it would matter less that a member country was itself not well-governed. Failing that, we must try to ensure each outlaw state's representatives are not chosen by its abusive government, but instead plausibly represent its members. The material rewards of climate change treaties (aid towards cleaner factories, compensation for storm damage, etc.) would give outlaw leaders a powerful incentive to allow such limited autonomy, especially if Rawls is right about the material benefits of peace.[27]

Active participation would enhance efforts to teach members of burdened and outlaw societies how to act in a participatory democracy, for example, how to form coalitions rather than extremist-led factions. Because democratization requires more than one choice (of external representative) and is difficult to achieve at the best of times, reforming badly-ordered societies is time-consuming and dangerous. Giving people practice at self-determination, without first destabilizing their government, preserves existing civil society. This seems the risk-averse

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[26] More could be said about this institution's design: for example, how to prevent a few (powerful) countries capturing the agency, how to promote reasonable over rational politics. Answers are familiar from other democratic projects. I need only show such an institution can be both effective and relatively safe.

[27] Consider the enthusiasm of countries to join the EU. They are eagerly modifying their constitutions and practices to meet its requirements. Rather than complaints that qualifying conditions are culturally biased, we see appeals for accelerating the admissions process.

approach. Though easy to suggest and hard to imagine; it is worth trying to find a way to include badly-ordered societies while minimizing the inadvertent stabilizing effect such inclusion would have.

X. Conclusion

The point of a theory of just international relations is to guide real international relations. Rawls argues that just-and-decent countries easily find mutually beneficial resolutions to problems. This natural cooperation leads democracies to prefer peaceful trade to conquest or intimidation. He argues, mistakenly, that well-ordered societies need no binding international institutions, and prefer *ad hoc* negotiations on treaties they find easy to write. This, he thinks, maximizes each country's independence, allows citizens to determine their common goals with the least interference from abroad. Unfortunately, not all global concerns can be resolved without steep, asymmetric costs. Under such conditions, well-ordered societies may be unable to agree on allocating those costs, lacking common ideas of fairness and equal partnership.

Consider a global cap on greenhouse-gas emissions. If countries face several fair schemes to share the burdens, that are equally reasonable but with radically different costs and benefit distributions, then each has reason to think that the others are choosing on rational, not reasonable grounds. Citizens have reason to reject costly (for them) agreements. Each country can interpret uncertainty as evidence of others' treachery (or at least, lack of commitment to cooperate). Disagreement on one issue can lead to generalized distrust, doubting others' well-ordering, or even violent conflict.

The goal is to allocate burdens fairly-enough to be acceptable on reasonable grounds, and then to administer the agreement fairly over time. A holding environment allows

disagreement without jeopardizing peaceful cooperation on other issues. Evaluating fairness over time makes it rational to pay more now, secure that others won't defect when it is in their short-term interest. Both considerations suggest a deliberative and administrative body to which all countries commit; it enacts a stream of decisions, accommodating all countries' needs fairly and reasonably. Fairness is not a prior principle, but rather a property of specific allocations of costs and benefits aggregated over time, across many decisions.

The constitution and practices of the international body are also components of fairness – they determine whether it is reasonable for individuals and countries to comply with decisions that seem unfair taken in isolation. Institutional design is crucial for limiting the agency's despotic potential. Democratic legitimacy both justifies universal compliance and limits the institution's power. Raw power is limited further if it cannot impose severe penalties on members; those should only be imposed indirectly, through explicit consent and coordinated action of member states. This encourages broad consensus over bare plurality, and favors accommodation of special needs over rigidity in the name of fairness. Such a climate favors peace and respect for other countries as equals, in a spirit of reciprocity and compliance.

My proposal shares Rawls' aims of peaceful, reasonable, sustainable cooperation, and accommodates his fear of global tyranny. It may also satisfy a liberal who is perplexed at Rawls' rejection of cosmopolitanism. It introduces the practice of democratic deliberation to residents of badly-governed states without first destabilizing their socioeconomic institutions. Basic security encourages peaceful experimentation with political reforms, because all sides risk more with revolts.

These proposals will stand or fall not so much on the sketch offered here, as on the details of implementation, for institutions are remarkably good at growing beyond their briefs,

and political theory has yet to describe real accountability – elections are a very imperfect proxy. Ultimately, though, one has to balance the risks of different schemes collapsing. When Rawls' construct fails, just states have reason to fight one another; when mine collapses, either there is global gridlock, or bureaucrats sneak additional power and members have to respond. I think Rawls risks too much – lethal consequences for vast numbers of people in the world. Fortunately, this disagreement too can be settled peaceably.

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