

UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

LIBERATION AND LIBERAL FREEDOM:
A CRITIQUE OF RAWLS'S LAW OF PEOPLES IN LIGHT OF
POSITIVE FREEDOM

A DISSERTATION
SUBMITTED TO THE GRADUATE FACULTY
in partial fulfillment of the requirements for the
degree of
Doctor of Philosophy

By

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2006

UMI Number: 3207597

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LIBERATION AND LIBERAL FREEDOM:
A CRITIQUE OF RAWLS'S LAW OF PEOPLES IN LIGHT OF
POSITIVE FREEDOM

A DISSERTATION APPROVED FOR THE
DEPARTMENT OF POLITICAL SCIENCE

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ACKNOWLEDGEMENTS

With profound gratitude I acknowledge the contribution that my parents, Boyd and Sue Shook, have made toward this project and all my endeavors. Their encouragement, example, and support have been essential. Likewise, the love and patient support of my own children, Jesse, Bailey, and Bridget have kept me going. Thanks are due to many friends for help with everything from caring for my kids to proofreading. I would especially like to express warm thanks to Rebecca Gaston, Nathaniel Batchelder, Robyn Lemon Sellers, Amy Oden, Peggy Johnson, Deborah Appler, Mindy Hellwege, Nancy Fuller, Roger Lienke, and Bob Nichols. My sisters, Liz, Judy, and Jen have also been a source of power. Thanks are due to the leadership of Church of the Open Arms for patient support and flexibility through the years of these studies.

Sincere thanks to members of my committee: Charles Kenney, Greg Russell, Cindy Simon Rosenthal, Zev Trachtenberg, and especially to my chair, Ronald Peters for the excellent leadership of the process and penetrating discussions that helped clarify the project. I would also like to thank the political science department and members of the philosophy department as well. Your teaching has made this possible. I continue to be thankful to earlier teachers who have shaped my life, especially Ed Lawry and Neil Leubke, who first taught me about the work of John Rawls in 1980. Leslie Penrose was my friend and mentor who got me involved with the work in Nicaragua. With her I have shared in the struggle of learning about

liberation. I thank Carolina, Octavio and many friends in Nicaragua, particularly those at FUNDECI and Witness for Peace. Finally, I am grateful to Father Miguel who has been generous with us through the years sharing his time and wisdom.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	iv
TABLE OF CONTENTS.....	vi
ABBREVIATIONS.....	viii
ABSTRACT.....	ix
 Introduction	 1
Freedom and Resources	20
Freedom and Community.....	24
Freedom and Labor.....	30
 Chapter 1 Positive Liberty Defined	 38
After Berlin: Ongoing Debate over Positive Liberty.....	55
 Chapter 2 Positive Freedom in Perpetual Peace	 83
Kant's Influence on Rawls	93
Gray's Critique.....	116
Economic Issues in Perpetual Peace	121
 Chapter 3 Freedom and Resources	 128
Freedom and Other Primary Goods	131
The Worth of Liberty	141
Capabilities, Opportunities, Freedom in Nussbaum's Critique.....	154

Chapter 4	Freedom and Community for Rawls	175
	Humans Flourish in Communities.....	180
	Clarification of terms: Community, Association, Society.....	191
	Society's Relationship to States as Actors.....	204
	International Community in Pogge's Critique.....	224
Chapter 5	Labor and Freedom	238
	Rawls's View of Labor Issues	244
	Labor Problems in Rawls's Theory.....	256
	G. A. Cohen's Critique	272
Conclusions	286
	Extension of Justice as Fairness Beyond Borders.....	293
	Economic Regulations for Justice.....	295
	Bridges between Liberalism and Liberation Theory.....	306
BIBLIOGRAPHY	321
APPENDIX	339

ABBREVIATIONS

The following abbreviations will be used in citations in this paper:

- CP – Rawls, John. *Collected Papers*. (ed.) Samuel Freeman. Cambridge, Massachusetts: Harvard University Press. 1999.
- CPR – Kant, Immanuel. *Critique of Pure Reason*. (ed.) Paul Guyer. New York: Cambridge University Press. 1998.
- IPR – Rawls, John. “The Idea of Public Reason Revisited,” in *The Law of Peoples*. Cambridge, Massachusetts: Harvard University Press, 1999.
- LP-- Rawls, John. *The Law of Peoples*. Cambridge, Massachusetts: Harvard University Press, 1999.
- PL – Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993.
- PP – Kant, Immanuel. “Perpetual Peace,” in *Perpetual Peace and Other Essays*. Trans. Ted Humphrey. Indianapolis: Hackett Publishing Company. 1982.
- RP -- *Revisioning the Political*. ed., Nancy J. Hirschmann and Christine Di Stefano. Boulder, Colorado, 1996.
- RR – Pogge, Thomas. *Realizing Rawls*. Ithaca, New York: Cornell University Press, 1989.
- TC – Berlin, Isaiah. “Two Concepts of Liberty,” in *Four Essays on Liberty*. New York: Oxford University Press, 1969.
- TJ -- Rawls, John. *A Theory of Justice*. Cambridge, Massachusetts: Harvard University Press, 1971.
- WHD-- Nussbaum, Martha. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2000.

ABSTRACT

How can Rawls's *The Law of Peoples* serve as a theory of justice that clarifies the responsibility of consumers in affluent societies to workers in impoverished societies whose labor produced the goods being consumed? If it is true that some of the most serious cases of injustice involve labor arrangements in the global economy involving something similar to economic slavery as described by Marx, then an adequate theory of justice should address such problems. I will argue that Rawls's theory in the international application should be revised in order to avoid criticisms of being either irrelevant to crucial cases of injustice or merely a modus vivendi argument that fails to accomplish Rawls's intent. To demonstrate the need for these revisions, I ask: how would his theory be different if Rawls had maintained both the positive and negative dimensions of freedom? I explore the reasons that Rawls dismissed positive freedom as a valuable concept, including the influence of Isaiah Berlin and others. I examine various definitions of positive freedom with special interest in the words of T.H. Green who advocated the "the liberation of the powers of all."¹ This liberation assumes both material conditions and moral justification. If Rawls had maintained this notion of positive freedom as social self-expression with enabling conditions then Rawls would have prevented various criticisms. This definition of positive freedom shapes three parts of my

¹ T.H. Green, *Lectures on the Principles of Political Obligation*. (New York: Cambridge University Press, 1986), 2000.

argument: first, positive freedom entails resources as enabling conditions; second, positive freedom is social freedom in relationship with others; and third, positive freedom is activity of the will and therefore a labor of self-construction. I link criticisms of Martha Nussbaum, Thomas Pogge, and G. A. Cohen as examples of criticism related to the potential for freedom to be merely formal in Rawls's theory. I conclude that positive freedom is a concept worth retaining because it helps account for Rawls's drift toward socialism. Finally, I conclude that further extension of the Law of Peoples as informed by this robust notion of freedom would lead to connections with liberation and feminist theory and greater relevance for issues of labor justice in the global economy.

INTRODUCTION

Two main ideas motivate the Law of Peoples. One is that great evils of human history – unjust wars and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder – follow from political injustice, with its own cruelties and callousness... The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) basic institutions, these great evils will eventually disappear.¹

Political liberalism, with its ideas of realistic utopia and public reason, denies what so much of political life suggests--that stability among peoples can never be more than a *modus vivendi*. The idea of a reasonably just society of well-ordered peoples will not have an important place in a theory of international politics until such peoples exist and have learned to coordinate the actions of their governments in wider forms of political, economic, and social cooperation. When that happens, as I believe, following Kant, it will, the society of these peoples will form a group of satisfied peoples.²

“Realistic utopia” was Rawls’s attempt at a middle ground between realism and utopian theory in international relations. It was his hope of reclaiming and fortifying earlier liberal utopian theories that were overthrown by realist criticism. I want Rawls’s theory to work. The splendid hope of achieving just peace has universal appeal. It is precisely because I have high hopes for his work, that I offer criticisms and suggest revisions. His final book, *The Law of Peoples*, claims that liberalism can develop and sway international relations in answering tough questions regarding the extent of just intervention and use of force. Although the cases of

¹ Rawls, LP, 7.

² Ibid., 19.

intolerance that he considers are primarily cases of religious intolerance, and the cases of intervention are primarily cases of war, this international theory of justice may be applicable to other social and economic cases as well. When do cases of economic injustice warrant intervention? I approach Rawls's international theory with this question: can Rawls's *The Law of Peoples* serve as a theory of justice that clarifies the responsibility of consumers in affluent societies to workers in impoverished societies whose labor produced the goods being consumed? If it is true that some of the most serious cases of injustice involve labor arrangements in the global economy involving something similar to economic slavery as described by Marx, then an adequate theory of justice should address such cases. My argument concludes with the claim that Rawls's theory in the international application should be revised in order to avoid criticisms of being either irrelevant to crucial cases of injustice or merely a *modus vivendi* argument that fails to accomplish Rawls's intent. The limits of toleration and the justifications for intervention are the subject of the *Law of Peoples*.³ This study explores toleration and intervention in economic freedom.

As culture wars rage, fueling global conflict, liberalism offers great potential for peaceful conflict resolution through promoting freedom and tolerance. Why then, is this liberal theory unacceptable to thinkers who claim that the only solutions to the

³ This question concerning intervention because of economic injustice is also raised in the work of Martha C. Nussbaum, "The Future of Feminist Liberalism," in *Varieties of Feminist Liberalism* (ed.) Amy R. Baehr (New York: Rowman and Littlefield Publishers, Inc., 2004), 122.

problems of hunger and poverty require rejection of liberalism? Mending the polarizing split between the socialist and Marxist theories in opposition to liberal theory could be furthered by shared concern for real world problems like hunger and poverty. Those who value freedom might reconcile with those who advocate limiting freedom in order to ensure equal access to property resources, meaningful labor, and community if it was understood that freedom itself requires such limitation. Freedom is more complex than the definition of negative freedom that is often defended by liberals. The positive liberty tradition offers a challenge to Rawls's theory.

My argument is based on the value of liberty. Different arguments could be mounted based on equality or other values.⁴ However, I focus on liberty because I want to engage others who claim that liberty is the sovereign virtue. Promotion of other virtues or values might lead to conclusions similar to mine in terms of suggested policies or institutions. However, to avoid stalemates in civic dialogue, it is worthwhile to explore arguments based solely on freedom as a cardinal value. If one person says equality is the trump value and another person says, no, freedom is more important than equality, there are no grounds for dialogue. On the other hand,

⁴ Dworkin, *Sovereign Virtue*. (Cambridge, Massachusetts: Harvard University Press, 2000).

Dworkin argues that equality is the highest virtue, and that it should have precedence when various values conflict. His policy conclusions are largely consistent with my own, although he doesn't consider many international cases. The drawback to his work is that he would not convince a person who rejects equality as a comprehensive good, and defends liberty instead. Mine is an alternative argument that leads to similar policy conclusions.

if it can be shown that meaningful freedom *requires* a measure of equality, then agreement over policies might move forward. Clearly, freedom is the value Rawls defended most strongly. Yet, his theory was criticized for promoting a notion of freedom that is merely formal rather than truly meaningful. In order to assess the relevance of his international theory to problems of workers' rights in the international economy, I explore the ways that resources, social systems, and labor are related to freedom.

In order to consider the implications of his international theory for obligations between persons in different societies, it is necessary to consider the nature of duties and obligations in his theory as a whole. In *A Theory of Justice* Rawls linked duties of mutual respect with "moral personality."⁵ Persons approach each other with mutual respect within a society because they recognize moral quality of human life. Then duties of mutual aid result. Rawls noted the influence of Kant in these duties of mutual aid that result from mutual respect.⁶ Rawls distinguished between natural duties and obligations, by saying that obligations arise only if background conditions are in place. He said that obligations arise only when we participate in systems of mutual benefit voluntarily.⁷ If the participation is involuntary or involves an institution that is unjust then that participation does not

⁵ Rawls, TJ, 337.

⁶ Ibid., 338.

⁷ Ibid., 343.

obligate one. Rawls wrote, “Acquiescence in, or even consent to, clearly unjust institutions does not give rise to obligations.”⁸ How to prioritize natural duties when they conflict with each other is the problem. Rawls wrote:

The real difficulty lies in their more detailed specification and with questions of priority: how are these duties to be balanced when they come into conflict, either with each other or with obligations, and with the good that can be achieved by supererogatory actions? There are no obvious rules for settling these questions. We cannot say, for example, that duties are lexically prior with respect to supererogatory actions, or to obligations.⁹

His proposal for resolving such conflicts is to provide a fair procedure for persons in specific contexts to sort out competing claims at the various levels of decision making. This study considers ways in which these claims about duties and obligations must be altered in order to apply to the international level.

My argument demonstrates that criticism Rawls received for promoting a notion of freedom that is merely formal and is not meaningful can be linked to the positive liberty tradition. At the same time, this challenge, based on the inadequacy of Rawls’s concept of freedom, reveals potential to improve Rawls’s theory through adjustments required in the face of severe poverty. The genuine interest and passion for freedom is a shared value that unites those who promote positive liberty and those who promote negative liberty. This critique of Rawls’s theory can be offered

⁸ Ibid.

⁹ Ibid., 339.

by developing a more robust conception of freedom that takes into account economic power. I will argue that the best contributions of Rawls's theory continue to be developed, reformed, and defended in the work of three contemporary Rawlsian critics motivated by concerns of wealth distribution: Martha Nussbaum, Thomas Pogge, and G.A. Cohen. The fact that a feminist theorist, a cosmopolitan thinker, and a Marxist all agree that in Rawls's theory freedom may be merely formal is worth pondering.

In the introduction to the 1992 paperback edition of *Political Liberalism*, Rawls acknowledge the potential problem that the concept of freedom in liberalism might be merely formal as Hegel, Marx, and socialist writers have observed.¹⁰ Rawls attempted to avoid this pitfall, addressing the problem in a section entitled, "Basic Liberties not Merely Formal" (VII: 7).¹¹ Nonetheless, Nussbaum, Pogge, and Cohen are examples of later critics of Rawls who do not think Rawls fully resolved this problem. This overlap in their work points to the potential for linking criticisms of Rawls to the concept of positive liberty. Since none of these three critics specifically uses the term "positive freedom," I admit that it is a stretch to suggest that their concerns can be linked through development of this concept. Although none of them advanced the concept of positive freedom, it is equally true that none of these three critics of Rawls specifically rejects the concept of positive freedom as a corrective

¹⁰ Rawls, PL, lviii.

¹¹ Ibid., 324.

for problems in Rawls's theory. I do not claim that any of these three thinkers would want to identify with this controversial concept of freedom, but rather that their concerns for freedom that is meaningful, robust, and realized in connection with capabilities intersect with concerns of those who advocate developing a concept of positive freedom.

Rawls did not explicitly promote only negative liberty. Rather, he rejected the distinction between positive and negative freedom altogether. However, by severing freedom from abilities, by refusing to apply the difference principle at the international level, and by trying to remain neutral on questions of the moral quality of freedom, he resorted to a negative concept of freedom. For these reasons his notion of freedom has been criticized for being merely formal.¹² He dismissed the possibility that there might be an important difference between positive and negative freedom, but then repeatedly resorted to defending this theory against the problems underlying the complexity of freedom. Freedom and liberty are used interchangeably in his work. The development of a definition of the terms includes Rawls's references to Isaiah Berlin, G.G. MacCallum, and Felix Oppenheim. Rawls wrote,

In discussing the application of the first principle of justice I shall try to bypass the dispute about the meaning of liberty that has so often troubled this topic. The controversy between the proponents of negative and positive liberty as to how freedom should be defined is one I shall leave aside¹³.

¹² See H.L.A. Hart, "Rawls on Liberty and its Priority," in *Reading Rawls*, edited by Norman Daniels, (Stanford: Stanford University Press, 1989). Also Norman Daniels, "Equal Liberty and Unequal Worth of Liberty," in the same volume.

He claimed that the debate “is not concerned with definitions at all,” but rather with how to prioritize values that are in conflict when different types of liberties conflict.¹⁴ For his working definition of the term, “freedom,” Rawls followed G.C. MacCallum who argued that the distinction between positive and negative liberty is not meaningful because both types of liberty are defined triadically.¹⁵ According to this line of thought, which was developed most fully by Felix Oppenheim, freedom can always be explained by identifying the subject of freedom, the potential inhibitor of freedom, and the specific area or substance of freedom.¹⁶

I do not disagree with the conclusions of Rawls, MacCallum, and Oppenheim, that freedom can be diagramed triadically. However, that merely demonstrated that positive and negative freedom are not distinguished by different structures, not is the difference captured by the terms “freedom from” and “freedom to.” My claim is that Rawls slips into characterizing freedom in the negative sense, and fails to resolve the need for a less empirical notion of freedom, such as positive freedom can offer. He followed the positivist reduction of freedom to a merely formal, value-neutral concept. This fails to capture the rich, beloved dynamic of freedom that people

¹³ Rawls, TJ, 201.

¹⁴ Ibid.

¹⁵ Gerald C. MacCallum, “Negative and Positive Freedom,” *The Philosophical Review*, Vol. 76, No. 3 (July, 1967), 102.

¹⁶ Felix E. Oppenheim, *Dimensions of Freedom* (New York: St. Martin’s Press, 1961), 130.

would choose in the original position. Rawls denied that the distinction between positive and negative liberty gets at anything that cannot be addressed by protecting the worth of liberty. However, the insurance for the enabling conditions of freedom is forgotten in the international application of his theory. This background debate regarding the work of Oppenheim and MacCallum is analyzed more fully in Chapter One where positive liberty is defined. Rawls wrote:

Therefore, I shall simply assume that liberty can always be explained by reference to three items: the agents who are free, the restrictions or limitations which they are free from, and what it is that they are free to do or not to do... The general description of liberty, then, has the following form: this or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so¹⁷.

In that way, Rawls followed MacCallum in dismissing the significance of a distinction between positive and negative liberty. All liberty can be described by a triadic conception, so the difference between freedom *to* and freedom *from* is not a meaningful distinction, according to Rawls. He argued that the conflicts surrounding the debate between positive and negative liberty traditions are really conflicts about how values like liberty, equality, and community should be prioritized. The attempt to stick with a purely empirical conception of freedom fit well with Rawls's hope to derive normative conclusions without beginning with premises dependent on comprehensive religious or philosophical schemes. In his essay, "The Basic

¹⁷ Rawls, TJ, 202.

Structure as Subject,” Rawls expressed his commitment to remain within the “canons of a reasonable empiricism.”¹⁸ The Kantian concept of positive freedom did not meet this criterion.¹⁹

Therefore, setting aside the positive liberty controversy, Rawls claimed to deal with the conflicts over prioritizing liberty in relationship with other values through his two principles of justice as fairness as conceived and ordered. I will argue that Rawls would have avoided much criticism and later revision of his theory if he had addressed issues of positive liberty more fully from the beginning. I do not disagree that the structure of both positive and negative liberty can be diagrammed triadically or that the terms freedom *from* and freedom *to* fail to capture the essential distinction between negative and positive liberty. However, the fact that liberty can be diagrammed by an abstraction in that triadic structure does not mean that there is no real substance to the concern for positive liberty. In order to fully grasp the influence of Kant’s vision of perpetual peace on Rawls, it is necessary to understand Kant’s concept of positive freedom

Rawls proceeded as if he had taken care of the problem of positive liberty by this definition, although he acknowledged the conflicting arguments about how to prioritize competing values that underlie the subject. His separation of liberty and the worth of liberty was an attempt to bypass these problems. By focusing on

¹⁸ John Rawls, “The Basic Structure as Subject,” *American Philosophical Quarterly*, 14 (1977), 159-65, 165.

¹⁹ Rawls, PL, xliii, n.8.

constitutional and legal restrictions as the primary subject of this discussion of liberty, he attempted to draw a circle that would leave issues of economic business arrangements as well as family arrangements outside the scope of political discussions of freedom. He wrote, "... there are many kinds of conditions that constrain them... Yet these distinctions can be made without introducing the different sense of liberty."²⁰ The continuous problems Rawls encountered safeguarding the worth of liberty raise questions regarding that claim. Martha Nussbaum, Thomas Pogge, and G. A. Cohen are among voices that have criticized Rawls for insufficiently taking into account the consequences of economic power on freedom. Their criticisms are included at the end of each subsequent chapter. Now it could be objected that the problems of material resources, social cooperation, and workers' rights can all be addressed in different ways with no recourse to the concept of positive freedom. This may be true. Nevertheless the rich, resilient literature on positive freedom is intriguing enough to warrant examination as a tool that might help with revisions needed in Rawls's theory.

In his most recent work, *The Law of Peoples*, Rawls acknowledged that there are societies unable to realize freedom due to economic poverty. This is the specific problem I will address, drawing on his earlier theory in order to analyze what help Rawls can be to those concerned with issues of global poverty and injustice of global trade. In this final work, he applied his earlier theory to a world of societies sharing a law of peoples. Maintaining that his original theory cannot be

²⁰ Ibid.

extended and reformatted to apply to international relations, he argued that the theory applies only to decent or democratic societies. Once again, he claimed that the priority of the first principle is possible in cases where primary goods make the worth of liberty equal. So what about the many situations where poverty precludes the worth of liberty? He addressed these as cases of nonideal theory. He said that these “burdened societies” are owed a “duty of assistance,” but did not adequately address the global systems of colonialism and multinational corporate trade.²¹ He did note that liberal democracies have been motivated by imperialist tendencies in the past, but did not fully answer how to eradicate those impulses in the future.²² More thorough reflection on this problem makes up the body of this dissertation. Although my primary focus is on the international application of this theory in *The Law of Peoples*, references to his earlier work are necessary in order to explicate this last work.

There is irony in a criticism of Rawls that argues his work does not defend freedom with enough strength. As a classical liberal, Rawls intended to promote freedom to the maximum level compatible with fairness. Rawls wished to develop a notion of justice as fairness that would counter utilitarian systems and leave openness to various conclusions regarding matters like distributive justice. His systematic work, *A Theory of Justice*, first published in 1971, continues as a cornerstone of political philosophy. His approach posed a thought experiment with

²¹ Rawls, LP, 111.

²² Ibid., 54.

the goal of erasing privileges of social or political position such as race, class, ability, or wealth. He suggested that people in the “original position” be behind a “veil of ignorance” meaning that they would know nothing about their station in life. From this position of equality they would reasonably develop principles to govern society. Among his conclusions was the claim that freedom or liberty should be maximized as long as it was compatible with equal freedom for all others. The two principles that define justice as fairness include the “difference principle” designed to limit inequalities to those of benefit to the least well off. However, prior to that principle in both order and importance is the “freedom principle” requiring the maximum freedom commensurate with equal freedom for all. Interference with freedom is only justified by measures necessary to protect freedom for all, and inequality is only justified by measures necessary to promote the welfare of all.

This model proposed a four-stage sequence for applying the theory of justice in a constitutional democracy.²³ The first stage involves choosers in the original position selecting the principles of justice. The second stage is like a “constitutional convention” in which the justice of political forms is considered in order to choose a constitution.²⁴ In that way choosers are designing a just procedure for resolving differences. Next, the third stage is the legislative stage where choosers assess the

²³ Rawls, TJ, 196.

²⁴ Ibid., 196.

justice of laws and policies.²⁵ Then finally, in the fourth stage the application of rules selected in stage three takes place as judges and administrators implement the process.²⁶ Rawls proposed that the second, or constitutional stage, would be focused on securing the first principle. In contrast, the third stage, or legislative stage, would be the arena for attention to the difference principle. The priority of the first principle over the second principle and the consequences of that ordering demonstrate Rawls's valuing of freedom over equality. Although he hoped to balance and reconcile both equality and freedom in a reasonable and persuasive way, he had to amend and modify his project as it developed in the future because of unresolved questions about that ordering. Rawls hoped that the polarization and deadlock between socialist advocates of equality and liberal advocates of freedom could be resolved by this procedural notion of justice. Therefore, he thought it unnecessary and unproductive to pursue the positive freedom debate. Instead, his project attempted to balance freedom and equality in the most reasonable way.

He conceded that one potential problem in this attempt to balance freedom and equality could be related to inequalities of political liberty. For this reason, the "worth of liberty" he distinguished from liberty itself. He considered the risk that freedom may be compromised by unequal influence in political systems. Yet, he thought this could be corrected through provisions for public financing of campaigns and other measures to ensure equal access to political voice despite conditions of

²⁵ Ibid., 198.

²⁶ Ibid., 199.

unequal wealth. In other words, Rawls thought that where justice as fairness is realized, the equal worth of political freedom could be assured through institutional arrangements. However, he never adequately addressed the implications for economic redistribution required to rectify the problem of wealth distribution as it relates to political voice and power. His assumption that rational choosers would value liberty over all assumes that survival needs are being met. If a person is starving or too impoverished to realize even minimal political participation, then the worth of liberty is in question. If we assume, as Rawls suggests, that his theory applies only to situations in which people do have access to primary goods necessary for equal political participation, then we are left to conclude that his theory will not help us with the monumental problems of international justice in a world where many do not have access to basic goods necessary for survival. If real world problems of inadequate resources and unequal political power are the starting point of our deliberations, Rawls's conception of freedom is vulnerable to the accusations of being merely formal or irrelevant to serious cases of injustice.

Rawls further developed his theory in his next book, *Political Liberalism*. Fending off criticisms of his original theory, he refined his theory of justice as fairness as a political rather than a comprehensive theory. In this second monograph, Rawls does not substantially revise his notion of freedom as such; although he did emphasize again that his interest is in political freedom. The tension between the value of liberty and equality is his focus. He wrote,

We may think of this disagreement as a conflict within the tradition of democratic thought itself, between the tradition associated with Locke, which gives greater weight to what Constant called 'the liberties of the moderns,' freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law, and the tradition associated with Rousseau, which gives greater weight to what Constant called 'the liberties of the ancients,' the equal political liberties and the values of public life.²⁷

It is this rift between liberties of the ancients and moderns that justice as fairness tried to reconcile. He wrote, "... justice as fairness tries to adjudicate between these contending traditions..."²⁸ Thus he argued that the principles that govern basic institutions would be freely chosen by equal persons. The contract that binds together a society negotiates a balance between freedom and equality that is the best possible balance. The concept of overlapping consensus provides a basis for peaceful coexistence within society even when members do not share comprehensive views. More than just a concession for getting along, or a tolerated mode of operation, overlapping consensus builds on the common ground shared among comprehensive views. In this way, the profound convictions of persons grounded in comprehensive views fuels the consensus that bonds the society. He thought that the tension between the value of equality and that of liberty was balanced in this way because people would be governed by institutions shaped by principles that all reasonable, equal, and free persons would choose. He wrote:

²⁷ Rawls, PL, 4-5.

²⁸ Ibid., 5.

But publicity ensures, so far as practical measures allow, that citizens are in a position to know and to accept the pervasive influences of the basic structure that shape their conception of themselves, their character, and their ends... that citizens should be in this position is a condition of their realizing their freedom as fully autonomous, politically speaking.²⁹

Overlapping consensus makes room for passionate pursuit of liberation, liberty, and freedom of conscience in this way, since these are common values across many comprehensive views. But what of the limits or boundaries of society united through overlapping consensus?

In *Political Liberalism*, Rawls drew a distinction between a democratic society as distinct from a community and an association. He said that democratic societies are “complete and closed.”³⁰ By the term “complete” he means that the democratic society is autonomous and inclusive of all areas of life. By the term “closed” he means that persons in the democratic society do not voluntarily decide to join it, as opposed to an association. Persons do not freely choose their society, but are born in it. Rawls did use this distinction in an attempt to defend the priority of the first principle. He argued that liberty must have priority over all other goods because the grounds on which liberty is secured provide all other possibilities of other goods. It was important to his view to maintain that a democratic society exists only to secure liberty for persons. In this way, a democratic society is

²⁹ Ibid., 68.

³⁰ Ibid., 40.

distinguishable from an association that is based on a common end or aim. More detailed examination of this distinction between an association, society, and community, is included in chapter three.

Rawls noted that some past societies were held together by a common value such as a religion, dominion, empire, or glory.³¹ In that respect they understood themselves as what he calls an association. It is possible for people to be united by a comprehensive notion of the good agreeing upon the nature of the good and its justification. However, liberalism assumes that comprehensive doctrines of the good cannot be proven or demonstrated conclusively. Therefore, since rival understandings about the nature of the good must coexist, a process for resolving conflicts is needed. Liberals like Rawls suggest that a political doctrine rather than a comprehensive doctrine can unite people by achieving agreement about the best process or method for resolving conflicts. In earlier societies united by a comprehensive conception of the good, decisions were governed according to the comprehensive doctrine. Because of this shared view of the common good, distribution of resources might have been justified according to the understanding of how various persons or classes related to that idea of the good. In contrast, democratic societies have no such common end. The political is a process of justly securing liberty.

Rawls distinguished between the political, the familial and the personal. Some critics have wondered if he was lopping off areas of life that present serious

³¹ Rawls, PL, 41.

challenges to his theory here. Most notably, Thomas Pogge and G. A. Cohen have argued that family life and economic life cannot be divorced from political life as if they were outside the purview of justice. Rawls wants to remain neutral on notions of the good, but he must take a stand in the debates over the problematic distinction between the personal versus the political and the public versus the private. The work of Martha Nussbaum included similar concerns by insisting that familial and economic systems be subject to the same questions of justice. While affirming Rawls's achievement of providing helpful theory for peaceful coexistence within and between societies with different comprehensive views of the good, I see no advances in *Political Liberalism* related to the problems of freedom and the worth of liberty.

The method of criticism of Rawls's theory is grounded in the concept of positive liberty. Rawls's failure to appreciate the consequences of positive liberty relate to criticisms of his work based on issues of resources, community, and labor. Positive liberty emphasizes the relationship between freedom and material resources, freedom and community, and the employment of freedom in labor or creative production. In contrast, the negative concept of freedom emphasizes individuation rather than community, self-sufficiency rather than dependence on property, and a right to acquisition rather than the process of creation and self-ownership. When addressing the problem of poverty at the global level, Rawls reduced freedom to an inadequate and merely negative concept. By looking at the relationship between freedom and resources, freedom and community, and freedom and labor in Rawls's work, some problems with his notion of freedom become clear. The freedom he defended is

either merely formal or leads to a level of redistribution that requires limitations of negative freedom. Therefore, these three issues of resources, community, and labor, correspond to the subsequent three chapters in this study. However, before these aspects of Rawls's theory are examined, the notion of positive liberty is more fully developed in Chapters one and two. Chapter one examines the influence of Kant's positive freedom on the Law of Peoples. Chapter two considers the influence of Isaiah Berlin and others on the subject of positive freedom. Then that concept of positive liberty is applied to the relationship between freedom and material resources, freedom and community, and freedom and labor.

Freedom and Resources

With respect to the relationship between freedom and resources in Rawls's work, I will begin by analysis of his writing on the subject of material goods. This is followed by an examination of a possible distinction between liberties that can be compatible with inequalities in resources or wealth versus those that cannot. For example, imagine a rich person and a poor person living in a society that highly values liberty. What types of freedom do they hold equally? Both can access public goods and services if they so choose. If both were at a party offering free drinks, gambling tokens, and cigarettes, both would be free to participate or not. There are a number of situations in which the two have equal freedom. On the other hand, acts requiring economic resources demonstrate inequalities in the worth of the respective freedom of these two persons. What sense does it make to say that both of these

people can live where they choose, work as they choose, or participate fully in controlling the social and political structure? Clearly, the basic liberties of the person with more economic resources allow greater freedom. This is what Rawls called, “the worth of liberty.” Norman Daniels, in his article, “Equal Liberty and Unequal Worth of Liberty,” questions whether or not political equality can coexist with social and economic inequalities. He argued that a system that allows the wealthy more influence in selecting candidates, influencing public opinion, influencing elected officials, and even influencing court procedures is no system of equal political liberty.³² When Rawls considered the worth of liberty he recognized that although all persons would have the same freedom, those with greater authority and wealth would have greater “means to achieve their aims.”³³ Yet, justice as fairness requires that persons have equal opportunity to influence the policies and principles undergirding the constitution and legislation controlling them. For this reason, Rawls said that in a just system, those who have less means to achieve their aims should be compensated by the system. Even the basic good of self-respect relies on resources. Joshua Cohen demonstrated that “resource” bases of self-respect are required for meaningful personal development.³⁴ Catriona McKinnon further developed this same critique of Rawls based on the premise that the requirement for resources necessary

³² Norman Daniels, “Equal Liberty and Unequal Worth of Liberty,” in *Reading Rawls* (Stanford: Stanford University Press, 1989), 281.

³³ Rawls, TJ, 204.

³⁴ Joshua Cohen, “Democratic Equality,” *Ethics*. 99 (July 1989), 737.

for self-respect leads to greater egalitarianism than Rawls originally envisioned.³⁵ These types of criticism of Rawls have been developed from his earliest writing. As Norman Daniels pointed out, “economic factors, and perhaps other factors (like ideology) are explicitly excluded from among the constraints *definitive* of liberty.”³⁶ Daniels asked whether it makes sense to speak of something as a liberty when it cannot be exercised.³⁷ Daniels concludes that Rawls’s theory will not justify a wide variety in social systems, but will lead to “a more far-reaching egalitarianism” than Rawls intended.³⁸ I agree, and see the same type of argument in Catriona McKinnon’s recent article which argues for “unconditional basic income as the policy best suited for realizing Rawls’s ideal of equality...”³⁹ McKinnon’s conclusions will be examined further in the conclusion of this essay.⁴⁰

Chapter three more fully develops this analysis of the relationship of resources to freedom. Beginning with the intuitive claim that there are some cases of injustice

³⁵ Catriona McKinnon, *Liberalism and the Defense of Political Constructivism* (New York: Palgrave Macmillan, 2002), 80.

³⁶ Daniels, 260.

³⁷ Ibid., 259.

³⁸ Ibid., 280.

³⁹ McKinnon, 144.

⁴⁰ Shaun Wilson, *The Struggle Over Work: The ‘End of Work’ and Employment Options for Post-Industrial Societies* (New York: Routledge, 2004), 104. Wilson noted Rawls’s rejection of state’s need to grant minimum income to people who chose not to work. Wilson detailed how advocates of basic income sought to go beyond Rawls.

in the disparity between rich and poor on an international level, I examine Rawls's law of peoples as a guideline for political justice in light of these problems. I argue that the law of peoples requires a global difference principle to address injustice caused by both inequalities in wealth and in the worth of liberty on a global scale. Then, the analysis offered by Martha Nussbaum on Cicero's concept of a law of peoples is reviewed as the basis of a criticism of Rawls. Her essay on Cicero anticipated some criticism that could be made of Rawls. Her own critique of Rawls is best demonstrated in relationship to her work on the capabilities approach. This work links human freedom with physical resources. Nussbaum argued that "the major powers of a human need material support."⁴¹ Her study of women in poverty illustrates how people must be seen in their social context. Theories of justice must be based in awareness "of the obstacles that the context offers to the struggle for liberty, opportunity, and material well-being."⁴² Nussbaum's critique of Rawls centers on the idea that his theory does not take into account appreciation of the way in which needs for resources vary. She argued that his theory "doesn't sufficiently respect the struggle of each and every individual for flourishing."⁴³ The hope that Rawls's theory can be reformed and expanded to apply to international systems rests on the demonstration that Rawls's notion of primary goods is not "particularly

⁴¹ Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000), 73.

⁴² Ibid., 69.

⁴³ Ibid.

western.”⁴⁴ Nussbaum’s criticism of Rawls provides the type of corrective that could incorporate the positive liberty tradition.

Freedom and Community

The second weakness in Rawls’s analysis of freedom relates to community. Once again, we see that positive freedom adds another dimension to the picture, bringing a higher resolution image. Freedom from restraint is one thing, but freedom to cooperate, to form covenants and systems with others is another type of freedom. He underestimates the erosive influence of extreme individualism and the potential liberating power of group action. Private property and public property systems can coexist. For example, it is possible to have libraries that are used, produced, and maintained by the community as a whole. At the same time privately owned books for personal use can be justified. The tragedy of stacks of privately owned books going unused in a dusty, personal library is as disturbing as the possibility that the commonly owned books in the public library will not be well-cared for. The fact that a bookseller’s potential to make money on books is probably diminished by promoting public libraries, does not outweigh the freedom gained by a book reader who may have no resources to buy books. As long as there are public libraries, freedom of speech, expression, and self-development is protected. Liberal thinkers have sometimes failed to realize the potential of community action for expanding freedom. The insistence on promoting freedom to pursue business ventures has obscured the potential to promote freedom by limiting economic activity. For

⁴⁴ Ibid.

example, it is not uncommon to hear arguments that environmental regulations should be relaxed in order to promote business development. Yet, arguments could be made that limits on economic activity designed to protect the environment or workers' rights actually promote other types of freedom. The ban on child labor promoted freedom of more children to go to school. Prohibitions against deforestation protect freedom to experience natural resources like endangered plants or animals. These are examples of the way that limitations of freedom through cooperation and relationship can actually free individuals. It illustrates the positive sense of freedom that is sometimes in conflict with negative freedom.

Rawls failed to recognize the profound reliance of freedom on community. In the positive sense of freedom, the ability to fully develop a self requires ability to live in relationship to social and political systems or communities. No individual can be free to create the harmony of the symphony.⁴⁵ In isolation, no individual can achieve what cooperation and community can produce. But, social systems are constructions. They are conventions developed through shared expectations and understandings. Distinctions between private and public areas of life, geographic borders between nations, conventions of monetary value and ownership are all culturally constructed systems that no individual can completely reinvent in isolation. The notion of accountability between persons who interact raises issues of obligations, mutual respect, and just relations whether they are viewed as being part of the same society or in different societies. The idea that a society involves

⁴⁵ Rawls suggests this metaphor of an orchestra in PL, p. 321.

contracts or agreements does not explain accountability to those outside the society. The relationships between different societies and between individuals in different societies raises additional questions. In other words, how does justice as fairness guide relationships on an international level? Certainly, there are interactions that cross borders. The differences in power and liberty among various players in those international interactions preclude justice as fairness, since the background conditions are not in place. There can be no fair negotiations at that level since the worth of political liberty is unequal at the international level.

In conditions of starvation, hierarchical states could be pressured to trade its political liberty for food. Their sovereignty to maintain the political system they value is in conflict with their need for financial aid from the international community. In one sense, they would be faced with the choice of being dominated politically by international economic force or starving. This type of scenario raises a serious challenge for Rawls. Given his cut off point in aid to burdened nations, such a scenario could occur. This is an illustration of unequal power of nations on an international level, resulting in unequal worth of liberty for nations. So how can justice be applied to these international interactions? Can the mutual respect, obligations, and just relations implied at the domestic level within a society be extended to an international community? The problem of how nations or other aggregates of persons can be viewed as the subjects of liberty raises further questions. Berlin criticized Fichte for the analogy between the individual and the nation because this leads to the loss of focus on individual freedom and individual

conscience.⁴⁶ However, Kant made a similar move in “Perpetual Peace,” claiming that a nation is a society of men with existence as a moral person.⁴⁷ The problems of attributing liberty to aggregates of persons is considered more fully in chapter four.

If participation in the society is motivated by mutual advantage at the domestic level, then can a similar motivation guide international interactions? Only if some type of community between either nations or citizens of different nations is recognized can justice as fairness be helpful at the international level. Otherwise, what persuasive power could Rawls’s theory have to convince wealthy nations that a relatively weak nation should have a choice about its form of government?

Recognizing the tendency for wealthy nations to control the international scene, the later work of Rawls applied his theory to the development of laws of nations. On an international level, Rawls’s theory operates with an enlightenment naiveté that there will be motivation to do what is agreed to be just through the persuasive power of reason. Of course, the problem of motivation is a challenge for each level of Rawls’s theory. He thinks it can be addressed through cultivation of liberal citizenship.

However, within local societies the dynamic of sympathy and mutual accountability functions in ways that are harder given the distances involved in international relations. His theory seems to be embedded in a worldview in which people contract to be part of a nation because the alternative is worse. The tradition of contractarian

⁴⁶ Isaiah Berlin, *Freedom and Its Betrayal* (Princeton, New Jersey: Princeton University Press, 2002), 70.

⁴⁷ Kant, *Perpetual Peace*, 108.

thought looks different in our own time, when the nation state system is affected by regional and international institutions and actors. For these reasons, Rawls's theory cannot simply be applied to national governments, but must be applied to corporations and international economic and trade associations as well. The challenges are around issues of compliance and enforcement, which may cause the justification of liberty to collapse. In *Political Liberalism*, Rawls recognized that his theory may not have universal or international application. In *The Law of Peoples*, he does not fully overcome this challenge related to the relevance of state borders to his theory. Chapter four expands this positive notion of freedom in relationship to cooperation and international community, as proposed by Thomas Pogge in his criticism of Rawls. To be sure, many other cosmopolitan thinkers have offered arguments similar to Pogge's suggestions that Rawls's Law of Peoples be expanded and revised. Charles Beitz and Patrick Hayden would be among the list of examples of cosmopolitan criticism.⁴⁸ From among this menu of options, I have chosen to review Pogge's critique because Rawls himself seemed to take it most seriously.⁴⁹

Liberal thinkers differ in ways of balancing liberty with other values. When it comes to embodiment in a particular system of government, liberty's importance may be eclipsed by vying concerns for stability or comparative strength in the global system. One question that must be addressed is whether liberal theory will be

⁴⁸ Patrick Hayden, *John Rawls: Towards a Just World Order* (Aberystwyth: University of Wales Press, 2000), 179. See Also Beitz.

⁴⁹ See LP 118, n. 53. Rawls mentions possible agreement with Pogge pending agreement on the cut-off point in assistance.

adequate to the issues of globalization. Or, to be more precise, which form of liberalism will be adopted and extended in the quest to address problems of globalization. Coercion at an international level must be weighed against other injustices. Consent of the governed makes sense within a nation state of citizens who are unified by some sort of constitution. But, can these notions of fairness cover relations among nations? Given the widely divergent notions of the good among various civilizations, peaceful coexistence requires some respect for tolerance and impartiality. Yet, some claim their comprehensive theories of justice are incompatible with the degree of toleration and freedom suggested by liberal theory. If liberal theory cannot produce an adequate notion of the good, should liberal theory be abandoned in exchange for a comprehensive theory as communitarians suggest? This study seeks to reform liberal theory rather than replace it. The claim that freedom is to be universally valued can be fortified by offering a more robust conception of freedom that is relevant to the reality of globalization. Thus, my suggestion is that some type of procedural, liberal system is preferable to a comprehensive theory of justice. The liberal system that best ensures freedom in this global economy must accommodate not only the negative, but also the positive sense of freedom.

Thomas Pogge also draws attention to the need for further scrutiny about systems of wealth distribution and human flourishing. He noted the distortion that the position of privilege and wealth can have on the consideration of questions of universal justice and economic freedom. He wrote,

When they think about how to structure world trade (Bretton Woods, the Uruguay Round, and the World Trade Organization), they do try to anticipate how alternative global trading regimes would affect international trade flows and worldwide economic growth. Only in their attempts to explain global poverty is our global economic order strangely neglected. The tunnel vision of economists rubs off on the rest of us. We regret that so many countries have bad institutions and governments, but we do not ask further why this may be so. In particular, we do not ask how we ourselves might be involved in this sad phenomenon⁵⁰.

Freedom and Labor

The third point is that freedom in the positive sense relates to creativity and labor. An intuitive notion of fairness indicates that persons ought to be free to reap where they sow. However, the complexity of economic production in the global economy makes it difficult to clarify precisely who has a fair claim to products of labor. This clarification is difficult enough even within one domestic setting.⁵¹ Rawls

⁵⁰Thomas Pogge, *Realizing Rawls* (Ithaca, New York: Cornell University Press, 1989), 358.

⁵¹Karl Marx's classic polemic on the problem of exploitation of labor was directly related to his appreciation of freedom. In volume three of *Capital*, 820. He wrote, "In fact, the realm of freedom actually begins only where labour which is determined by necessity and mundane considerations ceases; thus in the very nature of things it lies beyond the sphere of actual material production... Freedom in this field can only consist in socialized man, the associated producers, rationally regulating their interchange with Nature, bringing it under their common control, instead of being ruled by it as by the blind forces of Nature; and achieving this with the least expenditure of energy and under conditions most favourable to, and worthy of, their human nature. But it nonetheless still remains a realm of necessity. Beyond it begins that development of human energy which is an end in itself, the true realm of

failed to apply his principles of justice to the complexities of labor, thus neglecting important realities relating freedom to labor. In liberal theory, transfer of property will be just if it is not coerced, but is conducted freely. However, inadequate attention to the reality of severe poverty limits liberal reflection. Consider this example of exchange of property from an imaginable act of labor. A young woman works in a cigar factory. It is the only job she can get to feed herself and her children. She exchanges the value of her work for the wages she earns. Since she and her children would starve without her wages, what sense does it make to say that she is not coerced? I cite this as an act of labor resulting from unjust contractual agreements. Technically, it is a contract between free parties. However, if there are no alternatives that insure survival needs are met, then the freedom of the laborer is merely formal and not meaningful.

Rawls has said that his theory of justice only applies when background conditions of non-starvation are met. However, on an international level, he does not adequately address the cases of individuals in burdened societies. If such cases exist, then they are problematic for Rawls's global theory of justice. All too often, discussion of political philosophy are conducted in contexts where it is inconceivable that the young woman would really starve without the wages, or that she could not switch to another job if she chose. In fact, there are too many places in the world where those are serious realities. The degree to which an act is free is surely relative.

freedom, which, however, can blossom forth only with this realm of necessity as its basis."

She is clearly not as free in the choice to work as a person who has an alternative for employment of other income. It would be a mistake to acknowledge only two options, such as either 1.) She freely chooses to work or 2.) She is coerced. After all, she is free to starve, so if she chooses to work one might call this a just transfer of property. Freedom is a matter of degree. Perhaps a distinction should be made between transfers that are made freely between mutually powerful agents and transfers between persons with different levels of power. Rawls reflects some awareness of these issues but does not go far enough in applying his theory to the political dynamics of labor and capital.

In acts of labor, the conditions of transfer are often controlled by a more powerful party. In Rawls' theory this inequality is thought to be justifiable because the advantage of the investors arise from a risk they took that allows the whole system to benefit. However, this does not justify workers having little control or power over their working conditions. The amount of power they should have over decisions in the work place is both an economic and a political question to be determined in light of quality of life issues as well as efficiency. The transfer of property involved in this act of labor is not beyond the need for ethical scrutiny simply because the workers "freely" work there twelve hours a day, six days a week for wages of \$72 a month. Rawls inadequately examines the conditions of labor, and workers ability to influence those conditions. The positive sense of freedom would suggest that taxation of the factory owner's income or the laborer's income is not the only theft or harm involved in this example of labor. The relationship between the

notion of positive freedom and the writings of Hegel and Marx must be addressed at this point. Both Hegel and Marx criticized liberal freedom as being merely formal.⁵² The suspicion and disdain for positive freedom, exemplified by Isaiah Berlin results from the way in which Hegel's dialectical notion of freedom was used as a tool for totalitarianism. Marx criticized Hegel for this very reason.⁵³ Nonetheless, Marx shared Hegel's critique that freedom is merely formal in many cases where capitalism is protected through liberal institutions. I agree with Marx's statement that, "In capitalist society spare time is acquired for one class by converting the whole life-time of the masses into labour-time."⁵⁴ Marx was correct in passionately decrying this as a serious problem. The best redress of the problem remains unclear. My goal in this study is to explore characteristics of the best solutions to this problem developed by both Rawls and some of his friendly critics. Production as well as trade must be included in the spheres to be reformed according to our theory of justice. In other words, liberalism that accepts as inevitable the degrading and deplorable conditions of many workers, conditions that are aptly described as economic slavery, does not promote an adequate theory of justice. Marxists are not

⁵² G.W.F.Hegel, *Lectures on the Philosophy of History* (Berkeley: University of California Press, 1990), 474. "In thus asserting the formal side of Freedom – this mere abstraction—the party in question makes it impossible firmly to establish any political organization."

⁵³ Marx, *Capital*, 25.

⁵⁴ Ibid., 581.

the only ones to suggest that a society can develop in ways that liberate people.⁵⁵ In this study I seek to analyze Rawls's theory to consider the extent to which it can meet the challenge of liberating people in the area of labor as in other areas.

A similar point that demonstrates a weakness in Rawls's notion of freedom is the relationship between freedom and labor. In order for a just system to protect the equal worth of political liberty, two things are necessary. Sheltering the political process from financial influence is one thing. But it is also necessary that economic power not eclipse political power in the workplace or market. The worth of liberty in control of labor is also a political issue. If a worker in private industry has little or no control over working conditions then her liberty is restricted. If a person's ability to earn basic necessities is contingent upon relinquishing power, then her liberty is restricted on a morally irrelevant basis. If corporations are unchecked by political control, indeed, if corporations manipulate the political systems themselves, then freedom is threatened even though coercion in the strict sense of negative freedom may be difficult to pinpoint. For example, if a corporation sets the policy of pursuing cheap labor and resources, they are free to avoid governmental controls and the power of organized labor by frequently relocating across national borders. The freedom to dominate markets is the power to dominate others. Sometimes it is too

⁵⁵ Bertrand Russell, *Political Ideals* (New York: Barnes and Nobles, Inc., 1963), 28. He promoted the aim of developing an economic system that would "aim at liberating creative impulses and diminishing possessive impulses." He suggested that this would be accomplished best through something like "guild socialism" combining "economic freedom" with "industrial self-government. p.41.

great to be regulated by political process. This analysis is developed more fully in Chapter five in the discussion of G.A. Cohen's criticism of Rawls. At first, it might seem strange to select Cohen's critique of Rawls since Cohen represents a socialist challenge to Rawls's liberalism. However, a striking overlap will be demonstrated between Rawls's theory as it developed over time, moving more toward the left, and the concerns of Cohen. Once again, this overlap is explained in terms of the value of positive freedom. Cohen's emphasis on self-ownership has been analyzed by other Rawlsian critics, including Carol Pateman who revisited the connection between self-ownership and autonomy as a potential weakness in Rawls.⁵⁶ However, Cohen's more complete analysis provides the best demonstration of the potential role of positive freedom in developing the Rawlsian argument.

This study begins with a real world problem: liberal theory as it has developed has resulted in policies that promote negative freedom but sometimes limit positive freedom. For example, the pressure from the World Bank and IMF to privatize utilities and services is based on free market assumptions but does not respect state sovereignty of nations that want to provide such services through a public sector. In many such cases, states are over-powered by multinational agencies or corporations that are freed from accountability in the global market. Words about freedom and liberation abound in current news stories. Naming an offensive "Enduring Freedom" or defining a military mission as "liberating the people" illustrate the use of these

⁵⁶Carole Pateman, "Self-Ownership and Property in the Person: Democratization and a Tale of Two Concepts," *Journal of Political Philosophy*, 10, No. 1, (2002), 51. Also, Tully (1993), Gorr (1995) and Ryan (1994).

ancient and honored concepts in contemporary rhetoric. The use of such rhetoric would be unacceptable to Rawls. However, close scrutiny of international economic relations raises questions about the commitment liberals like Rawls have to meaningful freedom. When the freedom of investors and developers is in conflict with other types of freedom Rawls's theory may not be much help unless it is revised. The modern concepts of freedom that are crucial in political theory were formed in the crucible of the transition from feudalism to the nation state system. Language and concepts about the role of freedom in political life have not kept pace with the radical changes in the world. Globalization requires renewed interest in freedom, particularly in relationship to economic power. Critics of Rawls have argued that incompatible values reside in the liberal tradition, explaining how the problem of toleration at the international level only accentuated a problem inherent in liberalism itself.⁵⁷ There are choices to be made in the future of liberalism. This study attempts to clarify some of those choices related to concepts of freedom.

The reality of severe poverty is the starting point and continual reference point for this study. Political philosophy is not immune from the tendency to flee from this painful and agonizing reality. If we can overcome our resistance and continually keep awareness of this problem at the center of our political philosophy we might gain alternative perspectives on ancient questions of justice and freedom. This project focuses on Rawls's law of peoples as the culmination of his theory in

⁵⁷ Tan, Kok-Chor Tan, "Liberal Toleration in Rawls's Law of Peoples. *Ethics* 108 (January 1998), 295. Also John Gray.

political philosophy as the object of analysis. What new insight might come from approaching Rawls's theory asking for solutions of the problems of global hunger and poverty? The liberalism of John Rawls has been selected because it is among the important conceptual paradigms that constitute liberal political theory. His work exemplifies the liberal tradition characterized by individual rights, consent of the governed, equality of opportunity, impartial government, and universal value of freedom. The idea that government should be neutral and allow individuals freedom to personally pursue different notions of the good unites liberal thinkers. In contrast to communitarians or others who would promote a comprehensive notion of justice, liberal thinkers seek systems that promote more freedom. In a world of competing civilizations, liberal thought attempts peaceful coexistence and freedom to pursue disparate notions of the good. However, discrepancies between liberal theory promoting freedom and the actual extent of real freedom for the economically poor raise questions about the meaning of freedom itself. Rawls's international theory has been faulted for "failure to devote any sustained attention to transnational trade," and "silence on matters of rectification."⁵⁸ It is consistent with the work of Rawls to insist that the pursuit of justice is not merely an abstract question, but a practical problem that we must attempt to address.⁵⁹

⁵⁸ Simon Caney, "Cosmopolitanism and the Law of Peoples," *Journal of Political Philosophy*, 10, No. 1, (2002) 188-189.

⁵⁹ Martha Nussbaum, "Conversing with the Tradition: John Rawls and the History of Ethics," *Ethics* 109 (January 1999), 430.

CHAPTER ONE POSITIVE LIBERTY DEFINED

I argue that the distinction between basic and nonbasic rights ought not to be interpreted as privileged one category of rights (e.g., negative rights to act without interference) over other categories of rights (such as positive rights to capacities, resources, and opportunities for action). Finally, an adequate theory should be complete, in that it includes all categories of rights that are necessary for the full exercise of any human right (Ingram, 360)...The U.S. State Department's continual refusal to endorse the UN's International Covenant on Economic, Social, and Cultural Rights (1966)... thus parallels the theoretical obtuseness of both Rawls (despite his belated recognition of basic subsistence rights) and Habermas (despite his belated recognition of social and cultural rights). Of course, there is a priority ranking among rights – the State Department has got that right – but it is not a priority of “negative” freedom over “positive freedom.

--David Ingram.¹

Positive liberty is a meaningful concept that contains roots of major criticisms leveled against Rawls. In subsequent chapters the application of this fortified notion of freedom to Rawls's work will illustrate my argument defending that claim. First however, this chapter offers thorough explication of the concept of positive liberty apart from its relationship to Rawls's theory. What do I mean by the term “positive freedom?” After reviewing and evaluating alternatives, I adopt a modification of the definition developed by T. H. Green. For Green, positive liberty is “the liberation of the powers of all men equally for contributions to a common

¹ David Ingram, “Between Political Liberalism and Postnational Cosmopolitanism: Towards An Alternative Theory of Human Rights.” *Political Theory*. 31, No. 3, (June 2003), 373-374.

good.”² Positive freedom must be understood as freedom realized through material conditions of freedom, social support for freedom, and acts of the will, work, and construction requiring self-fulfillment or self-realization. However, the problematic inclusion of the term “common good” renders Green’s full definition unworkable. By modifying Green’s theory slightly an acceptable concept of positive freedom may emerge. My working definition of positive freedom suggests positive freedom be understood as liberating power of self-construction in concert with liberating social and material relationships.

Positive and negative freedom are closely related and interconnected, not absolutely distinct. I do not disagree with MacCallum’s claim, described further below, that all freedom can be diagramed triadically, and thus has the same formal structure. However, I think MacCallum fails to capture crucial substantive aspects of the differences between positive and negative freedom. I will argue that Berlin left unresolved ambiguities in John Stuart Mill’s concept of freedom, and that a strictly negative concept of freedom is inadequate for liberal political theory. The lively debate that continues despite the work of MacCallum’s contribution or Berlin’s caution can be sorted out in light of three aspects of freedom: freedom dependent on enabling economic conditions, freedom in relational or social systems, and freedom as acts of will for self-determination. This analysis of positive liberty is worth reconsidering because it accounts for overlap in various criticisms of Rawls’s work.

² T.H. Green, *Lectures on the Principles of Political Obligation*. New York: Cambridge University Press, 1986. p. 200.

Isaiah Berlin's articulation of two different aspects of freedom provides a good starting point, although his is not the first or the last word on the subject of positive freedom. Berlin's essay, "Two Concepts of Liberty," continues to have formative influence regarding the concept of positive liberty. Rawls referred to the essay in his comparison of the freedom of the ancients versus the freedom of moderns.³ However, careful review of Berlin's essay raises questions concerning his reading of J.S. Mill and unresolved questions related to economic and social aspects of freedom. I offer three claims related to Berlin's concepts of liberty. First, I argue that Berlin clearly recognized two types of freedom, although he urged caution about positive freedom. Thus, Berlin differed from MacCallum who thought that the triadic concept dissolved important differences and the need for a positive concept of liberty. In fact, a close reading of Berlin reveals that he anticipated MacCallum's type of critique when he said,

The essence of the notion of liberty, both in the 'positive' and the 'negative' senses, is the holding off of something or someone—of others who trespass on my field or assert their authority over me, or of obsessions, fears, neuroses, irrational forces—intruders and despots of one kind or another.⁴

In other words, Berlin noted what MacCallum later illuminated more fully. Both types of liberty have *formal* similarities. Nonetheless, despite these formal

³ Rawls, PL, 299 n. 16.

⁴ Isaiah Berlin, Two Concepts of Liberty, *Four Essays on Liberty*. New York: Oxford University Press, 1969, 158.

similarities, Berlin developed two conflicting notions of freedom. These are not meant to be strictly independent or sharply distinct concepts, but overlap in various ways. Nevertheless, Berlin did not argue as MacCallum did that there is really only one type of liberty. Rather, he thought both concepts needed clarification.

Secondly, I will argue that Berlin did urge that only a negative concept of liberty should be promoted through political systems. He urged caution regarding positive liberty because of the historical propensity to enlist that concept in rhetorical defense of totalitarianism. However, although Berlin noted the reality that economic dynamics can be enabling conditions for freedom, he left those problems unresolved. So my third claim related to Berlin's analysis of these two concepts is that he did not fully settle the questions that motivate the call for a positive concept of liberty. After reviewing Berlin's definitions of the two concepts, I proceed with this analysis of his claims.

Berlin admitted that liberty is not only the freedom from restriction, but also "the freedom which consists in being one's own master."⁵ Granting that there are many ways to think about freedom, Berlin named two senses of freedom: the negative sense and the positive sense of freedom or liberty. The negative aspect of freedom is the simplest to grasp. Absence of restraint or interference from others is freedom in the negative sense. For example, we have freedom to assemble a group because the state does not prohibit this. We have freedom from capricious or invasive intrusions from the state in cases where the constitution protects these

⁵ TC, 131.

liberties. Berlin said, “You lack political liberty or freedom only if you are prevented from attaining a goal by human beings.”⁶ However, as Berlin pointed out, there is a second aspect of freedom in addition to negative freedom. Positive freedom is more difficult to explain or illustrate. Nevertheless, it cannot be ignored because it can conflict in some important ways with negative freedom. What Berlin did not do, was to argue that there is no such thing as positive freedom. Despite his caution that positive freedom was a dangerous concept, and that only negative freedom should be promoted as a political value, he did acknowledge a rich, ancient tradition of positive freedom.

Berlin understood positive freedom as freedom to develop a self. It is the source of control. Self-differentiation, self-development, and self-mastery are all part of this aspect of freedom. Berlin spoke of being one’s own “master.” In seeking to illustrate positive liberty as distinct from negative liberty, Berlin wrote,

I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were from outside. I wish to be somebody, not nobody; a doer – deciding, not decided for self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave.”⁷

⁶ Ibid., 122.

⁷ Ibid., 131.

This contrast between positive freedom as self-determination versus the status of slavery will be developed further in relationship to the continuing debate over positive freedom. Berlin acknowledged this sense of freedom related to being an individual. This idea is developed further in his later essay, "From Hope and Fear Set Free," published in 1964, where he wrote:

I do not, of course, wish to deny that when we say that a man is free—or freer than he was before—we may be using the word to denote moral freedom, or independence, or self-determination. This concept, as has often been pointed out, is far from clear: the central terms—willing, intention, action, and the related notions—conscience, remorse, guilt, inner versus outer compulsion, and so on—stand in need of analysis, which itself entails a moral psychology that remains unprovided; and in the meanwhile the notion of moral independence—of what is, or should be, independent of what, and how this independence is achieved—remains obscure.⁸

Although one might assume that this moral freedom is distinct from political conceptions of freedom, that demarcation is far from clear. The ambiguity between individual or personal moral freedom as separate from social or political freedom is a point of vulnerability for Rawls. Berlin noted that "a frontier must be drawn between the area of private life and that of public authority."⁹ How or where to draw that line between private, personal freedom and public, political freedom is the question.

⁸ Isaiah Berlin, "From Hope and Fear Set Free, " *Proper Study of Mankind*, (New York: Farrar, Straus and Giroux, 2000), 108-109.

⁹ Berlin, *Two Concepts*, 124.

What is clear is that Berlin recognized two separate and meaningful concepts of freedom in classical Western thought.

Secondly, Berlin's arguments were directed against those who suggested that positive freedom was the only real freedom. His liberal defense of negative freedom was overstated for that reason. He said that freedom includes self-control, self-determination, independence, although freedom should not be confined to self-determination. He recognized the reality that social and economic resources shape individual freedom. Berlin wrote,

To be free is to be able to make an unforced choice; and choice entails competing possibilities—at the very least two 'open' unimpeded alternatives. And this, in its turn, may well depend on external circumstances which leave only some paths unblocked. When we speak of the extent of freedom enjoyed by a man or a society, we have in mind, it seems to me, the width or extent of the paths before them, the number of open doors, as it were, and the extent to which they are open.¹⁰

Delving more deeply into the history of ideas, Berlin understood the loyalty and passion that sometimes motivate advocates of positive liberty. Berlin noted the Kantian roots of the concept of positive liberty. The term "positive freedom" seems to have first been developed in Kant's *Critique of Pure Reason*. There freedom was described as a pure transcendental idea, "By freedom, by contrast, in the

¹⁰ Ibid., 110.

cosmological sense of the term, I mean the power to begin a state on one's own."¹¹

Kant wrote,

And this freedom of pure reason can be regarded not only negatively, as independence from empirical conditions (for the faculty of reason would thus cease to be a cause of appearances). Rather, this freedom can be designated also positively, as a faculty of reason to begin on its own a series of events.¹²

Kant's liberalism rests on the premise that both free will and positive reason are meaningful realities. The Kantian concept of positive freedom will be reviewed further in Chapter Two in connection with Kant's hope for perpetual peace. However, Berlin acknowledged the challenge of reconciling Kant's moral freedom with political freedom.¹³

The propensity for positive freedom to be enlisted in defense of totalitarianism is Berlin's main concern. Berlin noted the development of positive freedom from Kant through Hegel who built on Kant's idea of the self manifesting free will. Hegel developed that idea further saying that the self in the moment of self-consciousness discovers his identity in the act of labor.¹⁴ Marx connected acts of labor to this idea of self-realization through the collective activity of labor which

¹¹ Kant, CPR, 726.

¹² Kant, CPR, 732.

¹³ Berlin, Two Concepts, 147.

¹⁴ Hegel, *Philosophy of History*, 474.

generates language, customs, and economic institutions.¹⁵ This connection of the idea of positive freedom with Marxism motivated Berlin's polemic against positive freedom.¹⁶ This unsavory historical and political use of the concept of positive freedom contributed to the liberal avoidance of the concept. If positive freedom is identified with the will of "true" self that can be in conflict with immediate desires, then acts designed to free a person from her own immediate desires can be viewed as acts of liberation. Berlin was concerned with using the concept of positive liberty in order to justify "coercing others for their own sake."¹⁷ Cautioning against T.H. Green's definition of positive freedom Berlin said, "Green was a genuine liberal, but many a tyrant could use this formula to justify his worst acts of oppression."¹⁸

The controversial nature of the concept of positive freedom derives in part from a lack of conceptual clarity, and in part from the use of the term in service of totalitarian regimes. It was that potential use of the term positive liberty to justify authoritarianism that troubled Berlin. In other words, according to Berlin, some thinkers have made a sleight of hand move. They began by claiming that freedom in the positive sense allows humans to be masters of themselves, but then they claimed that the "real self" could be identified with a social whole. In such cases the

¹⁵ Karl Marx, *Capital: A Critique of Political Economy*. (New York: Charles H. Kerr and Co. Random House, 1906), 197.

¹⁶ Berlin, Two Concepts, 118.

¹⁷ Ibid., 133.

¹⁸ Ibid., 133, n. 1.

individual will is then forced to submit to the dominant self of higher nature, which is the common good. The problem, of course, lies in determining who gets to define the public good. Berlin says that in such cases it is an illusion to suggest that true freedom results from an individual self in submission to a common good. Although persons may want to sacrifice individual freedom for a common good, why not admit that this reduces personal freedom? Why not claim that at times individual liberty should be curtailed to insure the liberty of others? Some advocates of positive liberty claim that the way to maximize individual liberty is really to discipline it to the common good. Some process for the self-expression of the community as a whole must be in place to facilitate positive liberty. Liberalism seeks to provide a process for individuals or nations to make decisions and find voice as a group.

Berlin's criticism of the concept of positive freedom was also a response to the way it was developed by August Comte. Comte's "positive religion" claimed to be the religion of humanity based in voluntary cooperation of the "fully social" individual.¹⁹ He espoused the idea that a perfect collective "harmonized by love" was possible. The claim that "collective self-affirmation turns into individual self-sacrifice" sounds positively frightening today.²⁰ Nevertheless, Comte thought that positive politics could follow the scientific, medical model of "healthy normality"

¹⁹ Andrew Wernick, *August Comte and the Religion of Humanity*. (New York: Cambridge University Press. 2001), 136.

²⁰ Ibid., 213.

arriving at criteria for determining when to use coercion to achieve compliance.²¹

Berlin warned about this dangerous tendency to use the concept of positive freedom in that way.²²

For these reasons, Berlin advocated promoting only the concept of negative freedom in political systems in the tradition as J.S. Mill as Berlin understood that. The development of liberalism was shaped by this overdeveloped sense of negative freedom and underdeveloped sense of positive freedom. Perhaps Berlin thought that only “negative freedom” is pure freedom itself as an ultimate value. He observed that what is called “positive freedom” is often used as a means to another value. For example, he noted that equality and other values can conflict with freedom. Berlin wrote, “Neither political equality, efficient organization, nor social justice is compatible with more than a modicum of individual liberty.”²³ Reconciling these competing values is the trick, especially when those values are necessary for certain types of freedom. Rawls attempted to provide a procedural notion of justice wherein freedom is the highest value because it is a means to any good. Thus, freedom is both inherently valuable and valuable as a means to the pursuit of any other value.

The murky issues of self-esteem, cultural construction of meaning, and access to political voice are all part of what Berlin called positive liberty. However, although Berlin mentioned the connection between economic power and freedom, he

²¹ Ibid., 57.

²² Berlin, *Two Concepts*, 151.

²³ Berlin, *TC*, 334.

did not fully develop the role of economics in positive freedom. He reluctantly acknowledged ways in which the negative concept of liberty was prone to be merely formal, but he still rejected advancing anything except negative liberty. Despite applauding Berlin's commitment to guard against totalitarianism fostered by rhetoric of those who use the concept of positive freedom to dominate, I think Berlin failed to fully answer questions of the relationship between freedom to be a "doer" and enabling conditions like economic resources. Berlin noted but left unanswered problems related to freedom requiring economic resources as enabling conditions. He acknowledged a broad list of obstacles to freedom including "lack of food or shelter or other necessities of life."²⁴

In that way Berlin is like Rawls who recognized background conditions including economic resources necessary for freedom. Yet Berlin stated that a lack of ability, like the human's inability to fly like an eagle, is not a lack of freedom.²⁵ Then Berlin admitted that if the lack of ability is produced by a creation of human will or human structures, then inability is more like a restraint. The lack of clarity arises in cases that include disabilities resulting from human choices rather than natural, material condition. Berlin said,

What troubles the consciences of Western liberals is...
that the minority who possess it (freedom) have gained

²⁴ Ibid.

²⁵ Berlin, TC, 336.

it by exploiting or, at least, averting their gaze from, the vast majority who do not.²⁶

He noted this problem, but did not resolve it. Similarly, Berlin mentioned the problem of what he called “oppression.” He said that oppression or “economic slavery” is “being kept in want by a specific arrangement” that is unjust.²⁷ Berlin did not fully develop a response to this problem either. He admitted that there were these problems of negative freedom leading to oppression or economic slavery, but he did not resolve the issues. Berlin admitted that there is a hierarchy of human needs in which freedom is not as high as the physical necessities for survival. He said that “clothes or medicine” might be higher priorities than personal liberty.²⁸ When decisions must be made about whether a society will promote freedom more than equality, the voice and power of the poor is often unrepresented in the process. Both the poor and the affluent have the same freedom if freedom is only defined according to the negative freedom concept. Rawls hoped to resolve this problem by equalizing the worth of liberty. Berlin left the problem unsolved. If the poor decided, they might decide differently than would the affluent. Yet the affluent always control the power to make that decision.

Berlin acknowledged the complex relationship between the freedom of some and the oppression of others. He said, “If the liberty of myself or my class or nation

²⁶ Ibid., 338.

²⁷ Ibid., 336.

²⁸ Ibid., 337.

depends on the misery of a number of other human beings, the system which promotes this is unjust and immoral.”²⁹ It is true that this statement comes just after a claim that liberty is not ability or equality. He wrote:

But nothing is gained by a confusion of terms. To avoid glaring inequality or widespread misery I am ready to sacrifice some, or all, of my freedom: I may do so willingly and freely; but it is freedom that I am giving up for the sake of justice or equality or the love of my fellow men. I should be guilt-stricken, and rightly so, if I were not, in some circumstances, ready to make this sacrifice. But a sacrifice is not an increase in what is being sacrificed, namely freedom, however great the moral need or the compensation for it. Everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience.³⁰

This illustrates the liberal separation between freedom and ability. However, Berlin left out the reality of conflicting freedoms here. There are cases that pit one person’s freedom against another person’s freedom. Freedom may be sacrificed for gains in other freedoms. When he says, “everything is what it is” he seems imply that freedom is a thing that can be in conflict with other things but not other cases of freedom. The problem is that if the liberty of some must be limited in order to secure liberty for others, then we must determine what principle should be the criterion for this limiting of liberty. Sometimes a criterion used to limit liberty is a claim about a “higher good” than liberty. Equality is one candidate for a “higher good” which

²⁹ Ibid.

³⁰ Ibid., 125.

could justify limits to liberty.³¹ Nevertheless, abstract disagreements between the virtues of equality and those of liberty lack compelling resolution and result in stalemate. A problem that Berlin did not fully address is the extent to which liberty must be limited in order to provide equal worth of liberty to all. Berlin did mention the challenge of prioritizing liberty against other values. For example, Berlin wrote, “shame at gross inequality” is as basic a human experience as “desire for liberty.”³² For this reason, Berlin wrote, “We are rightly reminded by R.H. Tawney that the liberty of the strong, whether their strength is physical or economic, must be restrained.”³³ Berlin concludes that because all values are not compatible, and we must ultimately choose, pluralism is preferable.³⁴ That is to say, all persons should be free to define the good for themselves. This conclusion is like Rawls’s but leaves unanswered questions about the extent of redistribution required to equalize the worth of liberty.

Inadequate attention to the economic resources as enabling conditions for freedom in Berlin’s work coincide with his over-generalization of Mill’s concept of freedom. Don A. Habibi provides a detailed analysis of Berlin’s misreading of Mill, in his 2001 monograph, *John Stuart Mill and The Ethic of Human Growth*. Habibi claimed that although Berlin attributed a negative conception of liberty to Mill,

³¹ Dworkin, *Sovereign Virtue*.

³² Berlin, 346.

³³ Ibid.

³⁴ Ibid., 347.

“Berlin’s portrayal of Mill is inadequate and ultimately mistaken.”³⁵ Furthermore, although the interpretation of Mill as a proponent of negative liberty persists, Habibi referenced a number of other scholars who consider Mill as an advocate of positive liberty.³⁶ Thorough evaluation of Mill’s writing is beyond the scope of this work. However, it is often acknowledged that Mill leaned toward socialism with increasing objection to capitalism in his later life. Gertrude Himmelfarb demonstrated Mill’s “concessions toward socialism and communism” in successive editions of *Political Economy*.³⁷ She noted changes in the third edition (1852) where Mill added the line, “It remains to be discovered how far the preservation of this characteristic (liberty) would be found compatible with the Communistic organization of society. No doubt this, like all other objections to the Socialist schemes, is vastly exaggerated.”³⁸ And furthermore, Himmelfarb reflected the significance of these lines from Mill’s autobiography:

The social problem of the future we consider to be, how to unite the greatest individual liberty of action with a common ownership in the raw material of the globe, and an equal participation of all in the benefits of combined labour.³⁹

³⁵ Don A. Habibi, Don A. *John Stuart Mill and the Ethic of Human Growth*. (Boston: Kluwer Academic Publishers, 2001), 123.

³⁶ Ibid., n. 35

³⁷ Gertrude Himmelfarb, *On Liberty and Liberalism: The Case of John Stuart Mill*. (New York: Alfred A. Knopf, 1974), 126.

³⁸ Ibid., 127.

³⁹ Ibid., 137.

If this analysis is correct, that Mill moved toward the left as his thought developed, and then he would be similar to Rawls in that respect. Berlin's reading of Mill seems to have missed what Habibi and others note as the way in which Mill's stress on individuality and human growth overlap with the positive notion of freedom as self-determination. Rawls noted the influence of Mill's concept of individuality in relationship to his own notion of autonomy.⁴⁰ His attempt to delineate a clear line between personal and political autonomy persists as a problem.

To identify positive freedom, Berlin suggested the question, "Who determines what I do?"⁴¹ Although Berlin cautioned against the use of positive freedom as a guise for authoritarianism, he recognized the complexity of freedom beyond the strictly negative conception. Berlin argued that negative freedom was the only freedom the state should defend, but did not solve the problems he raised related to the social construction of provisions to make freedom meaningful for the poor. Berlin also left unanswered the problems of oppressive systems that force the poor to work without real opportunity to influence the conditions or terms of their work. But the most important question left unanswered is the problem of how to respond to inequalities in the worth of liberty. Liberalism continues to hammer out answers to the questions of conflict between negative and positive aspects of freedom. In order for a person to have freedom, systems must exist that provide for

⁴⁰ Rawls, LP, p. 146.

⁴¹ Berlin, TC, 132.

the expression of the individual's will. At the same time, the liberty of one person circumscribes the scope of another person's liberty. Positive freedom must be understood as freedom realized through material conditions of freedom, social support for freedom, and acts of the will, work, and construction requiring self-fulfillment or self-realization.

After Berlin: The Ongoing Debate over Positive Freedom

Rawls acknowledged Berlin's influence on this thinking about freedom, but chose not to address the concept of positive freedom himself.⁴² This direction was set from early on in his writing when he cited the influence of Gerald MacCallum's analysis about the two concepts of freedom.⁴³ Having reviewed Berlin's writing on positive versus negative freedom, I move forward to review various reactions to Berlin, including MacCallum's. My goal is to explore alternative evaluations of MacCallum's moves as well as to acknowledge the lively debate that continues regarding positive freedom. In his article, "Negative and Positive Freedom," Gerald MacCallum argued that Berlin's attempt to distinguish between negative and positive conceptions of liberty does not hold up. He argued that there is only one conception of liberty, and it is always "triadic" All statements

⁴² Rawls, PL, 299, n. 16.

⁴³ Rawls, TJ, 201.

about freedom refer to the freedom of x from y to do z.⁴⁴ The nature of the obstacle represented by y or the description of the goal of freedom represented by z may be defined differently, but the positive and negative categories are not helpful, according to MacCallum. Rawls followed MacCallum on this point as indicated in his footnote on his initial explanation of his own conception of freedom.⁴⁵

MacCallum was following the work of Felix Oppenheim who attempted to apply rigors of behavioral analysis to the concept of freedom. In his 1961 work,

Dimensions of Freedom, Oppenheim wrote,

As an effective weapon in the ideological power struggle, liberty assumes a different meaning according to the speaker's position within the power hierarchy. As a fruitful concept in scientific discourse freedom must have a universal and valuationally neutral meaning.⁴⁶

Rawls followed Oppenheim in separating the term liberty from the worth of liberty.⁴⁷

But, Rawls did not attend with enough care to Oppenheim's insights regarding the role of influence and power in relationship to freedom. Oppenheim wrote, "... the economically powerful can make it impossible for the poor to pursue certain courses

⁴⁴ Gerald C. MacCallum, "Negative and Positive Freedom," *the Philosophical Review*, Vol 76, No. 3 (July 1967), 314.

⁴⁵ Rawls, TJ, 202.

⁴⁶ Felix E. Oppenheim, *Dimensions of Freedom*. (New York: St. Martin's Press, 1961), 130.

⁴⁷ TJ, 202, n. 4.

of action and necessary for them to accept disadvantageous bargains.”⁴⁸ Although Rawls certainly intended to correct this type of injustice, his dismissal of positive freedom contributed to later criticism. In his chapter on social freedom, Oppenheim said, “I do believe that those who speak of freedom in a political context refer most often – but often unknowingly—to freedom as a relation between actors.”⁴⁹

Although I agree that is frequently what people mean when they speak of freedom, I think there is a type of power of the individual to develop a self that is set aside in Oppenheim’s work. This is the same mistake Rawls makes regarding his definition of freedom. Rawls’s own attempts to solve these complexities regarding freedom and the use of freedom are examined more fully below.

Despite MacCallum’s attempt to eradicate the distinction between positive and negative freedom, scholarship related to difference between positive and negative freedom continues. Therefore, an overview of the enduring interest in positive freedom in current literature deserves some attention. Numerous voices rejecting MacCallum’s argument will be reviewed here in an effort to seek a clearer definition of positive liberty. One problem in sorting through this literature is that there are multiple definitions of positive freedom. My first point is simply that although Rawls was convinced by MacCallum’s and Oppenheim’s dismissal of the distinction between two types of freedom, many scholars remain unconvinced on this

⁴⁸ Ibid.

⁴⁹ Ibid., 109.

point. This only indicates that positive freedom has not been totally discarded as a potential building block for political theory.

In contrast to those that reject Berlin's distinction, some thinkers continue to defend and develop the difference between positive and negative freedom. I do not assume that each of these writers uses the term "positive freedom" in precisely the same way. Yet, I assert that this ongoing debate over positive freedom can be sorted out with the help of three aspects of positive freedom: economic power as enabling conditions, social or relational freedom in systems, and acts of well for individual self-development.

This unresolved question about the agent or subject who is free generates various feminist critiques of the distinction between positive and negative liberty. Nancy J. Hirschmann rejects Berlin's distinction in her work on revisioning freedom. She acknowledged that "negative liberty plays a prominent part in the ideological and political landscape of the West."⁵⁰ However, she claimed that both positive and negative concepts are gender biased models. She wrote,

Positive libertarians such as Rousseau and Hegel similarly denied women's rationality, requiring them to adopt very particularized and structured roles within the family as a means of guaranteeing the stability of the state.⁵¹

⁵⁰ Nancy J. Hirschmann, *Revisioning the Political* (ed.) Nancy J. Hirschmann and Christine Di Stefano, (Boulder, Colorado, 1996), 54.

⁵¹ Ibid., 55.

This illustrates the tendency to consider Rousseau and Hegel the paradigmatic models of advocates of positive liberty. However, the emphasis on economic power as a condition of freedom is part of the positive liberty tradition that is unrelated to gender issues. Hirschmann did not deny a real distinction between positive and negative freedom, but criticized the historical use of both concepts. Hirschmann said, “Positive liberty has developed as more of a leftist (though sometimes rightist) reaction to liberalism’s individualistic tendencies.”⁵² She admitted that not just women, but also the poor, have been excluded from both the exercise and the opportunities of freedom.⁵³ While I agree that concepts of positive liberty can be used without concern for gender justice, I will argue that positive liberty conceptions are more likely to advocate on behalf of the poor. If economic implications of positive freedom are developed, then Hirschmann’s critique of positive liberty would be deflated.

Peter P. Nicholson also argued against MacCallum’s move. Nicholson defended the distinction between positive and negative freedom not only as Berlin developed the concepts, but drawing on earlier roots in the work of T.H. Green. Nicholson argued that “MacCallum’s application of his analysis to the debate about negative versus positive freedom, however, is problematic in Green’s case.”⁵⁴ He

⁵² Ibid., 54.

⁵³ Ibid., 55.

⁵⁴ Peter Nicholson, *The Political Philosophy of the British Idealists*, (New York: Cambridge University Press, 1990), 123.

acknowledged that Green's concept of real freedom could be expressed in triadic terms, but this only shows that it has the "same formal structure" as negative freedom. Nicholson claimed that a "fundamental difference between the two senses of freedom" exists because real freedom, as a moral concept, is qualitatively different. The shared triadic form is irrelevant to the distinction Green was after.

This may show that real freedom has the same formal structure as negative freedom ("of a person *from* coercion by other persons *to* do as he likes"), but it fails to capture Green's essential meaning. MacCallum's very success in reducing real and negative freedom to a single form signals his omission of the pivotal difference between them, for this is one of content, not form. The main point, so far as Green is concerned, is that negative freedom is a legal concept and denotes an area in which the individual is given the opportunity to act as he chooses and in particular to do what is morally wrong as well as what is morally right. Real freedom, on the other hand, is a moral concept and denotes the individual's doing, or having a character which is disposed to do, what is morally right.⁵⁵

Although Green's conception of positive liberty has been criticized for lack of clarity, Nicholson and others continue to insist that something important is left out if freedom is reduced to merely its negative aspect.⁵⁶ Like Nicholson, Avital Simhony also analyzed T.H. Green's view of freedom and similarly concluded that "negative

⁵⁵ Ibid., 124.

⁵⁶ Ben Wempe, *T.H. Green's Theory of Positive Freedom*. (Charlottesville, Virginia: Imprint Academic. 2004), 127,

freedom has to be supplemented by enabling conditions.”⁵⁷ These enabling conditions relate to economic power and its relationship to political voice.

Significant consequences of these two competing notions of freedom include polarity over economic policy. Robert Goodin demonstrated that “The classical debate over the impact of the welfare state on freedom turns on the distinction between ‘positive’ and ‘negative’ freedom.”⁵⁸ Goodin argued that the terms should both be used in tandem, and criticized Rawls for discarding the notion of positive freedom. Goodin wrote,

Positive liberty determines, in Rawls’s (1972, sec 32) terms, the ‘worth’ of negative liberty. Rawls himself takes this as an excuse for ignoring positive liberty, since it is not, strictly speaking, an aspect of liberty at all. But the real effect of this move is surely to upgrade rather than downgrade those things that go into making liberty valuable. I can see no plausible reason for championing or cherishing worthless liberties.⁵⁹

Although Goodin admitted MacCallum’s point, he maintained the importance of integrating both conceptions of freedom.

Despite these rejections of MacCallum’s claim to have done away with Berlin’s two concepts of liberty, there are others who would agree with Rawls that

⁵⁷ Avital Simhony, “Beyond Negative and Positive Freedom: T.H. Green’s View of Freedom,” *Political Theory* 21, No. 1 (February 1993), 54.

⁵⁸ Robert E. Goodin, “Freedom and the Welfare State: Theoretical Foundations,” *Journal of Social Policy* 2, No. 2, (April 1982), 151.

⁵⁹ *Ibid.*, 152.

MacCallum's solution works. For example, Tara Smith, in her 1995 work, *Moral Rights and Political Freedom*, agreed, that there is no need for a positive conception of liberty. In fact, she vehemently argued that resistance to the notion of positive liberty was required to "safeguard freedom." She wrote, "I must show why this bifurcation of freedom is unwarranted. In order to safeguard freedom, it is crucial that we understand exactly why the notion of positive freedom is invalid."⁶⁰ Despite the urgency of her concern to prove the notion invalid, her argument fails. The only argument she provided is circular because of the way in which she defined freedom. She wrote, "Freedom is the absence of others' use of force against a person's will."⁶¹ Since that is what Berlin called negative freedom, this already precludes the concept Berlin intended to express in his term "positive freedom." However, Smith did make a helpful distinction by pointing out that there are two major strains within the discussion of positive freedom. She called these "Enabling Conditions" and the "Ideal Deployment" models of positive freedom.⁶² Some advocates of positive freedom claim that true freedom conforms with some normative criteria expressing the higher self or true self. In other words, they use the rhetoric of promoting freedom while actually attempting to deploy or promote another ideal. For example, in repressive regimes it has been argued that no one is truly free until they are made

⁶⁰ Tara Smith, *Moral Rights and Political Freedom*. (Lanham, Maryland: Rowman and Littlefield Publishers, Inc., 1995), 165.

⁶¹ Ibid., 166.

⁶² Ibid., 163.

to conform to the ideals of the state. This would be what Smith called the ideal deployment type of positive freedom. This type of argument made Berlin wary, just as it made Smith reject the notion of positive liberty altogether. Smith identified but did not develop the other type of positive liberty, which she called enabling conditions of positive liberty. This is the type of positive liberty that most clearly related to economic conditions. Some advocates of positive freedom stress that certain conditions are required in order to allow a person to exercise freedom. For example, certain levels of nutrition and economic stability are required in order to make voting rights real. Although Smith dismisses the validity of opportunity conditions because these do not fit with her own definition of freedom as “to control one’s own actions from others’ use of physical force,” her term, “Enabling Conditions” is useful. I disagree with her conclusion that positive liberty is not a valid concept, but I will use her distinction between enabling conditions and ideal deployment.

Unfortunately, some types of “ideal deployment,” foster totalitarians. Disrespecting the autonomy of a person, while at the same time encouraging her to serve a common good that does not include her own good, has been accomplished using rhetoric drawing on the concept of positive liberty. It is no wonder the reaction against positive liberty of that type advocates radical individualism with a primary concern for self. Nevertheless, there may be some way to guard against ideal deployment in service of dominance while actually promoting the exercise of

autonomy underwritten by access to resources. This possibility is illustrated in the historical development of the language of freedom in contrast to slavery.

The link between economic power and positive liberty is developed by a number of thinkers inclined toward socialism. Peter Self, in his 1991 discussion of socialism, attested to the polarization between those who promote positive liberty and those who promote negative liberty. The tendency to reduce the definition of liberty to only include negative liberty, and then to ignore problems of positive liberty related to poverty concerned Self. He wrote:

Isaiah Berlin's (1969) well-known distinction between 'negative' and 'positive' liberty has been perverted by extreme liberals (libertarians) into the argument that only the negative form of liberty is real and that it should be restrictively interpreted as the absence of direct coercion.⁶³

Maria Dimova-Cookson provided an argument related to concern for the freedom of the poor in her essay, "A New Scheme of Positive and Negative Freedom." Insisting that there is an important substantive difference between negative and positive freedom she wrote, "The concept of positive freedom expresses the idea that those who have the resources to lead a better life should use these resources to improve the well-being of others."⁶⁴ Her attempt is to reconstruct

⁶³Peter Self, "Socialism," in (ed.) Robert E. Goodin and Philip Pettit. *A Companion to Contemporary Political Philosophy*. (Cambridge, Massachusetts: Blackwell Publishers, 1996), 340.

⁶⁴ Maria Dimova-Cookson, "A New Scheme of Positive and Negative Freedom," *Political Theory*, 31, No. 4, (August 2003), 524.

T.H. Green's argument making a distinction between "ordinary and moral" types of goods that we pursue resulting in the two distinct types of freedom. She wrote:

One can be negatively free only in a society of conscientious citizens who respect each others' right to choose freely. Respecting other people's rights is a moral act and, therefore, an exercise of positive freedom. To press this point further, if negative freedom is as important as Berlin believes, then we have to do more for it than simply restrain from interfering with the others: both juristic and negative freedoms are increased by positive action. In other words, diminishing intervention does not increase negative freedoms as much as providing actual help, that is, acting as an agent of positive freedom.⁶⁵

Motivated by questions of distributive justice as related to freedom, she was not troubled by the Rawlsian concern with remaining neutral on conceptions of the good. She wrote:

Whether we are agents of positive or negative freedom, we are dealing with very much the same issue: we are demonstrating awareness about the unequal distribution of resources in a society and the belief that this could be mended by some form of redistribution.⁶⁶

The economic and material conditions necessary for the realization of freedom justify limitations on some types of freedom in order to promote others, according to her view. She said:

Berlin is right to claim that the advocacy of positive freedom is linked to moral pressure onto others. The defense of Green is that this moral pressure is narrowly targeted and justified. The concept of positive freedom

⁶⁵ Ibid., 525.

⁶⁶ Ibid., 524.

is based on the understanding that the amount of (juristic) freedom we have (i.e., the amount of power to do things) depends on the social arrangement, and we are in a position to change these arrangements through legislative reforms.⁶⁷

For example, imagine a woman who works ten hours a day in a free trade zone factory. She leaves her five children with her sister and her two children in the shack they all share. In this home constructed of tin, cardboard, and scraps of wood, they sleep on boards with no pillows or sheets. They eat rice and beans cooked on a fire outside. With no running water in the house they wash outside and use a latrine. The wages of less than two dollars a day barely cover food costs. Any extra funds are saved for things like medicine or shoes. In the negative sense of liberty she is free. On the other hand, their living conditions look amazingly similar to slave quarters. Poverty shapes the positive sense of freedom of her children who are unable to attend public school because they do not have money for fees or supplies. In her neighborhood, a cluster of comparable shacks, families do not even name newborns until they are one year old, because so many infants die in early months of life. Despite the emotional reactions raised by this type of example, if there are such cases, they pose a serious problem for proponents of only a strictly negative concept of freedom. Ability to influence labor conditions, wages, and the significant role of work in human life depends on a positive sense of freedom that cannot be understood apart from economic systems.

⁶⁷ Ibid., 521.

The structural and institutional provision for freedom depends on the cooperation of individuals concerned with mutual respect for the good of others. Whereas Rawls argued that such cooperation is purely rational, Dimova-Cookson viewed it as “moral” rather than merely practical. She wrote:

In the case of positive freedom, the agent exercises his freedom in his capacity as a ‘producer’ of moral goods; in the case of negative freedom, the agent is a ‘recipient’ of such goods⁶⁸.

In this way, her distinction between negative and positive liberty is even sharper than the one drawn by Berlin.

The charge that Rawls’s work is overly individualistic is the subject of numerous criticisms of his work. Although those are beyond the scope of this work, the understanding of the self and of the good cannot be totally divorced from a conception of freedom. The notion of positive freedom assumes that concern for one’s freedom and opportunities is inseparably linked with being in a world in which the freedom and opportunities of others are also valued. The theme of community or collective life in Rawls’s writing must be examined to consider his vulnerability to criticisms based on the positive conception of freedom. Thus, the relationship of freedom to resources, community, and labor are important to understanding the positive notion of liberty.

It has been argued that as a group sometimes disadvantaged economically, women have had less freedom in the positive sense even if they had the same

⁶⁸ Ibid., 524.

political freedoms for free speech or voting. In her essay entitled, "Enquiries for Liberators," Janet Radcliffe Richards argued that women's experience provides one illustration of the way that "different social arrangements" create advantages for different groups.⁶⁹ Thus, she claimed that not only absence of direct coercion, but access to power determines freedom. She argued that "people are free to the extent that they are in control of their own destinies."⁷⁰ Although she did not use the terms positive and negative freedom, she contended that "within a social context freedom and power are virtually the same."⁷¹ This emphasis on freedom as more than the absence of restraint suggests that a strictly negative concept of freedom is inadequate to capture the political meaning of the term freedom. Richards wrote, "Your freedom is restricted by society to the extent that different social arrangements might have made it possible to do more of what you wanted."⁷²

Lawrence Crocker agreed that there was something important in the distinction between positive and negative liberty. He, too, criticized MacCallum's argument. Crocker wrote:

About two claims I am pretty sure that MacCallum is wrong. The first is that there are not different kinds of

⁶⁹ Janet Radcliffe Richards, "Enquiries for Liberators," *Social and Political Philosophy*, (ed.) John Arthur and William H. Shaw, (Englewood Cliffs, New Jersey: Prentice Hall: 1991), 312.

⁷⁰ Ibid., 314.

⁷¹ Ibid., 316.

⁷² Ibid.

liberty. If legal liberty has a more restricted set of preventing conditions than social liberty, as it does on nearly all accounts, why not say that legal liberty is one kind of liberty and social another? The kidnap victim is free to escape with respect to legal freedom, since there is no law against escape, while perhaps, not being free to escape with respect to broader freedom.⁷³

The point here is that the triadic form of freedom is all well and good, but there is still something important in that the distinction between positive and negative liberty. The social and economic conditions of meaningful freedom are what Rawls knew had to be addressed for what he called the worth of liberty to be real.

Rawls addressed the issue of slavery a number of times. Not surprisingly, he denounced slavery as an unjust institution. He cited the work of Orlando Patterson equating slavery with “social death.”⁷⁴ Rawls said,

To take an extreme case, slaves are human beings who are not counted as sources of claims, not even claims based on social duties or obligations, for slaves are not counted as capable of having duties or obligations... This contrast with slavery makes clear why conceiving of citizens as free persons in virtue of their moral powers and their having a conception of the good goes with a particular political conception of justice.⁷⁵

⁷³ Lawrence Crocker, *Positive Liberty*. (Boston: Martinus Nijhoff Publishers. 1980), 6.

⁷⁴ Rawls, PL, 33,n.35.

⁷⁵ Ibid., 33.

The richer content of the concept of positive freedom as social construction can be seen more clearly in relationship to the writing of Orlando Patterson on freedom. Patterson's sociological analysis of freedom begins with the claim that the notion of freedom developed in connection with the realities of slavery, economic systems of labor, and the earliest development of democracy. He said that the Greek notion of freedom can be traced through the development of the language. He wrote, "There is clear philological evidence of a growth in the appreciation of the free status of the citizen with the growth of slavery and the resident alien population during the sixth century."⁷⁶ What it means to be a not-slave is to have economic power. To be free is not just to be left alone, but is also to have access to necessities for constructing a life.

In an essay entitled, "Two Concepts of Liberty Through African Eyes," Chisanga N. Siame offered a parallel analysis of the importance of the positive concept of liberty based on the experience of slavery in Africa. Once again, status is at the center of liberty. Siame argued that in Africa the idea of freedom developed in contrast to the reality of slavery. The pre-colonial ChiBemba word for slavery referred to those who had "slipped socioeconomically to a level considered sub-free and indeed sub-"human."⁷⁷ The economic power of independence protected the status of persons. "To be independent therefore simply means to be free, which in

⁷⁶ Orlando Patterson, *Freedom*. (New York: Basic Books, 1991), 79.

⁷⁷ Chisanga Siame. "Two Concepts of Liberty Through African Eyes," *Journal of Political Philosophy*, 8, No. 1, (2000), 57.

turn means to be fully human as opposed to having a servile or sub-“human” status.”⁷⁸ Siame concluded that Berlin’s distinction between positive and negative liberty is important, but that Berlin’s dismissive criticism of positive freedom was unfair. Siame wrote, “By understanding the meaning of ‘freedom’ in a Zambian context, we may conclude that Berlin was wrong in maintaining that only ‘negative freedom’ is true freedom.”⁷⁹ The limits of our freedom are constructed through social systems. Positive freedom required voice and power in shaping those systems. Slavery is the opposite of self-determination.⁸⁰ Reiterating that freedom is a matter of degree rather than an either/or quality of life, it helps to consider the extreme case of slavery as the opposite of freedom. If it can be shown that cases of extreme poverty amount to something very like slavery, then such cases need to be addressed by theories of justice.

Imagine a farmer who wants to continue farming land that has been in his family for generations. Care of the land involves a relationship with this precious natural resource. Farming was historically referred to as “husbandry” because it involves far more than mere production. Too often farmers have been forced by economic circumstances to sell their land. Yet, no direct coercion is involved. There is no infringement of their freedom in the negative sense of freedom. There are forms

⁷⁸ Ibid., 56.

⁷⁹ Ibid., 66.

⁸⁰ On freedom as self-determination see James Bohman “Republican Cosmopolitanism,” *Journal of Political Philosophy*, 12, No. 3 (2004), pp. 336-352.

of inability that are not the result of coercion. But, this example is different than an unavoidable case of lack of ability. If the farmer wanted to be a doctor but was not smart enough, or wanted to be a movie star but was not handsome enough, or wanted to be a public speaker but was not articulate enough, we would accept that his lack of ability as an inevitability that must be accepted. But in the case of his desire to continue farming the land, we know that his economic problems are the result of complex financial systems that have been constructed through historical decisions and can be remedied through economic adjustments. His freedom in the positive sense requires financial resources possible through a socially constructed system. Again the negative freedom and positive freedom are in tension. So despite commitment to free markets, we subsidize farming in the United States to support farmers in their freedom to continue farming. Positive freedom requires economic resources and social cooperation. It also requires self-determination as acts of human will.

In his essay, "What's Wrong With Negative Liberty?" Charles Taylor sought to balance the concern for individual self-realization with the need for collective self-realization. Regarding the distinction between positive and negative liberty, Taylor wrote, "I believe it is undeniable that there are two such families of conceptions of political freedom abroad in our civilization."⁸¹ He traced the theories of Rousseau and Marx as fitting in the category of positive freedom, but also included the views

⁸¹ Charles Taylor, "What's Wrong with Negative Liberty." *The Idea of Freedom* (Oxford) 1979), 175.

“which owe something to the ancient republican tradition, according to which men’s ruling themselves is seen as an activity valuable in itself, and not only for instrumental reasons.”⁸² Taylor argued that the concept of positive freedom corresponds to what he called an “exercise concept” whereas negative freedom is the conception that is an “opportunity concept.” A person can exercise freedom through development of self and personal agency. On the other hand, the opportunity for freedom of self-expression can be limited or negated by restrictions on freedom. In some ways this distinction parallels the distinction that Nussbaum made between functioning and capability, described in more detail in Chapter three. Taylor’s interest in positive liberty dealt primarily with issues of self-concept rather than economic realities. When he examined freedom as an expression of “frustration/fulfillment of our purposes”⁸³ he seemed to assume the fulfillment of property resources required for basic survival. Further examination of the property resources required and the ways in which those resources can be provided must be included in the proposals for promoting freedom. We might wish that Taylor had developed this further. Positive freedom, as freedom exercised, involves action of the will. This supports my claim that both concepts of freedom are useful.

John Gray agreed that an important distinction between positive and negative conceptions of freedom does exist. He rejected MacCallum’s argument that the

⁸² Ibid., 175-176.

⁸³ Ibid., 191.

triadic structure of freedom does away with the substantive tensions between various types of freedom. Gray wrote,

Finally, it seems hard, if not impossible, to accommodate within MacCallum's triadic analysis the conception of individual freedom as possessing a certain social status, which Berlin later discusses in another context.⁸⁴

Gray continued to develop this distinction in his own later writing. He defined positive liberty as autonomy, and criticized Rawls for failing to adequately address conflicts among types of freedom. Gray wrote:

The value of negative liberty must therefore be theorised in terms of its contribution to something other than itself, which does possess intrinsic value. In truth, it seems clear that the chief value of negative liberty is in its contribution to the positive liberty of autonomy. By autonomy is meant the condition in which persons can be at least part authors of their lives, in that they have before them a range of worthwhile options, in respect of which their choices are not fettered by coercion and with regard to which they possess the capacities and resources presupposed by a reasonable measure of success in their self-chosen path among these options.⁸⁵

But the path chosen by the self is conditioned, limited, and also made possible by the society's choices. Even a person's abilities can be restricted or expanded by the policies of the community in which they live. Gray appreciated the insight of

⁸⁴ John Gray, *Liberalisms*. (New York: Routledge, 1989), 49.

⁸⁵ John Gray, *Beyond the New Right*. (New York: Routledge, 1993), 78.

Rousseau and Hegel that freedom is realized through the state. In other words, freedom is constructed. Gray wrote:

Autonomy is not free-standing. It is a complex achievement, encompassing (among a good many other necessary ingredients) the absence of coercion, the possession and exercise of skills in choice-making and an environment which contains an array of options that are worth choosing. Judgments of autonomy stand on a view of the good life. They are always grounded in beliefs about what makes life worth living.⁸⁶

Although Gray does not think a proper balance of positive and negative liberties can be clearly determined through liberalism, he did recognize the distinction between the two conceptions of freedom. Thus, Gray disagreed with MacCallum that there is no significant difference between positive and negative freedom. The following example illustrates Gray's point.

Consider a family from the Marshall Islands who want to return to their island that was evacuated in the 1940's so that atomic testing could be conducted. Their community leaders made a deal with the United States. There was no direct coercion in the exchange. At least the representatives of the people on the island were free to enter this agreement. But it seems the people did not have the information that the islands would be uninhabitable for decades. The people who were evacuated in 1946 and were returned in 1974, only to be told in 1976 that they would have to leave again. New evidence showed that levels of radiation were still dangerously high. The freedom to continue their ways of life on their island may not

⁸⁶ John Gray, *Two Faces of Liberalism*. (New York: The New Press, 2000), 100.

be fulfilled in the foreseeable future at all. The people of Bikini Atoll in the Marshall Islands were addressed by a US military governor on Sunday, February 10, 1946 after church services. Drawing on the authority of Christian scripture to convince them of the “necessity of relocation” the governor compared the island people to the “children of Israel whom the Lord saved from their enemies and led unto the Promised Land.” They were told that their island was needed for testing that would “lead to peace and freedom for all humankind.”⁸⁷ Less than two weeks after this address, the people had been moved to another island. The positive sense of freedom, the freedom to be a culture of island people, to be subjects, not objects was in direct conflict with the freedom to enter in to this economic exchange. Determinations about what makes life worth living are both individual and social or cultural. Autonomy requires resources as well as collective power.

What has traditionally been accepted as a separation between political freedom and economic freedom, or a distinction between personal and political freedom becomes problematic. In order to more fully explicate the complexity of positive freedom, consider the definition of freedom offered by T. H. Green.

If the ideal of true freedom is the maximum of power for all members of human society alike to make the best of themselves, we are right in refusing to ascribe the glory of freedom to a state in which the apparent elevation of the few is founded on the degradation of the many...If I have given a true account of that freedom which forms the goal of social effort, we shall

⁸⁷ Robert C.Kiste, *The Bikinians: A Study in Forced Migration*. (London: Cummings Publishing, Co.,Inc., 1974), 27-28.

see that freedom of contract, freedom in all the forms of doing what one will with one's own, is valuable only as a means to an end. That end is what I call freedom in the positive sense: in other words, the liberation of the powers of all men equally for contributions to a common good.⁸⁸

Green's definition of positive freedom as "the liberation of the powers of all" has consequences not only for political institutions, but for economic and interpersonal relationships as well. Sometimes there is internal conflict as well as external conflict influencing a person. Freedom from addiction is one example of positive freedom. T. H. Green, in his essay, "Liberal Legislation," presented an example of how giving up one liberty might lead to becoming more free in general. He wrote about the citizens of England debating over liquor laws. He said that laws had already been passed to regulate labor, child abuse, and building construction, and in each case people were prevented from some liberty, but "the result was a great addition to the real freedom of society."⁸⁹ He went on to argue that liquor laws could likewise promote freedom in society. He wrote,

There is no right to freedom in the purchase and sale of a particular commodity, if the general result of allowing such freedom is to detract from freedom in the higher sense, from the general power of men to make the best of themselves.⁹⁰

An obvious problem is the impossibility of reaching agreement over the question of what constitutes a person's *best*. If this definition of positive freedom can be made

⁸⁸ Green, 200.

⁸⁹ Ibid., 212.

⁹⁰ Ibid., 210.

to work it would have to specify terms and conditions for a person's *best* to be determined by that person's own free exercise of judgment.

A more contemporary example based on Green's argument might be related to drug or alcohol screening in school or workplace. There is a kind of calculus that can be done comparing the reduction in the individual's freedom to pursue altered states of consciousness with the public's freedom that is secured by safety and sobriety in public space. But, the second aspect of freedom is not merely about the conflicting freedoms of the one and the many. It might be said that preventing a person from riding a motorcycle without a helmet is only the beginning of liberating their full potential.

What examples can we offer to illustrate the potential tension between these two notions of freedom? Drug or alcohol addiction is one example of an obstacle to positive liberty. However, it could be argued that it is a case of private or personal freedom not a matter of political freedom at all. Although some have suggested that the difference between positive and negative freedom is related to the distinction between internal and external freedom or public and private spheres of liberty, several examples illustrates that such distinctions are slippery. In contrast to the seemingly personal or private example of drug addiction, the example of wealth addiction might be an example that begins to push at the borders of what is understood to be political freedom. Cultural messages suggesting that material wealth and material pleasures are the surest form of the good life present a danger not unlike the totalitarianism control of tyrannical regimes. The criticism of

American culture from Islamic and other perspectives argues that the seduction of western materialism is as powerful a tool for brain-washing as any other. Wealth addiction may be a disease like drug addiction. It has been said that a consumer who continually fuels the economy by purchasing goods may become addicted to the pleasures of materialism just as a drug addict is addicted to the fix. Driven by a voracious appetite to use material wealth for dominance, prestige, and self-esteem, such consumers need more and more immediate gratification through compulsive spending. The consumer begins to feel incapable of living within her means. Mounting debt, excessive environmental damage, and expanding expectations of necessities result. Just as in Green's example of the drunk, in this case the whole society is affected. When taken to excess, conspicuous consumption diminishes creativity and freedom to live in harmony with nature. The freedom to exploit natural resources, compete for the cheapest labor, and dominate markets to secure the best deal all have global consequences. The freedom of the entrepreneurs to convince buyers that they need a product can be in conflict with the common good. The freedom of consumers to pursue the purchase of products they believe they need can be in conflict with their own best interests. From warning labels on cigarettes, medications, and power tools, we see the interest of the state in regulating safety and environmental impact of the market. Action in the market place often has political consequences. The line demarcating what is political action as opposed to other actions that are apolitical is far from clear.

These illustrations demonstrate that negative freedom can be in direct conflict with positive freedom. The child of a wealthy family is free to choose among many fine universities. But, the prestigious universities who lack cultural diversity due to prohibitive tuition costs may unknowingly limit the freedom of their students to experience the fullest range of learning. Constraining limits in innovation and sensitivity result inadvertently because of the economic system that both shapes and perpetuates elite education. On the other hand, if the child of a wealthy family chooses to experience vastly different cultural perspectives by selecting a university where more average, and thus more diverse students share education, this wealthy student may sacrifice certain privileged freedoms like entrance in elite circles while at the same time increasing personal freedom to create a self. On the other hand, the poorest families may not be free to choose university education at all. There is no law preventing them, but lack of confidence, personal support, and financial resources may prevent them. Is this lack of freedom the result of a precondition, which is natural or conventional? In other words, is the lack of freedom caused by political choices that could be changed? A person barely surviving by working several jobs and living hand-to-mouth is not free in comparison with a person who inherited a fortune and lives off investment income. Is the struggling worker really free to participate in political process to change the system? In a certain type of redistributive economic system, this type of freedom could be equalized. So this arrangement is historically constructed and not natural in the sense of being inevitable. The lack of freedom could be avoided.

One hallmark of a liberal society is the freedom from interference in many areas of life. This is no small improvement over feudal systems or despotic monarchies. As feudalism ended and the nation state emerged, the individual freedoms were recognized as liberties states should defend. The liberal tradition developed the negative notion of freedom without adequately considering the positive notion. More recently, the writings of John Rawls offer a clear example of liberal political philosophy that champions freedom. Benjamin Constant's "freedom of the ancients" consists in "active and constant participation in collective power" contrasted with modern "private independence."⁹¹ Although Rawls never mentioned positive liberty again after his early dismissal of its importance, he did struggle in later works to clarify his position in relationship to Constant's republican freedom. Although Constant's notion of public freedom differs somewhat from the notion of positive freedom, the two concepts are related. Rawls's theory could have been strengthened by expanding his understanding of freedom to include the positive notion of liberty. In each of the examples of positive freedom described above, the dynamics of access to material resources, community power, and self-development or act of the will through labor are central. These are aspects of positive freedom that the concept of negative freedom leaves out. Therefore, in order to analyze the possibilities that a critique of Rawls from the application of the concept of positive

⁹¹ Benjamin Constant, "The Liberty of the Ancients," (1819), 275-276.

liberty could develop, I will examine the relationship between freedom and material resources, freedom and community, and freedom and labor in Rawls's writing.

Positive freedom must be understood as freedom realized through material conditions of freedom, social support for freedom, and acts of the will, work, and construction requiring self-fulfillment or self-realization.

CHAPTER TWO

POSITIVE FREEDOM IN PERPETUAL PEACE

Just as we view with deep disdain the attachment of savages to their lawless freedom—preferring to scuffle without end rather than to place themselves under lawful restraints that they themselves constitute, consequently preferring a mad freedom to a rational one – and consider it barbarous, rude, and brutishly degrading of humanity, so also should we think that civilized peoples (each one united into a nation) would hasten as quickly as possible to escape so similar a state of abandonment.

-Immanuel Kant¹

Thus categorical imperatives are possible because the Idea of freedom makes me a member of an intelligible world.

-Immanuel Kant.²

The penultimate line of *The Law of Peoples* reaffirms Rawls's philosophical kinship with Kant. As the strategic capstone of his last major work, Rawls wrote this concluding line:

If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on earth.³

¹ Kant, *Perpetual Peace*, 115.

² Kant, *Foundations of the Metaphysics of Morals*. Trans. Lewis White Beck. (Upper Saddle River, NJ: Prentice Hall, 1990), 71.

³ Rawls, LP, 128.

The international application of Rawls's theory of justice bears unmistakable resemblance to Immanuel Kant's essay, "Perpetual Peace." Despite some important differences, these two writings should be read in tandem. Before reviewing the influence of Kant on Rawls's theory, a brief review of Kant's notion of freedom is required. More specifically, the connection of Kant's notion of positive freedom to his argument in "Perpetual Peace" is the target of the review in this chapter. The larger body of Kant's writing will be referenced here only as it is necessary to explicate the concept of freedom in "Perpetual Peace." I will argue that Kant's notion of positive freedom is a crucial element in his political theory. This notion of positive freedom reveals the paradoxical nature of freedom that is accentuated at the level of international relations. Next I will review the influence of "Perpetual Peace" on Rawls while noting important differences between their international theories. Then finally, I will argue that these issues related to Kant's ideas about freedom and the nature of moral personhood are not adequately resolved in Rawls's final work. At this point a brief foray into Kant's earlier writings will help illuminate the argument.

In his essay, "Idea for a Universal History with a Cosmopolitan Intent," published in 1784, Kant argued that external laws actually maximize freedom. His fifth thesis therein stated that civil society can achieve the greatest freedom that can coexist with the freedom of others by making possible freedom under external laws. For Kant this is no purely abstract, metaphysical speculation, but is an urgent political issue directly related to peace and stability in the world. He wrote, "The

greatest problem for the human species, whose solution nature compels it to seek, is to achieve a universal civil society administered in accord with the right.”⁴ Kant’s answer to this crucial problem rests on a distinction between two types of freedom. The first type of freedom is wild, unrestricted, “savage, barbarous freedom.”⁵ Later, he referred to this as “negative” freedom.⁶ However, a greater freedom is possible if negative freedom is restricted through the coercive power of civil society. He wrote:

Necessity compels men, who are otherwise so deeply enamoured with unrestricted freedom, to enter into this state of coercion; and indeed, they are forced to do so by the greatest need of all, namely, the one that men themselves bring about, for their propensities do not allow them to coexist for very long in wild freedom.⁷

Coexistence is the reason for restricting freedom. Kant does not deny that such unlimited freedom would be possible if people were totally isolated and did not live interconnected lives. Yet the benefits of living arrangements that connect people increase the ability to exist. Kant assumes that meaningful lives in an intelligible world require cooperation among persons. Coexistence fosters individual existence. In order to coexist, a sacrifice of individual freedom is required. Kant thought that

⁴ Kant “Idea for a Universal History with a Cosmopolitan Intent,” 33.

⁵ Ibid., 35. “savage, brutal freedom.”

⁶ Kant, *Foundations of the Metaphysics of Morals*, 63.

⁷ Kant, “Idea for a Universal History with a Cosmopolitan Intent,” 33.

humans accept the coercive power of civil society because it is reasonable to do so.

Kant wrote,

Man is an animal that, if he lives among other members of his species, has need of a master. For he certainly abuses his freedom in relation to his equals, and although as a rational creature he desires a law that establishes boundaries for everyone's freedom, his selfish animal propensities induce him to exempt himself from them wherever he can... Thus, begin wherever he will, it is not to be seen how he can obtain a guarantor of public justice who will himself be just...⁸

This is true not only on the level of individuals in relationship to civil society, but equally true at the international level in relations between nations. Kant argued that reason suggests that civil states should form a federation or a league. Like moral persons, states have the ability to follow the suggestion of reason,

...to leave the lawless state of savagery and enter into a federation of peoples. In such a league, every nation, even the smallest, can expect to have security and rights, not by virtue of its own might or its own declarations regarding what is right, but from this great federation of peoples.⁹

Therefore, Kant argued that reason leads to a cosmopolitan society governed by "right" reason.

⁸ Ibid., 33-34.

⁹ Ibid, 34.

He continued to develop this argument in *Foundations of the Metaphysics of Morals*, published in 1785. He said, “The concept of freedom is the key to the explanation of the autonomy of the will.”¹⁰ In this argument, freedom is not an empirically observed reality, but a transcendent form of experience. The argument is based on pure practical reason. This attempt to demonstrate a justification for the inherent value of freedom rests on an impulse to see meaning in the world. Kant wrote, “Thus categorical imperatives are possible because the Idea of freedom makes me a member of an intelligible world.”¹¹ The coherence of intelligible experience relies on the freedom of the will in Kant’s theory. Apart from positive freedom all experience is meaningless including negative freedom.

Although Kant agreed with empiricists that all knowledge begins and ends in experience, he claimed that the principles of organization of experience cannot be experienced empirically. Furthermore, he argued that our experience would not have the coherence it has if such principles did not exist. So Kant claimed that *a priori*, universal forms point to a transcendental consciousness explaining the structure of the mind common to all individuals. We cannot know the ‘things-in-themselves’, but we can recognize operations of the transcendental consciousness organizing experience. Time and space are examples of such forms of intuition that explain the

¹⁰ Kant, *Foundations of the Metaphysics of Morals*, 63.

¹¹ Ibid., 71.

coherence of experience. Freedom is another organizing form required to explain our experience.

Kant's concept of positive freedom only makes sense in light of his insistence on the reality of free will. He wrote,

As will is a kind of causality of living beings so far as they are rational, freedom would be that property of this causality by which it can be effective independent of foreign causes determining it, just as natural necessity is the property of the causality of all irrational beings by which they are determined to activity by the influence of foreign causes....The preceding definition of freedom is negative and therefore affords no insight into its essence. But a positive concept of freedom flows from it which is so much the richer and more fruitful. ... freedom is by no means lawless... Rather, it must be a causality of a peculiar kind according to immutable laws.¹²

It is because reason "transcends anything that sensibility can give to consciousness" that we affirm our free will, and thus the need to limit our negative freedom.¹³ This argument will not be compelling to those who do not accept the postulate of freedom of the will, or some notion of reason's transcendental reality. But, Kant's argument does explain how civil society's need to limit individual freedom paradoxically increases people's freedom at the same time. The meaningfulness of the concept of positive freedom rests on some notion of the power of reason. Kant wrote, "For this reason a rational being must regard itself qua intelligence (and not from the side of

¹² Ibid.

¹³ Ibid., 69.

his lower faculties) as belonging to the world of understanding and not to that of the senses.”¹⁴ Positive freedom is a contracted freedom, a reasonable freedom that requires limiting negative freedom even with coercive measures. For example, the negative freedom to seize property must be limited to achieve the positive freedom of civil society. Only reasonable beings would freely agree to such limitations of their freedom.

Thus, Kant found a way to reconcile freedom and coercion through the concept of positive freedom because the concept of justice requires universal reciprocity. This solution to the paradoxical nature of freedom continues to satisfy some thinkers who therefore value the concept of positive freedom. For example, Kevin Dodson explained the duality of autonomy and authority in Kant’s thought in this way:

The notion of a right embodies this duality. A right is not only the freedom to act in a certain way; it is also the authorization to use coercion to prevent someone from hindering me in performance of that action... The positive and negative conceptions of freedom are again indissolubly united, for my freedom to engage in a specific action always involves a corresponding freedom from external interference with the performance of that action. Thus, ‘right’(or ‘justice’) and the ‘authorization to use coercion’ mean the same thing.¹⁵

¹⁴ Ibid., 70.

¹⁵ Kevin Dodson, “Autonomy and Authority in Kant’s Rechtslehre,” *Political Theory* 25, No. 1 (February 1997) 99.

Dodson maintained that Kant's reconciliation of both positive and negative freedom are necessary to make sense of the terms right and justice. Paul Guyer presented a similar argument in his 2000 monograph, *Kant on Freedom, Law, and Happiness*. He said that acting on the categorical imperative both conforms to universal law and also "preserves and enhances freedom."¹⁶ These claims that restriction of unreasonable freedom actually promotes reasonable freedom hinge on the notion of existence of a meaningful concept of positive freedom. Kant's political theory makes no sense apart from this concept of positive freedom. Furthermore, this concept of positive freedom for the individual person living in civil society correlates to construction of peace in the international application of Kant's theory.

Kant most fully presented the application of his philosophy to the level of international politics in his essay, "Perpetual Peace", published in 1795. For Kant the great political problem was how to remain autonomous while living in community. His solution to this problem depended on his insight that freedom has a paradoxical nature because the seeming threat to freedom, namely living in community with others, is also the necessary condition for a greater freedom. Freedom's paradoxical nature is more clearly revealed in the relationship between nations. Kant thought that nations have moral agency analogous to that of individual subjects. Kant argued that coercive pressure between nations can be justifiable because it limits negative freedom, but expands positive freedom. He wrote:

¹⁶ Paul Guyer, *Kant on Freedom, Law, and Happiness*. (New York: Cambridge University Press, 2000), 5.

As nations, peoples can be regarded as single individuals who injure one another through their close proximity while living in the state of nature (i.e., independently of external laws). For the sake of its own security, each nation can and should demand that the others enter into a contract resembling the civil one and guaranteeing the rights of each.¹⁷

Civil society secures freedom for the individual at the domestic level. The international parallel is that a civilized league of nations will secure the global peace.

The distinction between “mad freedom” versus “rational freedom” is a cornerstone of Kant’s argument in “Perpetual Peace”.¹⁸ The federation of free states recommended by Kant would be peaceful because states act reasonably. Being reasonable means being willing to accept coercive limits to freedom in order to exchange negative freedom for positive freedom. The quality of life possible through the establishment of a league of peace replaces the “savage” or “lawless” freedom with a “contracted” freedom.¹⁹ Thus, in the international application, the duty to construct a more stable freedom is analogous to the duty of an individual moral agent to act in accordance with reason. Given the history of war and international strife, the consequences of achieving positive freedom are dramatic.

Kant’s hope that achieving perpetual peace is possible depends on his particular understanding about reason, right, nature, and moral personhood. Kant’s

¹⁷ Kant, *Perpetual Peace*, 115.

¹⁸ Ibid., 115.

¹⁹ Ibid., 117.

international project depends on the idea that reason has sufficient reality to curb politics. He said that nature includes a state of war among nations.

Nonetheless, from the throne of its moral legislative power, reason absolutely condemns war as a means of determining the right and makes seeking the state of peace a matter of unmitigated duty. But without a contract among nations peace can be neither inaugurated nor guaranteed.²⁰

Reason's efficacy in securing peace depends on human will to construct systems of toleration and stability. Kant said that the only way for reason to provide peace is through the requirement that nations give up their "savage (lawless) freedom."²¹ In the same way, through contractual agreement, rights are established. Without the concept of the original contract "a people has no rights."²² Thus, reason is inseparable from Kant's notion of right. In fact, "the possibility of international right in general" depends on a contract among nations establishing a political right compatible with freedom.²³

Kant's optimism was grounded in his conviction that people have a "dormant moral aptitude to be governed by right."²⁴ So, in "Perpetual Peace," Kant suggested that nations could behave like rational agents, curtailing their wild, savage

²⁰ Ibid., 116.

²¹ Ibid., 117.

²² Ibid., 108.

²³ Ibid., 138.

²⁴ Ibid., 116.

freedom in order to achieve a stable peace. This would be more than a mere practical compromise based on mutual self-interest, but would be based on reason grounded in transcendental idealism. Practical reason makes peace possible and attainable. Nevertheless, Kant noted that there is a tendency to avoid being limited by civil society in this way. He cited the “depravity of human nature” as seen in each nation’s desire to be “unfettered”.²⁵ Kant acknowledged the dynamic of national interest that is sometimes irrational. He said that nations are inclined to see “their majesty to consist in not being subject to any external legal constraint.”²⁶ Furthermore, he noted that war “requires no particular motivation, but appears to be ingrained in human nature and is even valued as something noble...often war is begun only as a means to display courage.”²⁷ Unfortunately, in the brief space of Kant’s essay on peace, he did not fully address questions of how a federation of nations should respond to nations who do not submit to the requirements of peaceful coexistence. It is this question that Rawls tackled.

Kant’s Influence on Rawls

The influence of Kant’s “Perpetual Peace” on Rawls’s *Law of Peoples* is readily apparent. Rawls tried to further develop Kant’s ideas by pursuing the specific question of how peaceful, well-ordered peoples might be justified in using coercive force against others whose freedom threatens the international peace. Both

²⁵ Ibid., 116.

²⁶ Ibid., 115.

²⁷ Ibid., 123.

are arguments for a contract based on reasonable motives for coexistence. Both claim that such a commitment to peace can be founded on something more than mere stability motivated purely by self-interest. Kant claimed that the difference between a truce and a treaty of peace was that the former allowed mental reservations that would lead to future war, while the latter could actually “nullify all existing causes for war”.²⁸ When Rawls tenaciously maintained that peace could be more than mere *modus vivendi*, that stability for “right reasons” was preferable, he was continuing this Kantian project.²⁹ Rawls directly addressed the influence of “Perpetual Peace” on *The Law of Peoples* a number of times. In each case he attempted to distance his theory from the transcendental idealism of Kant. For example, Rawls wrote:

Since my presentation of the Law of Peoples is greatly indebted to Kant’s idea of the *foedus pacificum* and to so much in his thought, I should say the following: at no point are we deducing the principles of right and justice, or decency, or the principles of rationality, from a conception of practical reason in the background.³⁰

A footnote at that point in the text acknowledged that parts of *Political Liberalism* are “misleading in this respect.”³¹ Rawls hoped to establish new moorings for

²⁸ Ibid., 108.

²⁹ Rawls, LP, 45.

³⁰ Ibid., 86.

³¹ Ibid., 86, n.33.

meaningful discourse on ethics, leaving behind all traces of Kant's transcendental idealism.

This comparison between *Perpetual Peace* and *The Law of Peoples* is focused on the role of freedom in each. The main differences between the two works are disagreements about transcendental idealism, a teleological³² view of history, and concepts of moral personhood in relationship to human nature.³³ Important similarities include a desire for foundations of international peace that are more than mere *modus vivendi* and the hope that reason provides the means of reaching that goal. After examining these differences and similarities between the two works, I will argue that Rawls has not adequately solved the international problem of freedom and coercion without retaining some Kantian concepts that he hoped to reject. Kant's concepts of reason, right, and moral personhood are too entangled with Kant's teleological notion of history to serve as the neutral foundations Rawls wanted. Was Rawls able to tease out some elements of Kant's project for international peace without getting bogged down in Kant's comprehensive idealism? I will argue that Rawls's theory fails without maintaining at least some minimal adherence to Kantian

³² Although Kant famous ethical system is deontological, nevertheless his transcendental idealism included the claim that nature and history move toward an end. Thus his teleological view of nature and history are essential to his theory.

³³ Elisabeth Ellis, *Kant's Politics*. (New Haven: Yale University Press, 2005), 43. Ellis noted that removing the "teleological straitjacket" from Kantian constructivism makes possible Rawls's work and also clears the way for "the preconditions of autonomous citizenry." Ellis did not comment on *The Law of Peoples*.

positive freedom. The first step toward evaluating the extent of Rawls's success requires examination of the ways in which he departed from these Kantian concepts.

One difference between Kant's cosmopolitan vision and Rawls's Law of Peoples is the method offered for the two arguments. Rawls was determined to avoid Kant's transcendental idealism. In *Political Liberalism* Rawls distanced his theory from Kant's reliance on a normative concept of autonomy. He wrote, "The first difference is that Kant's doctrine is a comprehensive moral view in which the ideal of autonomy has a regulative role for all of life. This makes it incompatible with the political liberalism of justice as fairness."³⁴ In *The Law of Peoples* Rawls stated that his method was different than Kant's since he did not deduce principles of right and justice from a conception of practical reason.³⁵ Rather, Rawls argued that the three component parts, "the ideas of reasonableness, decency, and rationality" are normative ideas that lead to "principles and standards of right and justice." Rawls claimed that these principles and standards "will hang together and will be affirmed by us on due reflection."³⁶ Rawls's attempt to ground the argument in a reflexive equilibrium and overlapping consensus rather than deduction from practical reason is a clear deviation from the methods Kant used to ground his argument. However, when Rawls took this different path it resulted in a question over his confidence that

³⁴ PL, 99.

³⁵ LP, 86.

³⁶ Ibid., 87.

the principles reached through his method would “hang together.” In Kant’s theory the teleological view of history is the basis for the assurance that reasonable ends can be harmonious. But, without Kant’s transcendental idealism, Rawls must admit that the compatibility of different reasonable principles is not certain. He admitted that “there can be no guarantee” that these principles will hang together and be affirmed after reflection, because he does not share Kant’s transcendental idealism.³⁷

The methodological differences between Kant and Rawls did not necessitate every difference between the two projects. Some differences in their analysis are based in differing views of human nature and political assumptions. Kant’s transcendental idealism involved assumptions about the nature of history as a meaningful process in which ends can be identified. Rawls rejected that view of history as part of Kant’s comprehensive notion. Another difference demonstrates Rawls’s response to the realist critique of Kant’s work. Kant spoke of nations as the unit of analysis in the level of international relations discourse. Kant wrote that “a nation is a society of men” and the existence of a nation should be respected just as that of a “moral person.”³⁸ When Rawls declined to utilize the nation state as the building block of the international peace, he took a path different from Kant’s. The influence of the realist critique of Kant’s liberal utopian vision for peace is demonstrated in Rawls’s attempt to avoid the nation as the unit of analysis. Rawls

³⁷ Ibid.

³⁸ Ibid., 108.

spoke of peoples and societies rather than nations. In contrast, Kant used the terms “nations” and “peoples” interchangeably.³⁹ Rawls spoke of liberal democratic “peoples” but did not fully specify the extent to which peoples could be held responsible for actions as corporate agents. Rawls tried to avoid the realist critique based on national interest by suggesting that peoples could form a contractual law of peoples to secure international peace. The nature of these aggregates called peoples will be further examined in chapter four related to human nature in community. Here it is sufficient to note that Rawls avoided Kant’s claim that nations, like persons, are moral agents. In order to avoid Kant’s transcendental idealism, Rawls steered clear of applying Kant’s notion of moral personhood to aggregates of persons.

Rawls took seriously the critique that a liberal notion of the good was likely to infect any cosmopolitan notion of the right. Rawls wanted to restrict the concept of right to a meaning purged of metaphysical claims about virtue. However, Rawls’s hope was to retain a concept of justice with Kantian roots. Despite his rejection of certain elements of Kant’s work, Rawls shared important commitments that motivated Kant’s work. The main overlap involves a desire that reason can resolve conflict. In other words, in contrast to the view that “might makes right” or that power does not give way to reason, Rawls stands with Kant in the tradition that hopes for peace that is more than a precarious balance of powers. This is the basis of

³⁹ Ibid., 115.

Rawls's insistence that the motivation for international cooperation can be more than mere *modus vivendi*. Rawls said,

Stability for the right reasons describes a situation in which, over the course of time, citizens acquire a sense of justice that inclines them not only to accept but to act upon principles of justice.... We also conjecture, second, that the just society of liberal peoples would be stable for the right reasons, meaning that its stability is not a mere *modus vivendi* but rests in part on an allegiance to the Law of Peoples itself.⁴⁰

This possibility that toleration can be motivated by more than *modus vivendi* reflects Rawls's adherence to Kant's project in "Perpetual Peace." The view of human agency and of the power of reason reflected in this hope remains controversial. Various criticisms of *The Law of Peoples* center around this question of whether or not Rawls succeeded in establishing a credible argument for anything more than *modus vivendi*. After examining similarities between Kant and Rawls related to their views of reason and moral personhood, I will review some of the recent criticisms focused on this point.

Rawls shared with Kant an acceptance of reason as an authoritative power capable of arbitrating disputes. A major point of agreement between Rawls and Kant is the claim that reason can lead to prevention of war. Kant thought that since reason condemns war, people have a duty to seek peace.⁴¹ Rawls thought that reasonable

⁴⁰ Ibid., 45.

⁴¹ Ibid., 116.

people would not go to war because the causes of war could be eliminated. Rawls said,

The idea of a reasonably just society of well-ordered peoples will not have an important place in a theory of international politics until such peoples exist and have learned to coordinate the actions of their governments in wider forms of political, economic, and social cooperation. When that happens, as I believe, following Kant, it will, the society of these peoples will form a group of satisfied peoples. As I shall maintain, in view of their fundamental interests being satisfied, they will have no reason to go to war with one another.⁴²

Rawls exhibited a confidence in reason that assumes something significant and controversial about human nature. Following Kant, Rawls thought that reason was the key to the concepts of right or justice as fairness, even in the political sense.

When Rawls advocated stability for the “right reasons” was he using the term “right” in the Kantian sense? Before attempting to answer that question, I turn to complexities within Kant’s own use of these terms. Further examination reveals the lack of agreement about precisely what Kant himself meant by the term right or duty. At this point the ambiguity between Kant’s concept of virtue and his concept of right must be addressed.

Rawls’s insistence that the right can be separated from the good may be a deviation from Kant or it may be consistent with Kant’s later thought. Kantian scholars disagree on this matter. Jeffrie G. Murphy argued that Kant is often misinterpreted related to the role of human motive in ethics. Murphy wrote, “Kant

⁴² Ibid., 19.

contrasts such actions which are, in addition to being in accordance with duty, done from a respect for duty.”⁴³ Although the second kind of action is a moral action in Kant’s scheme, Murphy argued that the first type must also be moral regardless the agent’s motive.⁴⁴ The matter of stability for right reasons relates to the complex relationship between the sphere of law and the sphere of morality. It remains unclear whether or not the notion of a right or due action can be independent of the agent’s motive in performing the action. Murphy’s interpretation of Kant rests on the understanding that “Kant makes it a necessary and sufficient condition of a morally good will that it is a will which acts in accordance with duty for the sake of duty.”⁴⁵ Thus, it would be possible to act in accordance with duty from an improper motive. This provides space between acts that are right and acts that are virtuous in Kant’s later writing. Kantian scholars are divided over such interpretations of the terms like right, duty, and virtue. It would have been helpful if Kant had consistently distinguished between his “theory of virtue” and “his theory of right”.⁴⁶ If Murphy’s interpretation is correct, Rawls could retain Kant’s notion of “right” without implying Kantian claims about comprehensive concepts of duty grounded in transcendental idealism.

⁴³ Jeffrie G. Murphy, “Kant’s Concept of a Right Action,” *Kant Studies Today*. Ed. Lewis White Beck. (La Salle, Illinois: Open Court Press, 1969), 472.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid., 489.

Nonetheless, Kant's concept of moral personhood is inseparable from his idea of morality. "Existence as a moral person" is a reality that prohibits treating a person in the same way as a thing.⁴⁷ The recognition of others as ends in themselves is either granted or not. It can be shown to be reasonable, but those who question the authority of reason will not be convinced. If persons are recognized as moral agents, valuable ends in themselves, then the consent for political ground rules makes sense. Then, by extension, nations, like moral persons ought not to be treated as merely means to an end. Kant's confidence in moral personhood cannot be defended without reference to some comprehensive doctrine of the good. Kant asserted this principle, but left many unconvinced. He wrote:

For the moral principle in man never dies out, and with the continuous progress of culture, reason, which is able pragmatically to apply the ideas of right in accordance with the moral principle, grows through its persistence in doing so, and guilt for transgressions grows concomitantly.⁴⁸

Furthermore, Kant viewed the causes of war to be linked to depravity and evil in human nature.⁴⁹ The exact justification for these broad claims about evil and morality is rooted in Kant's transcendental idealism. Only with such Kantian notions of reason, right, nature, and personhood could Kant suggest that any constitution

⁴⁷ Kant, *Perpetual Peace*, 108.

⁴⁸ Ibid., 134.

⁴⁹ Ibid.

could be “completely just.”⁵⁰ Rawls sought to avoid Kant’s comprehensive notions of the good. However, readings of Kant’s later work, like that of Jeffrie G. Murphy, suggest that Kant sometimes used the term “right” in a more political sense. Therefore, it is possible that Rawls found some basis for seeking neutral grounds for practical, political foundations in Kant’s writing.

In “Perpetual Peace”, Kant acknowledged the need for pragmatic, political notions of right despite inability to reach pure knowledge of moral right. He wrote:

As hard as it may sound, the problem of organizing a nation is solvable even for a people comprised of devils (if only they possess understanding). The problem can be stated in this way: ‘So order and organize a group of rational beings who require universal laws for their preservation—though each is secretly inclined to exempt himself from such laws – that, while their private attitudes conflict, these nonetheless so cancel one another that these beings behave publicly just as if they had no evil attitudes.’ This kind of problem must be *solvable*. For it does not require the moral improvement of man; it requires only that we know how to apply the mechanism of nature to men so as to organize the conflict of hostile attitudes present in a people in such a way that they must compel one another to submit to coercive laws and thus to enter into a state of peace, where laws have power.⁵¹

Absent an indisputable comprehensive notion of the good, we might *hope* that some practical solution to problems of conflict could be found to establish coexistence. But why would we assume that such a problem is solvable? Despite our desire to resolve

⁵⁰ Ibid., 114.

⁵¹ Ibid., 124.

such problems, one possibility is that *no* solution to international conflict can be reached other than a highly reactive and tentative balance based on *modus vivendi*. However, Kant's teleological view of nature allowed him to assume that a more robust, practical solution was possible. He thought that nature would channel self-interest into a harmonious blend of coexistence. Unfortunately, Kant noted that even the "devils" in his scheme have to have "understanding." Kant's notion of nature itself includes recognition of reason as a compelling value. Thus, Kant viewed nature as the guarantor of perpetual peace, since conformity to reason leads people to coexist.⁵² Rawls attempted to build on this Kantian insight that reasonable elements of human nature incline people to cooperate and avoid war, even absent "good" motives.

At first it might seem that Kant's emphasis on right as distinct from moral virtue would be the concept of right that Rawls sought to develop in his political liberalism. The problem then is how to achieve more than *modus vivendi* as a basis for stable peace.⁵³ In Rawls's theory, as in Kant's, assumptions are made that reason has power and persons have value. Critics of Rawls have suggested that drawing on Kant's concepts more fully would strengthen Rawls's argument. For example, Kevin Dodson recommended that Kant's "connection between the establishment of

⁵² Ibid., 120.

⁵³ Kok-Chor Tan. "Liberal Toleration in Rawls's Law of Peoples. *Ethics* 108 (January 1998), 285. Tan argued that Rawls fails to achieve anything more than *modus vivendi* that way.

civil society and the institution of property” offers the key to solving the conflict between autonomy and authority.⁵⁴ Similarly, Brian Shaw argued that Rawls should have recovered Kant’s argument for property as a basis for his political theory.⁵⁵ However, a simpler solution with less reliance on comprehensive claims is possible. Rather than recovering Kant’s argument for property, Rawls could have adopted Kant’s notion of positive freedom.

If Rawls had explored Kant’s notion of positive freedom more tenaciously, perhaps a middle way between justice ethics and care ethics would result. Samuel Fleischacker questioned Rawls’s definition and use of “reason” and claimed that disagreements over what counts as reason render Rawls’s theories unhelpful.⁵⁶ The tension between contemporary debates between ethics based in justice, virtue, or care ends in a paralysis of inability to resolve basic questions. Rawls insisted that ethics pay attention to the question of how to be practical or political in addressing real-world problems. I am suggesting another way to reasonably synthesize justice theories with care theories.⁵⁷ If Rawls retained only the thinnest possible version of

⁵⁴ Dodson, 93.

⁵⁵ Brian J. Shaw, “Rawls, Kant’s Doctrine of Right, and Global Distributive Justice,” *Journal of Politics*, 67, No. 1 (February 2005), 221.

⁵⁶ Samuel Fleischacker, *A Third Concept of Liberty*. (Princeton, New Jersey: Princeton University Press, 1999), 202.

⁵⁷ Daniel Engster, Mary Wollstonecraft’s Nurturing Liberalism: Between an Ethic of Justice and Care,” *American Political Science Review*. 95, No.3 (September 2001), 577.

Kant's positive freedom then justice as fairness would be tied to mutual respect for the autonomy. Consideration based on mutual respect is a kind of care, although it is not a care based in sentiment. Rawls was trying to craft new arguments to anchor Kant's political project of reconciling freedom and coercion both within civil society and on the international level. He missed an important opportunity by dodging Kant's concept of positive freedom.

The controversy over a basis for ethics in political theory revolves around disagreements over concepts of moral agency. What weight or reality does a concept of moral agency have? The commitment to respecting a common morality based on the principle "that each person must respect the agency of every other" relies on a Kantian conception of moral personhood.⁵⁸ Human nature must allow mutual respect for the constructed freedom in civil society if human life is to be meaningful. The concluding line of *The Law of Peoples* refers Kant's conviction that if life is worthwhile it is in relationship to human's ability to be just. However, without Kant's confidence in transcendental idealism, Rawls genuinely questions "whether it is worthwhile for human beings to live on the earth."⁵⁹ Moral agency depends on the human will to use freedom to construct meaningful, worthwhile reality. This labor of the will, this freedom to fabricate meaning is positive freedom. Finally, Rawls adhered to Kant's idea that if life is worthwhile, it is due to human moral agency.

⁵⁸ Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs* 16, No. 1 (2002), 64.

⁵⁹ Rawls, LP, 128.

How does Rawls's conception of personhood compare with Kant's? Kant's concept of the individual cannot be severed from his convictions about free will. The freedom of the individual to craft a meaningful life is the microcosm of Kant's vision of how nations relate at the international level. Transcendental Idealism is the over-arching explanation of why it all fits together. Independent of Kant's comprehensive claims, Rawls has trouble reconciling public and private freedom. So, Rawls claimed that a meaningful distinction can be drawn between political freedom and moral freedom. In "The Idea of Public Reason Revisited," Rawls claimed that autonomy takes two forms: political autonomy and "purely moral" autonomy. This latter type of autonomy he likened to Mill's idea of individuality.⁶⁰ Rawls argued that because it does not satisfy the constraint of reciprocity, this latter type of autonomy is not a "political value."⁶¹ Much rests on whether or not this distinction holds up. Rawls thought of individuals as private entities that are free to develop comprehensive views of the good. However, these same individuals must set aside this work of crafting meaning when interacting in the public realm of interpersonal acts. More reflection needs to be done on whether this line between the political and the personal in Rawls is the same as the public versus private distinction prevalent in contemporary discourse. Rawls maintained that the good is a matter for the personal realm, while the right applies in the interpersonal or public realm. In this way, Rawls differed from Kant, who emphasized free will as the building block of

⁶⁰ Ibid., 146.

⁶¹ Ibid.

freedom among nations, and so reconciled the individual's experience of meaningful existence with the possibility of global cooperation.

Attention to the individual's experience as the locus of freedom raises problems for Rawls at the international level since Rawls argued that the well-being of individuals was not the focus of the Law of Peoples. In contrast to the cosmopolitan view, the Law of Peoples is not concerned with the well-being of individuals.⁶² The value of individual freedom is difficult to reconcile with the freedom of peoples, much less the freedom of nations in Rawls's system. The value of freedom is always inseparable from the individual possessing the freedom. Freedom has no intrinsic value apart from the will of those who may exercise it. The value of freedom is always manifesting in the freedom belonging to a person. Alan Hamlin formulated this point asking, "If freedom is valued intrinsically, who values it?"⁶³ Now it could be argued that even if a person did not value her own freedom, the observation of her servitude could be a problem for others who do value freedom. Nevertheless, it is worth considering that the value of freedom is connected with its instantiation in the life of persons. As Hamlin said, "Presumably the benefit of freedom is a benefit to the person whose freedom it is."⁶⁴ The conflict between

⁶² Ibid., 120.

⁶³ Alan Hamlin, "Welfare," *Companion to Contemporary Political Philosophy*. Ed. Robert E. Goodin and Philip Pettit. (Cambridge, Massachusetts: Blackwell Publishers, 1993), 655.

⁶⁴ Ibid.

various persons seeking to exercise their freedom requires resolution, so political freedom is never freedom in total isolation.

Kant accepted as obvious the superiority of civilized, limited freedom over savage freedom. However, the option of remaining outside of contractual agreements, of choosing savage freedom by isolating must be considered here.

Although perhaps it is inconceivable that a human could totally isolate and reject relationship with others altogether, it is not difficult to imagine an island of people being self-sufficient and completely removed from international relations.

Therefore, a legitimate question arises. Is there any moral duty to participate in international relations, or is self-interest the best argument for cooperation? It seems likely that a group that envisions either isolation or the possibility of dominance would not be motivated to cooperate since cooperation entails limits on freedom.

Kant's claim that by limiting savage freedom one actually increases freedom is paradoxical and not especially obvious at the level of international relations. Thus, difficulty of making a case for participation in a contractual arrangement including limitations of freedom that simultaneously increase freedom is more challenging at the international level. When considering cooperation between nations, it is easier to imagine either attempts at universal domination or total isolation as options nations might consider pursuing. In Rawls's international theory, it remains unclear why some people with unusually great power or resources might not choose to isolate rather than submitting to the Law of Peoples. What else besides self-interest based on mutual advantage would motivate the submission to bonds of cooperation

required for positive freedom when another option would be to remain in wild freedom? The answer Rawls seems to offer is only that peoples are reasonable and the causes of war can be eliminated. This question exposed the provisional nature of Rawls's project. Rawls's scheme requires a notion of moral personhood that relies on coherent reality of right reasons. Can justice as fairness hold up on an international level wholly detached from comprehensive notions of the good for the individual?

The evaluation of Rawls's project in the *Law of Peoples* depends on his success in demonstrating that there are reasons other than mere *modus vivendi* to cooperate. The extent to which Rawls convinces on this point may depend on his connection to Kant. Those who are amenable to Kant's reasoning are more likely to be convinced that Rawls should have retained more from Kant's theory. For example, Brian Shaw argued that Rawls needs Kant's concept of personhood because the very concept of personhood entails moral characteristics.⁶⁵ Shaw agreed on this point with Bernd Ludwig who argued that Kant's concept of *Rechtslehre* "cannot be detached" from his Transcendental Idealism because it is the metaphysic that is the foundation of the concept.⁶⁶ According to this line of thought, if it is meaningful to expect justifications of our actions or the actions of others then

⁶⁵ Shaw, 243.

⁶⁶Bernd Ludwig, "Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant's *Doctrine of Right*," (ed.) Mark Timmons, *Kant's Metaphysics of Morals: Interpretive Essays*. (New York: Oxford University Press, 2002), 170.

it must be so because of the moral nature of human subjects as rational agents. Shaw also acknowledged overlap with Katrin Flikschuh's argument that economic agency provides an account of Kant's metaphysics of freedom as an idea of reason. She wrote:

Although we can have no knowledge of transcendental freedom, we must assume its reality for practical purposes. The possibility of practical freedom thus depends on the idea of transcendental freedom. In his moral writings, Kant frequently articulates the negative/positive distinction with reference to the noumenal standpoint from which agents assess and determine the actions of their phenomenal selves.⁶⁷

Rawls did not adequately resolve the way in which a person's freedom to construct meaning relates to the nature of moral personhood. These claims boil down to a criticism that Rawls did not sufficiently develop his own view of moral personhood in contrast to Kant's. In a similar argument, Elizabeth Allison also defended Kant's radical conception of freedom as indispensable to his moral theory, based on a definition of the will as a "law unto itself."⁶⁸ She wrote:

Take anyone who claims the right to be free from a certain restraint by other human beings. She thus presupposes that she herself and a fortiori her fellow human beings are free agents, possible subjects of imputation and thus responsible for their actions. Otherwise it would be as pointless to claim any right of

⁶⁷ Katrin Flikschuh, *Kant and Modern Political Philosophy*, (New York: Cambridge University Press, 2000), 50.

⁶⁸ Henry E. Allison, *Idealism and Freedom*. (New York: Cambridge University Press. 1996), 136.

that kind, as it is pointless to claim any right against a lion or even to expect such a claim from a tree.⁶⁹

Either Rawls needed to admit more overlap with Kant, or Rawls needed to provide an alternative justification for his confidence in reason as a means of curbing freedom. One's conception of personhood and human nature shapes the evaluation of these claims. These scholars, many of them students of Rawls, drew on resources in Kant to move political theory forward beyond the contribution of Rawls.

In the same way, O'Neill suggested "building on less exclusively empiricist conceptions of reason, freedom, action and judgment."⁷⁰ My attempt to present positive freedom as a "less exclusively empiricist notion of freedom" stand in the tradition she advocated. Noting the trend in ethics and politics away from universalism she wrote:

My own view, however, is that if we are to have an account of justice that is relevant for a world in which state boundaries are increasingly porous to movements of goods, capital, ideas and people, and in which state sovereignty is increasingly circumscribed, we shall need to work on setting out a reasonable form of universalism for ethics and politics.⁷¹

O'Neill examined Kant's influence on Rawls and encouraged new readings of Kant with an eye to his political theory. In fact, she claimed that *Critique of Pure*

⁶⁹ Ibid, 169.

⁷⁰ Onora O'Neill, *Bounds of Justice*. (New York: Cambridge University Press, 2000), 2.

⁷¹ Ibid.

Reason is essentially a political text.⁷² If she is correct, Kant's grounding for the authority of reason is not purely metaphysical, but political. To illustrate her argument, she cited this passage from *Critique of Pure Reason*.

For reason has no dictatorial authority; its verdict is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objections or even his veto.⁷³

Reason is sometimes thought to be a reality that is given as part of existence, but this suggests that reason itself might be a convention, subject to political freedom. What it means to say that Kant's import is political rather than moral gets at the heart of Rawls's effort to divorce himself from Kant's metaphysics while gleaning a basis for persuasive ethics from Kant's work. New work is being done now reflecting on the ways that Rawls's work can be viewed as a reconstruction of Kant's conception of external right as a political rather than moral theory.⁷⁴ This idea that Kant's contribution was primarily political rather than moral harkens back to Rawls's claim that a line can be drawn between the political justice as fairness and the comprehensive notions of the good.

In *The Law of Peoples*, Rawls was adamant to defend the idea that toleration is more than a *modus vivendi*. In order to achieve this goal, Rawls must satisfy these

⁷² Kimberly Hutchings, *Kant, Critique and Politics*. (New York: Routledge, 1996), 7-8.

⁷³ O'Neill p. 15 (quoting CPR, a 738 /b 766). The translation from Paul Guyer is slightly different (CPR a739/b767, 643.)

⁷⁴ Paul Guyer, *Kant on Freedom, Law, and Happiness*, 267.

questions related to the construction of meaningful life on the part of the individual and the role that reason or meaning plays in public or interpersonal life. The concept of positive freedom provides a link between the freedom of an individual to pursue a meaningful life and the political freedom required to construct a life that sustains that pursuit. Kant's notion of positive freedom as autonomy is needed for Rawls's project. In Andrews Reath's, "Legislating for a Realm of Ends," he wrote, "Autonomy has a positive aspect, and without specifying the kind of meaningful activity that the agent is free to engage in, it remains an empty concept."⁷⁵ This is the solution Reath proposes to the conflict between freedom and civic constraint:

While the negative component of the schema (the "independence condition") removes the agent from certain kinds of social influence, its positive specification will make it clear that autonomy is only a possibility for agents located within sets of practices that structure their activity and interaction with other agents.⁷⁶

This explains why the concept of an autonomous moral agent is linked with that of the realm of ends. Similarly, it demonstrates why Rawls cannot claim to have demonstrated more than *modus vivendi* without a Kantian distinction between wild freedom and reasonable or meaningful freedom.

⁷⁵ Andrews Reath, "Legislating for a Realm of Ends," in (ed.) Andrews Reath, Barbara Herman, and Christine M. Korsgaard, *Reclaiming the History of Ethics: Essays for John Rawls*. (New York: Cambridge University Press, 1997), 217.

⁷⁶ Ibid.

To illustrate this point further, consider the claim that the reasonableness Rawls depends on already implies a Kantian notion of personhood. David Reidy claimed that Rawls regarded peoples as “corporate moral agents, as persons in the moral sense of the term.”⁷⁷ It is clear enough that Rawls’s liberal democratic convictions “commit him to an international politics of mutual respect and persuasion, voluntary exchange and interaction, rather than manipulation and coercion, among free and equal well-ordered peoples.”⁷⁸ However, this leaves unanswered the problem of justifications for coercion of persons who are outside the covenant of the Law of Peoples. Must they be respected as moral agents and treated as ends in themselves? In other words, when peoples are in societies that cooperate in contractual bonds of reciprocity and mutual agreement, they are acting as moral agents. However, Rawls does not give us enough information about how peoples relate to individuals in burdened or outlaw nations. In contrast, Kant assumed that since each nation had the moral autonomy analogous to that of a moral person, each nation was worthy of equal, mutual respect. The recognition of that autonomy assumes the constructing of positive freedom that is contracted at the international level. The realist critique of Kant and of liberalism questions that assumption. If there is more than the motivation of mutual self-interest then Rawls needs the

⁷⁷ David A. Reidy, “Rawls on International Justice: A Defense,” *Political Theory*, 32, No.3 (June 2004), 294.

⁷⁸ *Ibid.*, 312.

universal notion of positive freedom based in a notion of personhood. The most thorough analysis of these inadequacies in Rawls is offered by John Gray.

Gray's Critique

Gray's critique of Rawls is rooted in a critique of Kant. Kant, Rawls, and Gray would all agree that no one comprehensive idea of the good can be known as the best. Kant's distinction between pure and practical reason depends on this conviction as does Rawls's claim that his is a political not a comprehensive theory of justice. Whether or not normative comparisons of ways of life are grounded in any reality is a separate question. In other words, the good may be real despite our inability to know it. Given our inability to arbitrate ethical conflicts based on knowledge of the good, we are left with the question of how to live together in this world of rival values. Gray's significant contribution illuminates the inescapable tensions among values that are often lumped together as "liberal" values. His criticism of Rawls is on target when he notes that Rawls included as primary goods, values that lead to irreconcilable differences. Gray is correct in challenging Rawls's on an "Enlightenment faith in the harmony of values."⁷⁹ In that way, Gray unmasks the Kantian influence underlying Rawls's assumptions. However, the efficacy of the modus vivendi that Gray proposes as the solution for the future of liberalism does not look much different from what Rawls proposed in *The Law of Peoples*. What is

⁷⁹ John Gray, *Two Faces of Liberalism*. (New York: The New Press, 2000), 5. See also, 134, "primary goods being chain-linked with one another."

different is Rawls's insistence that the peace be based on more than mere *modus vivendi*. In this, Rawls adheres to Kant's tradition.

Gray published *Two Faces of Liberalism* in 2000, one year after *The Law of Peoples* was first published. Gray's criticism of Rawls is primarily based on *Political Liberalism* and earlier works and hence, makes no reference to the international application in *The Law of Peoples*. In *Two Faces of Liberalism*, Gray suggests that there is duplicity within the liberal tradition between viewing toleration as a pathway to one true best way of life versus viewing toleration as a strategy of peace. Gray cites Locke, Kant, Rawls, and Hayek as proponents of the idea of one best way. In contrast, Hobbes and Hume are his examples of "peaceful coexistence."⁸⁰ If Gray is correct that he can find examples of thinkers who claim that "the persistence of many ways of life is a mark of imperfection," then his argument holds. I will only analyze Gray's claim insofar as it is a criticism of Rawls. First of all, the term "way of life" needs clarification. Gray seems to mean something like culture or civilization by this term. Persistent determination to avoid promoting any way of life based on one comprehensive doctrine as best motivated all of Rawls's work. This is most clear in *The Law of Peoples*, where Rawls refused to join cosmopolitans in promoting universal claims about human rights. As far as Gray's criticism of Rawls goes, his theory about two faces of liberalism seems like a false dichotomy because Rawls's main claim about the best way is that it is a way of toleration of many ways of flourishing. Gray said liberals promote either one best way of flourishing or mere

⁸⁰ Ibid., 2.

toleration. He did not adequately disprove the possibility that toleration might be the best practical way given the impossibility of pure knowledge of the good. In other words, his dichotomy leaves out the idea of a pragmatic, limited, political claim about the best way as opposed to the idea of one way being best in a purely moral sense.

Rawls did not acknowledge Gray's criticism in any way in *The Law of Peoples*, but his insistence on preserving voice for decent non-hierarchical peoples could be viewed as an agreement with part of Gray's concerns. In fact, Gray's criticism of Rawls is based on a misrepresentation of Rawls's project. Rawls did not advocate one best way of life.

If it should be asked whether liberal societies are, morally speaking, better than decent hierarchical and other decent societies, and therefore whether the world would be a better place if all societies were required to be liberal, those holding a liberal view might think that the answer would be yes. But this answer overlooks the great importance of maintaining mutual respect between peoples and of each people maintaining its self-respect, not lapsing into contempt for the other, on one side, and bitterness and resentment on the other.⁸¹

Rawls's question was how to make a case against intolerance. In other words, when *modus vivendi* breaks down because of agents unwilling to operate by the terms of peaceful tolerance, what are the limits of tolerance? Gray's analysis is accurate and helpful in disarming liberals who would claim that one best way of life should be promoted. But, Rawls is not one of those liberals. Gray does not help us

⁸¹ Rawls, LP, 122.

with dilemmas of conflicting ways of life. Telling us that they should all have mutual toleration is not particularly beneficial when we come to a specific conflict between clashing ways of life. Gray's answer at that point is that a contextual, legislative process must be the procedure for resolving such conflicts.⁸² This is not much different than Rawls's answer. Gray criticized Rawls for relying too heavily on constitutional function rather than legislative institutions, but perhaps the choice between those paths would also be contextual and variable given different historical and cultural settings.

The serious problem in Gray's theory gets at the problem that motivates all of Rawls's work. First, consider these contradictions in Gray's writing. He says, "We do not need common values in order to live together in peace. We need common institutions in which many forms of life can coexist."⁸³ However, he does not explain how we can develop and maintain common institutions in the absence of common values. Furthermore, later Gray claims that human rights are prerequisite for *modus vivendi*. He said that human rights "can be honoured by both liberal and nonliberal regimes. Understood this way, universal human rights are not an obstacle to *modus vivendi* between different regimes but a condition for it."⁸⁴ This directly contradicts the earlier claim that common values are unnecessary. In the statement closest to

⁸² Gray, *Two Faces of Liberalism*. (New York: The New Press, 2000), 86.

⁸³ Ibid., 6.

⁸⁴ Ibid., 115.

Rawls's project in the *Law of Peoples*, Gray argued that in some cases enforcing universal rights justifies international intervention. "Enforcing universal rights may mean overriding a sovereign state."⁸⁵ Discernment about the justification of any particular intervention would be based on contextual judgment. This argument for a "worldwide regime of rights" is not unlike what Rawls proposed.

Gray said, "The case for *modus vivendi* is not that it is some kind of transcendent value which all ways of life are bound to honour. It is that all or nearly all ways of life have interests that make peaceful coexistence worth pursuing."⁸⁶ Although Rawls would not argue that one single way of life is best, he would agree that some kind of transcendent value or consensus on overlapping values is required for peaceful coexistence. Notice that Gray does not say that all ways of life benefit from peaceful coexistence. He adds the concession, "nearly all." Gray does not address the issue of those exceptions to the reasonable acceptance of *modus vivendi* as a means to peace. It is precisely these exceptions that are Rawls's primary concern in *The Law of Peoples*. When are tolerant peoples justified in using coercion against unreasonable, intolerant, or unjust actors? What are the limits of tolerance? These are Rawls's questions, and Gray does not help much with these problems.

Gray and Rawls may differ on the reality of human nature. However, Rawls needed to tell us more about his understanding of the relationship between individual

⁸⁵ Ibid.

⁸⁶ Ibid., 135.

autonomy and political autonomy if he would succeed in defending more than a *modus vivendi* motivation for cooperation between peoples. Gray said, “Being an autonomous agent is not, as Kant and his latter-day disciples seem to suppose, the timeless quintessence of humanity. It is a particular way of being human, and for that reason it has a history.”⁸⁷ How could one defend or negate such a claim? Various theories of truth could offer different possibilities. What is clear is that Rawls did not adequately resolves these questions about his own view of persons as autonomous agents. Before concluding this comparison of *The Law of Peoples* with Kant’s “Perpetual Peace,” a few brief side comments point to one additional similarity between the two. These are matters of economic dynamics among persons.

Economic Issues in Perpetual Peace

Kant did not fully address issues of economic freedom and regulation in “Perpetual Peace.” The gross disparity in wealth, as exemplified by a comparison between say Haiti and the United States today, was not acknowledged. This might be a result of Kant’s thinking of some nations as “savage” in contrast to civilized nations. There are only a few remarks in “Perpetual Peace” that can be related to questions of justice in economic distribution. He did claim a cosmopolitan right of “universal hospitality” that includes the right to visit any land based on common

⁸⁷ Ibid., 123.

ownership of the globe.⁸⁸ He also spoke of “nature’s provisional arrangements” in reference to the availability of some natural resources even in remote and marginally habitable regions.⁸⁹ He expressed disapproval of the “inhospitable conduct” of civilized nations towards “foreign lands and peoples,” involving commercial ventures that were the “same as conquering them.” Kant described that economic conquest as “terrifying injustice.”⁹⁰ He did exhibit an optimism that international trade and international peace would go hand in hand. He thought that the “spirit of trade” could not coexist with conditions of war, and therefore that those interested in development of commerce would advocate peace.⁹¹ His caution regarding foreign debt indicates an awareness of the problems of concentrated economic power as a threat to freedom and peace. He warned about the potential of foreign debt to result in an imbalance of power between nations. In fact, he stated that forbidding foreign debt would be a condition of perpetual peace.⁹² Similarly, Kant noted that one nation’s excessive military spending could threaten international peace. He said that the “power of money” is the “most reliable instrument of war.”⁹³ Since the “hoarding

⁸⁸ Kant, *Perpetual Peace*, 118.

⁸⁹ Ibid., 121.

⁹⁰ Ibid., 119.

⁹¹ Ibid., 125.

⁹² Ibid., 109.

⁹³ Ibid., 108.

of treasure” may be viewed as “preparation for war,” Kant recognized the requirement of some general economic regulation.⁹⁴ Unfortunately, Kant did not fully address the analysis of economic issues in relation to international peace. For example, the limits of a duty of economic aid to foreign nations is not addressed.

Kant’s concept of positive freedom is grounded in free will. It emphasizes the possibility of detachment from all influences besides the free will. As a polemic against determinism, Kant’s arguments promoted an understanding of humans able to overcome external conditions. That is to say, poverty is no justification to avoid one’s obligations. Circumstances of poverty or wealth were irrelevant to the ability to do one’s duty. The articles of perpetual peace would apply to all nations regardless of their level of wealth. The articles primarily relate to conduct of war rather than regulation of commerce. The comments included on economic matters do not answer questions about the extent of a nation’s duty to aid other impoverished nations. The closest Kant came to addressing this question was in a statement that duty should not be reduced to mere benevolence. He wrote:

Both the love of man and the respect for the rights of man are our duty: the former is only conditional, while the latter is unconditional, absolutely imperative duty, a duty that one must be completely certain of not having transgressed, if one is to be able to enjoy the sweet sense of having done right. Politics readily agrees with morality in the first sense (as ethics) for both surrender men’s rights to their rulers. But with regard to morality in the second sense (as doctrine of right), before which it must bend the knee, politics finds it advisable not to enter into any relation

⁹⁴ Ibid., 109.

whatsoever and, unfortunately, denies all reality to morality and reduces all duties to mere benevolence (Wohllwollen).⁹⁵

We can only conjecture about the extent of a duty of international wealth redistribution that Kant would recommend. It seems likely that he would claim the duty of international economic aid would be a demand of justice rather than a superogatory duty.⁹⁶ As a precondition of life, economic resources must be linked with Kantian positive freedom.

Kant's positive freedom is not about economic enabling conditions of freedom. If we return briefly to a distinction noted in the previous chapter, the clarification offered by Tara Smith as the positive freedom of enabling conditions versus that of ideal deployment, we must say that Kant's positive freedom involves a type of ideal deployment. However, the ideal being promoted is simply the claim that individuals are the source of right. In one way this is not the promotion of an ideal or value but rather a claim about the basis of any value. To promote this value of individual self-determination is to promote the thinnest possible notion of the good short of utilitarianism. As rational beings, persons are the locus of value, meaning, and right. That is why rationality is inseparably linked with free will. The consequence is a claim that humans have universal rights and obligations in respect

⁹⁵ Ibid, 139.

⁹⁶ Onora O'Neill offers a Kantian criticism of libertarian move reducing redistribution to a superogatory charity as opposed to a requirement of justice. *Bounds of Justice*, 128.

to one another. Kant's concept of positive freedom is only one building block in the construction of his larger moral theory. Since Kant's transcendental idealism and teleological view of history go too far to be compelling, we might be tempted to reject his concept of positive freedom as well. However, this would leave us with only a utilitarian basis for ethics. If we extract Kant's notion of positive freedom as rational acts of free will and then link this with enabling conditions like resources, we would approach a meaningful concept of freedom with universal appeal.

A recent criticism of Rawls offered by Roberto Alejandro suggests that "Rawlsian justice is deontology with a utilitarian bent," because of the way the difference principle maximizes material benefits.⁹⁷ Alejandro's work was published prior to *The Law of Peoples*, and does not engage the international project. However, his criticism could be extended to the Law of Peoples in this way. If the basis for a duty of assistance is based only on modus vivendi justifications, then it amounts to a utilitarian argument. Of course, Rawls sought to avoid this, reiterating that the duty assistance had to be based on more right reasons, not just modus vivendi. The question of the cut off point for a duty of international aid and the refusal to apply the difference principle on the international level jeopardize that argument. This will be the subject of my argument in subsequent chapters. Rawls

⁹⁷ Roberto Alejandro, *The Limits of Rawlsian Justice*. (Baltimore, Maryland: Johns Hopkins University Press, 1998), 63.

has been criticized for focusing on Kant's ethics at the expense of his politics.⁹⁸ This can be illustrated in Rawls's failure to heed Kant's warning that duty should not be "reduced to benevolence."⁹⁹ Rawls does actually propose a duty of assistance that can be reduced to mere benevolence. Why did Rawls stop short of arguing for the same "universal hospitality" that Kant advocated?¹⁰⁰ The reason must be related to the unresolved questions about individual moral agency and value that Rawls sought to avoid.

In recent decades, Kant's *Perpetual Peace* has been viewed in international relations theory as utopian liberalism that had been discredited by the realist critique.¹⁰¹ Given the reaction against utopian liberalism, and especially utopian political thought in the Kantian tradition, Rawls showed exceptional nerve in suggesting that this Kantian tradition should be reclaimed. Time will tell whether or not Rawls's attempt to regenerate the possibility of realistic utopia influences mainstream international relations theory. Reviewing the *Laws of Peoples* for the international relations academic circle, Chris Brown stated that Rawls was clearly

⁹⁸ Elizabeth Ellis, 181. *Kant's Politics: Provisional Theory for an Uncertain World*, (New Haven, Connecticut: Yale University Press, 2005), 181. See also O'Neill.

⁹⁹ Ibid., 139.

¹⁰⁰ Ibid., 118.

¹⁰¹ See E.H. Carr and Reinhold Niebuhr. Realist critique of utopian liberalism.

“on a different wavelength from most international-relations scholars.”¹⁰² In that field where ethics is sometimes dismissed as irrelevant, Rawls’s project challenged assumptions that power is the legitimate focus of inquiry rather than justice. In his review of Rawls, Brown wrote:

One of the most important impacts of Rawls on international relations and the study of international ethics might be to relegitimate the construction of utopias—always assuming that they are “realistic utopias,” and that the mistake of taking “what might be” as a description of “what currently is” is not repeated.¹⁰³

On this point, I agree with Brown, and hope that Rawls’s influence on international relations will continue to grow. Without a persuasive framework for global dialogue on ethics, the world is left vying for power or seeking to balance power to achieve tenuous peace. Rawls attempted to reclaim and recast aspects of Kantian theory that might withstand both the realist critique and his own standard of metaphysical neutrality. In order to succeed in demonstrating that there is a possibility for peace based on more than *modus vivendi*, Rawls needed to retain a bit more of Kant’s theory. The following chapters develop this argument, that Kantian positive freedom could link critiques of Rawls based on resources, humans in relationship to each other, and labor.

¹⁰² Chris Brown, “John Rawls, ‘The Law of People,’ and International Political Theory,” *Ethics and International Affairs* 14 (2000) 132.

¹⁰³ Ibid.

CHAPTER THREE

FREEDOM AND RESOURCES

We allow that there are certain things that are so bad, so deforming of humanity, that we must go to great lengths to prevent them. Thus, with Cicero and Seneca, we hold that torture is an insult to humanity; and we now go further, rejecting slavery itself. But to deny people material aid seems to us not in the same category at all. We do not feel that we are torturing or raping people when we deny them the things that they need in order to live—presumably because we do not think these goods are in the same class. Humanity can shine out in a poor dwelling, and we tell ourselves that human dignity has not been offended by the poverty itself. Poverty is just an external: it does not cut to the core of humanity. But of course it does. The human being is not like a block or a rock, but a body of flesh and blood that is made each day by its living conditions. Hope, desire, expectation, will, all these things are shaped by material surroundings.¹

There is a deep complementarity between individual agency and social arrangements. It is important to give simultaneous recognition to the centrality of individual freedom and to the force of social influences on the extent and reach of individual freedom. To counter the problems that we face, we have to see individual freedom as a social commitment...Development consists of the removal of substantial unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency.²

¹ Martha Nussbaum, "Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy," *Journal of Political Philosophy*. 8: No. 2 (2000), 191.

² Sen., 1999, xii.

“You lack political liberty or freedom only if you are prevented from attaining a goal by human beings,” said Isaiah Berlin.³ Therefore, inabilities are not cases of unfreedom unless the inabilities are results of human action. The fact that I cannot jump over the moon does not mean I am not free to do so. Inability and unfreedom are two different things, at least according to the strictly negative definition of freedom. Rawls accepted this distinction that separated freedom from ability. As a result, his theory is vulnerable to the criticism that it inadequately addresses the cases in which ability is the result of human action. Despite some clear cases in which inability is not the result of human will, there are ample cases that blur the distinction. For example, the fact that I cannot buy bread without money results from some combination of both natural conditions and socially constructed economic systems. Limits on capabilities to secure necessary goods for survival, pursue education, or choose a particular type of employment are not determined purely by nature. Clearly, there are many ways that even a person’s abilities are determined by cultural, political, and social structure. The specific question I put to Rawls’s theory in this chapter concerns how to resolve the conflict between freedom of the entrepreneur to invest in the global economy and the consequences for the freedom of the worst off members of humanity. I claim that the relationship between freedom and physical resources is inadequately developed in Rawls’s thought.

³ Berlin, TC, 122.

Rawls hoped this potential problem of freedom being merely formal in liberal theory could be overcome through his attention to equalizing the *worth* of political liberty. In the domestic case this works assuming that substantial redistribution takes place. However, in the international application of his theory, freedom may be meaningless or merely formal freedom, without the application of the difference principle. If Rawls had explored positive freedom further, he would not have been able to exempt the application of the difference principle in the Law of Peoples. Just as the worth of money depends on the local contractual agreements about legitimate currency, so the worth of freedom is likely to depend on such agreements in Rawls's international theory. Rawls sought to avoid injustices resulting from accidents of nature, while preserving consequences of personal choice. However, since his theory assumes basic subsistence needs be met as a background condition for procedural justice, his theory is irrelevant to important problems. After mounting this criticism based in a concept of positive freedom, I explore similarities between my ideas and those of Martha Nussbaum. Nussbaum criticized Rawls because he failed to adequately appreciate the ramifications of capabilities as a measure of freedom.

But Rawls's approach, even though more promising as a basis for international thinking than Rawls himself is willing to suggest, nonetheless has some serious difficulties. By measuring who is better off and who worse off in terms of resources, the Rawlsian model neglects a salient fact of life: that individuals vary greatly in their needs for resources and in their abilities to convert resources into valuable functionings.⁴

⁴ Nussbaum, WHD, 68.

In her book, *Women and Human Development: the Capabilities Approach*, Nussbaum wrote that her concepts of “preference, choice, desire, and capability” need further analysis.⁵ In this chapter I will further the work of clarifying those concepts and their relationship to the concept of positive liberty. Just as Nussbaum rejected Rawls’s attempt to leave family matters outside the scope of justice that his theory addressed, even so, Nussbaum’s critique points to the inclusion of economic matters as being inseparable from Rawls’s theory of justice. Rawls’s theory is vulnerable to critiques related to the relationship between freedom and property resources as enabling conditions shaping ability. Rawls’s decision to distinguish between liberty and the worth of liberty will be analyzed as the key to a distinction between formal versus substantive freedom. First, I turn to a brief review of the ways that material resources relate to freedom according to Rawls.

Freedom and Other Primary Goods

In *A Theory of Justice*, Rawls developed the relationship between freedom and resources. He always acknowledged that basic goods, including material resources were essential in order to secure liberty. He wrote:

Now the assumption is that though men’s rational plans do have different final ends, they nevertheless all require for their execution certain primary goods, natural and social. Plans differ since individual abilities, circumstances, and wants differ; rational

⁵ Nussbaum, “Duties of Justice, Duties of Material Aid: Cicero’s Problematic Legacy,” 299.

plans are adjusted to these contingencies. But whatever one's system of ends, primary goods are necessary means.⁶

The most basic means necessary for a rational plan are material goods required to sustain life. Freedom to execute a rational plan presupposes that these required goods be available. Therefore, provision for humans' need of property resources is assumed as part of the background conditions of justice as fairness. Property resources are on the list of primary goods, but not all primary goods are material resources. Primary goods are those goods that everyone is presumed to want. Whatever values a person may have or whatever life plan a person wishes to pursue, primary goods are those goods that would always be desired by everyone. The assumption is that these goods are either valuable in themselves or as a means to other ends. Rawls provided this list of primary goods:

- 1). rights and liberties
- 2). opportunities and powers
- 3). income and wealth⁷

These primary goods would be justly distributed according to the difference principle so that inequalities would have to benefit the least well off members of the society. Notice that liberty is listed as a primary good. There is a tension between promoting a good like wealth versus promoting a good like liberty. By including both on this list, the problem of prioritizing their value relative to each other is

⁶ Rawls, TJ, 93.

⁷ Ibid., 92.

obscured. In other words, at times liberty must be restricted in order to promote production of wealth. In contrast, there are times when wealth or income production are limited in order to protect freedom. By listing these conflicting values together, Rawls opened the door to confusion about how he resolved these problems. At times he seemed to equivocate between different types of benefits for the “worst off person.” For example, he argued that inequalities in wealth benefit the “representative unskilled worker” because these inequalities result in overall improvement of the system. His defense is that the improvement in the situation of the most disadvantaged person is better than it would be absent the inequality in freedom. It is the liberty of the entrepreneurs that

...encourages them to do things which raise the longterm prospects of the laboring class. Their better prospects act as incentives to that the economic process is more efficient, innovation proceeds at a faster pace, and so on. Eventually the resulting material benefits spread throughout the system and to the least advantaged. I shall not consider how far these things are true. The point is that something of this kind must be argued if these inequalities are to be justified by the difference principle.⁸

“The difference principle is compatible with the principle of efficiency” because the worst off person is better off in an efficient system than in an inefficient system.⁹ In other words, Rawls sought the fairest procedures possible for arriving at the most just system possible. He did not attempt empirical analysis of whether or not material

⁸ Ibid., 78.

⁹ Ibid., 79.

benefits actually do trickle down. However, he understood that equality of opportunity in terms of equal starting points in life could not be assured when unequal outcomes are allowed. He wrote:

Now those starting out as members of the entrepreneurial class in property-owning democracy, say, have a better prospect than those who begin in the class of unskilled laborers. It seems likely that this will be true even when the social injustices which now exist are removed (TJ, 78).

Here Rawls admitted that even if social injustices are removed, inequalities in economic class cannot be overcome through compensatory measures. Yet, he maintained that this inequality is justifiable when the difference principle is in effect. Evaluation of his original project hinged on the definition of terms like “worst off person” and “better off.” In what sense is it true that the worst off person is better off in an efficient system than an inefficient system? Consider the case of a person who earns two dollars a day in an inefficient system and has little choice related to conditions of labor because in her society most people make only two dollars a day. Now consider that case in comparison with another society in which most people make only one dollar a day in an equally inefficient system where the cost of basic goods is the same as in the previous case. Is the person in the first case better off than the person in the second case? Without establishing a definition of the good we cannot answer the question. Adding an additional third comparison doesn’t help. If time passes and either society becomes more efficient so that income relative to expense rises significantly could we say that the members of the society are better

off? The same problem of defining the good exists. Rawls asserted that people are better off when their access to primary goods increases, but he did not adequately address problems of trade offs between various items on that list of primary goods.

Are there cases in which liberty is justifiably sacrificed for material wealth?

Liberty, power, and material wealth are all on Rawls's list of "the social primary goods."¹⁰ These are goods that are assumed to be valuable regardless of one's individual comprehensive concept of the good. Given Rawls's definition of primary goods, it is possible that an increase in the level of affluence of a society is offset by diminished power or liberty. Rawls's insistence that liberty not be limited except for the protection of liberty prevents justification of losses of freedom for the sake of material prosperity. The priority of the first principle over the second principle means that "a departure from the institutions of equal liberty required by the first principle cannot be justified by or compensated for, by greater social and economic advantages."¹¹ However, when he defended the unequal worth of liberty, he returned to overall increases in material wealth as the benefit to the worst off person.

These unresolved tensions between various goods on the list of primary goods relate to the problem of the worth of liberty. If we ask why liberty is valuable or what liberty is good for, then we come back to comprehensive notions of the good. To avoid these problems Rawls later claimed that his is not a comprehensive,

¹⁰ Ibid., 62.

¹¹ Ibid., 61.

but a political theory of justice. In *Political Liberalism*, he responded to criticisms about his distinction between liberty and the worth of liberty by bolstering his stipulation that provisions to ensure equal worth of political liberty be maintained. He wrote,

This is done by including in the first principle of justice the guarantee that the political liberties, and only these liberties, are secured by what I have called their 'fair value.' To explain: this guarantee means that the worth of the political liberties to all citizens, whatever their social or economic position, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to influence the outcome of political decisions.¹²

Equal liberties secured by the first principle include all the liberties of citizenship. Equal liberties do not apply to power over decisions in the workplace or corporate board room. But leaving that issue aside for now, even securing equal liberties listed as political would require a level of redistribution of material resources approaching equality. Since Rawls left unanswered questions about how to accomplish this redistribution, his notion of freedom is merely formal. Of the following list of political liberties, many do not require equality of material resources. He wrote:

The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary

¹² PL, 327.

arrest and seizure as defined by the concept of the rule of law.¹³

On the one hand, public financing of elections can ameliorate some of these problems as Rawls suggested. Providing equal opportunity for voting may be a manageable accomplishment.¹⁴ However, on the other hand, because such problems can never be totally eradicated, equal worth of liberty to hold public office is merely formal when there are gross inequalities in material wealth. Similarly, freedom of speech will not be of equal worth unless equal material resources are available to all persons. The freedom of a citizen who makes two dollars a day in comparison with the owner of the company who makes thousands a day is an equal freedom from the perspective of the purely negative concept of liberty.

Rawls admitted that freedom is the type of good that requires other primary goods as prerequisites. Similarly “income and wealth” are listed as other primary goods and ownership of these types of property resources require the establishment of some rights. In fact, I think that assumptions about property rights are already presupposed by including income and wealth as primary goods. Rawls discussed private property regimes as one possible way of organizing a just society, but by listing income and wealth as primary goods, he suggested that access to these goods

¹³ TJ, 61.

¹⁴ PL, 359.

must be available in some form.¹⁵ Income and wealth might be included in the broader category of property that I will refer to as property resources. In order to enjoy a primary good like liberty, one must have access to material goods that sustain life and allow participation in social systems. Rawls consistently argued that access to primary goods was a prerequisite for his theory. However, the exact level of material resources needed would depend on the particular setting. For example, in some systems, not only shelter, food, and clothing would be required for a political freedom like voting, but access to transportation and a certain level of education would also be necessary. Thus, Rawls acknowledged that a minimum welfare is required for political liberty, at least enough to secure effective political participation. Therefore, in Rawls's theory liberty is dependent on other primary goods. He wrote, "Liberty is governed by the necessary conditions for liberty itself."¹⁶

Rawls's list of primary goods seems to include some goods that are inherently valuable. For example, property resources like access to clean water or food are such obvious primary goods that they are not listed as primary goods. They are natural goods rather than primary goods. But are income and wealth primary goods in the same way that political freedom is a primary good? To the extent that survival needs are met, income and wealth are tools to pursuing a life plan or a substantive notion of the good. Rawls seems unconcerned with scenarios in which

¹⁵ TJ, 259.

¹⁶ Ibid., 251.

survival needs are not met. Of course, he has insisted that his theory of justice only applies when background conditions of non-starvation are already met. However, this move left him vulnerable to the criticism that his theory is irrelevant to some of the worst cases of injustice related to wealth distribution. Why the lack of attention to the problem of unmet survival needs? His rational choosers behind the veil of ignorance are supposed to assume that survival needs are met, and he himself brushes off this problem by assuring us that we can assume that survival needs will be met. But the historical and actual conflicts related to balancing enough property resources for survival with interest in other primary goods are daunting. Aren't some of these goods that Rawls called primary goods really secondary goods? On the hierarchy of basic survival the most basic primary goods are more basic than what Rawls listed. What system would rational choosers select to ensure that survival needs of the community are met? Rawls wanted to leave this question open, hoping that a variety of specific economic systems or arrangements would be equally acceptable under the two principles of justice.

Self respect is another primary good that becomes more highly emphasized in his later writings. "Health and vigor" as well as "intelligence and imagination" are listed as primary goods that are natural goods.¹⁷ However, this distinction between natural goods and social values is problematic. Although clearly there are cases of natural inequalities in health or intelligence, there are many other cases in which health and even intelligence are directly related to socially constructed factors like

¹⁷ TJ, 62.

wealth distribution. Rawls intended to provide a corrective for inequalities based in nature. He wrote,

All social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of advantage any, or all, of these values is to everyone's advantage.¹⁸

Since some material goods are necessary conditions for liberty itself, one must assume that Rawls would accept redistribution and regulation of markets as sometimes required for the sake of liberty. His reluctance to specify terms and means for this redistribution and regulation derives from his liberal commitment to prioritize liberty as the most important good. He wrote, "The precedence of liberty means that liberty can be restricted only for the sake of liberty itself."¹⁹ But, it may be that liberty itself requires restriction of certain types of economic liberty in order to protect political liberty. The concept of positive liberty can help sort out the distinction between material prerequisites to effective political participation and acts of will in cooperation with others that construct a social freedom that is more than formal. Rather than proceed in that direction, Rawls tried to reconcile these problems by separating liberty from what he called the "worth of liberty." In his discussion of equal liberty Rawls wrote:

The inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and

¹⁸ Ibid.

¹⁹ Ibid., 224.

a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I shall think of these things as affecting the worth of liberty.²⁰

Poverty and ignorance represent two different types of problems with freedom. For now, I set aside the problem of the relationship between freedom and ignorance. I will focus here on the relationship between freedom and what Rawls here refers to as “means.” In this case, poverty is equated with a lack of means. Notice that the terms “inability” and “opportunity” are used to describe the results of poverty. Capacity to advance one’s own ends and capabilities are separate from liberty but reflect the worth of liberty in Rawls’s theory.

The Worth of Liberty

Why did Rawls make this significant move, locating the problems that poverty poses for freedom in this term “the worth of liberty”? He sought to avoid conclusions about the necessity of redistribution of wealth, thus staying neutral with respect to the laissez faire capitalism versus socialism debate. Furthermore, he sought to address the type of freedom that he understood as political freedom as opposed to economic or personal, familial issues of freedom.

Thus liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional

²⁰ Ibid., 204.

to their capacity to advance their ends within the framework the system defines.²¹

Justice as fairness requires that citizens equally share the capacity to act politically. Political voice, representation, and participation are rights of citizenship that would be held equally. Rawls argued that in contrast to equality of political power, equality in property resources would not be required by justice as fairness. He argued that in some cases, inequality in material resources would benefit the least well off. Since allowing inequalities is necessary to raise the level of affluence or most effective production, those at the bottom benefit from these arrangements, according to this theory. Therefore, such inequalities would be justifiable because they cause everyone to be better off than they would be otherwise. Although the worth of liberty would be different in respect to ability to utilize material resources as a mean to satisfactions of desires, what Rawls was willing to call liberty itself would be equal. He wrote, “Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all.”²²

Because of concerns for the worth of liberty, Rawls insisted that “the value of the equal rights of participation for all members of society” be protected by a constitution.²³ We want assurance of the value of the equal rights, not just rights that

²¹ Ibid.

²² Ibid., 205.

²³ Ibid., 224.

are formally equal. In a just system a constitution “must underwrite a fair opportunity to take part in and to influence the political process.”²⁴ On the other hand, Rawls did connect the worth of liberty with the concept of opportunity. He understood that equality of opportunity requires compensation for starting places that are unequal. He said,

... Those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born.²⁵

However, in this early work Rawls showed inadequate attention to the problems those inequalities in material resources pose for power in what he calls political liberty. Power to influence elections, political process, and all levels of government related to liberty is grossly different depending on one’s level of material wealth. Poverty represents a bottom level of the economic spectrum, and it is true that measures can be taken to insure certain rights of political participation for the poor. Nonetheless, the inequality of political power between rich and poor is never eradicated. Rawls said, “In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and

²⁴ Ibid.

²⁵ Ibid., 73.

endowed.”²⁶ Prospects rather than outcome must be equal. The reason that fully equal outcomes are not defended by Rawls is justified by the difference principle. In other words, Rawls claimed that strict equality of outcomes would disadvantage even the worst off members. Furthermore, equality of outcomes cannot be reconciled with reciprocity, since those who do not work would benefit at that same level as those who do. Therefore, Rawls argued that not outcomes, but opportunities should be equal. In this passage Rawls emphasized fair procedure for those people who have equal *willingness* to achieve, not those who exert similar levels of effort. This subtle point has important consequences related to Rawls’s understanding of reciprocity. The distinction can be illustrated by imagining that two workers both have an equal willingness to labor, but for whatever reason, one of them does not actually exert the effort in an act of labor. Equal ability and opportunity to labor do not always coincide with equal willingness. However, discussions of equality will only be analyzed here insofar as they intersect with the notion of freedom. Rawls would like to leave open possibilities that many types of economic systems could be just. He did not adequately resolve the conflict between highly efficient economic systems that augment the material resources of a people versus rival systems that promote values other than material well-being. Such choices between contending systems would be left up to the legislative level for resolution. However, the potential for material wealth to prevent fair procedure at the legislative level is not fully resolved. His discussion of freedom focuses specifically on political freedom

²⁶ Ibid.

since having voice in the procedure is what is required for justice. Rawls was stalwart in his defense of political liberty which he defined as, “The freedom to participate equally in political affairs.”²⁷ He wrote:

Liberty is unequal as when one class of persons has a greater liberty than another or liberty is less extensive than it should be. Now all the liberties of equal citizenship must be the same for each member of society.²⁸

This is part of fair procedure specified by persons in the original position. Because Rawls’s theory is a procedural concept of justice, he is most concerned that the process for making political decisions is fair, even though there may never be agreement about outcomes such as distribution of resources being fair. He thought that

Compensating steps must, then, be taken to preserve the fair value for all of the equal political liberties. A variety of devices can be used. For example, in a society allowing private ownership of the means of production, property and wealth must be kept widely distributed and government monies provided on a regular basis to encourage free public discussion.²⁹

Sometimes inequalities in political power are the result of natural talents and disabilities resulting from birth. In order to examine this point more fully it is

²⁷ Ibid., 201.

²⁸ Ibid., 203-204.

²⁹ Ibid., 225.

necessary to briefly discuss Rawls's concern that natural inequalities be rectified whenever possible.

Rawls said that just as people do not deserve the inequalities in their abilities and resources derived from being born in a certain body, class, and culture; similarly they do not deserve inequalities in what he called "natural liberty."³⁰ His notion of desert is shared by many who affirm as a common sense agreement the idea that it seems unfair that some be born with talents, abilities, and personal attributes that advantage them from the start. This intuitive idea implies that those born with physical disabilities or unfortunate personal attributes should not be disadvantaged because of these accidents of nature. This matter will be considered more fully in chapter four relating ability and talent to work. Nonetheless there exists sharp disagreement about the implications of such natural differences for justice. Rawls rejected that idea that some persons might be justly privileged precisely because they are naturally endowed with excellent virtues or abilities. For this reason, Rawls has been faulted for defending in his later work the seemingly contradictory position that the benefits of being born in one nation as opposed to another are defensible. This matter will be considered more fully in chapter three exploring the relationship between moral obligations and state borders. The distribution of natural endowments by birth does not justify inequalities in resources according to his reasoning in *A Theory of Justice*. He wrote,

³⁰ Ibid., 66.

It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments any more than one deserves one's initial starting place in society."³¹

Because of Rawls's notion of desert, he should not be satisfied with such a limited notion of freedom. In other words, equality of starting place is required for justice as fairness. Equalizing starting place requires equalizing outcomes since each generation's choices determine starting places for the next. When selecting options from behind the veil of ignorance, persons would choose a more robust notion of freedom that was underwritten with better property resources. Access to political freedoms like political voice and vote would not be enough. Rawls's concept of freedom is a formal conception, a negative conception. Rawls said, "Liberty and opportunity, income and wealth, and above all self-respect are primary goods."³² If he operated with a positive liberty conception he would clarify how there is no equal liberty without equal access to property. As it is, the conflicts between those who choose to maximize competing goods from the list are left unresolved.

In Political Liberalism, Rawls offered little change in the way he viewed the material conditions necessary of the value of liberty. He maintained his view that the "exclusive use of personal property" is one of the basic liberties.³³ Note the specification of the terms "use of property" and "personal property." He continued

³¹ Ibid., 104.

³² Ibid., 433.

³³ PL, 298.

to seek a middle ground in contrast to both a libertarian view of extensive property rights and a communal claim of shared property rights. His interest in defending the use of property rests in the realistic conditions of political cooperation and freedom. In consideration of the right to hold and use personal property he wrote:

The role of this liberty is to allow a sufficient material basis for a sense of personal independence and self-respect, both of which are essential for the development and exercise of the moral powers.³⁴

However, Rawls did not include as basic liberty rights of “acquisition and bequest.”³⁵ In this way, he further distanced his position from libertarianism. On the other hand, he also denied that there is a basic right “to equally control means of production and natural resources.”³⁶ Ownership of the means of production is not determined at the level of first principles of justice “but depend upon the traditions and social institutions of a country...”³⁷ In this way he distanced himself from socialism. How did he defend these limits to freedom? He said that these more comprehensive claims about property rights are not “necessary for the development and exercise of the moral powers.”³⁸

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid., 338.

³⁸ Ibid., 298.

Rawls's concern was in property as related to the fair value of political liberty. Too much economic inequality results in lack of equality of political liberty. Therefore, public financing of political campaigns is a crucial issue. In this way, he did demonstrate recognition that material resources determine the value of liberties. Concern for the fairness of the principles of justice motivates his discussion of "the problem of maintaining the fair value of equal political liberties."³⁹ Correcting the inadequacy of his treatment of this problem in his earlier writing, Rawls reflected awareness that political equality requires adjustments to compensate for economic inequality. He claimed that this can be corrected by institutional arrangements regulating elections and campaigns. He said, "What is fundamental is a political procedure which secures for all citizens a full and equally effective voice in a fair scheme of representation."⁴⁰ This necessity for institutions that ensure equal political liberties despite unequal economic situations requires justification at the level of the social contract. In other words, institutional safeguards of equality in political participation require a principle of justice defending this use of collective power. Rawls argued that the second principle of justice accomplished this. The difference principle is designed "to regulate the social and economic system so that social

³⁹ Ibid., 357.

⁴⁰ Ibid., 361.

resources are properly used and the means to citizens' ends are produced efficiently and fairly shared.”⁴¹

Rawls did not want to commit himself to either the laissez-faire notion that individuals would choose their own strictly individual survival and prosperity or the socialist notion that radically individual freedom is not as valuable as community well-being. To make either choice himself would be to burden his theory with a notion of the good that is more than a procedural notion of justice. His resistance to joining this split is wise since there are cases in which people seem willing to die rather than submit to less than freedom, and other cases in which people seem willing to sacrifice some liberties to pursue others.

In *The Law of Peoples*, the values of liberty and equality are combined and ordered according to three principles that lead to stability for the right reasons. The third principle deals with the necessity of material goods as a prerequisite for full and equal social cooperation. Rawls said, “...the third assures for all citizens the requisite primary goods to enable them to make intelligent and effective use of their freedoms.”⁴² Here Rawls maintained his earlier claim that the worth of freedom must be protected at the constitutional level, although the material conditions of political freedom were guaranteed at the level of agreements in the original position. He wrote:

⁴¹ Ibid., 368.

⁴² LP, 14.

The third principle is the assurance of sufficient all-purpose means to enable all citizens to make intelligent and effective use of their freedoms...The guaranteed constitutional liberties taken alone are properly criticized as purely formal.⁴³

Without the assurance of primary goods including material necessities, “excessive and unreasonable inequalities tend to develop.”⁴⁴ Thus, a well-ordered society underwrites material necessities for all citizens. In contrast to libertarian theory that precludes that level of redistribution and safety net, Rawls’s theory requires provision for “essential prerequisites for a basic structure” required by the principles of justice of all liberal conceptions because these lead to stability for the right reasons. Rawls hoped to justify more than merely stability based on a precarious balance of power or mutual interests. Stability for right reasons would be achieved through a procedural notion of justice. He said the essential prerequisites for this achievement of contractual justice include: “fair equality of opportunity, especially in education and training.”⁴⁵

In *The Law of Peoples* Rawls continued the defense of some redistribution of material resources because he viewed this as necessary for political fairness. He wrote:

... All citizens must be assured the all-purpose means necessary for them to take intelligent and effective

⁴³ Ibid., 49.

⁴⁴ Ibid.

⁴⁵ Ibid., 50.

advantage of their basic freedoms. (In the absence of this condition, those with wealth and income tend to dominate those with less and increasingly to control political power in their own favor.⁴⁶

This insistence on the role of material goods as a necessary condition of fair systems of cooperation does not amount to a sharp revision of his earlier writing, but rather a stronger emphasis on the importance he had recognized from the beginning.

However, Rawls rejected the extension of the difference principle to the global sphere. Inequalities in resources will continue to exist across borders despite the law of peoples. Redistribution is not required beyond the bounds of the society, except as a limited duty of assistance. Provision for only the most minimal requirements would be met by this duty of assistance. So, how does his theory address the conflict between freedom of the entrepreneur to invest in the global economy and the consequences for the freedom of the worst off members of humanity? The mechanism for determining the scope of economic development is left up to state constitutional government. In fact, whether the economic developer is a private investor or the state itself as an economic agent of public trust, the same problems occur. We need some criterion to balance economic interest with personal freedom. Rawls assumed that the plight of the worst off members of every nation are the responsibility of their own society. If the government of the worst off persons does not protect their interests, is the entrepreneur from another society morally culpable to damage of human rights or the environment? Rawls admitted a need for

⁴⁶ Ibid.

regional economic institutions to protect interests of all. But, if the worst off members of another nation are incapable of defending their own interests, then injustice would result. Rawls' argued that we have a duty of assistance, that is, peoples with access to wealth must assist societies burdened with severe poverty, but only to the level that makes possible the development of institutions of self-governance. This duty of assistance should assure that even the worst off have the resources to ensure enough political power to achieve some protection of their own interests. Yet, Rawls claimed that a global difference principle was inconsistent with the justice promoted through the Law of Peoples, because of his commitment to reciprocity. Without a global difference principle, cases of purely formal freedom persist, rendering Rawls's theory of justice either inadequate or irrelevant to the international scene. He could have made a different move, retaining a Kantian notion of positive freedom as the criterion by which competing interests and values would be adjudicated.

A strictly negative view of freedom is inadequate for the problems related to the relationship between liberty and resources. Consider the illustration of a fountain. Whether the fountain occurs naturally or is artificially constructed, certain material conditions must be in place. A natural bed of earth or rocks with varying levels of height can set the stage. Physical items like water pipes, a pump, and a well-lined receptacle are required to construct a fountain. Then, of course, the water is necessary. Some force to move the water; either gravity or energy for a pump is needed. All of these material resources for the fountain can be present, without

producing a fountain. We might look at an empty structure in the park and say, “That’s a fountain,” despite the fact that there is no water. To be more precise, a fountain is only real when the water is actually moving and flowing. The material resources required for the fountain parallel the way material resources are prerequisite for freedom. Freedom is more like a dynamic process, a function among various actors than it is like a possession. In that respect it is a different type of primary good, because freedom is not easily provided in the way that clothing or food can be. Such illustrations point to a distinction between the material conditions of freedom and the freedom itself. Resources are material conditions for freedom, not another type of freedom. Strictly speaking, negative freedom does not require material conditions, although positive freedom does. Maintaining substantive freedom in a positive sense is costly and calls for substantial regulation of social arrangements like economic systems. To illustrate this, I turn to a critique of Rawls offered by Martha Nussbaum.

Capabilities, Opportunities, and Freedom in Nussbaum’s critique

This difference between, on the one hand, having the formal elements for freedom in place and, on the other hand, having a real, functioning freedom indicates a weakness in Rawls’s theory. Among the myriad criticisms of Rawls’s work, some offer suggested amendments to his work while affirming the direction of his liberal theory. Martha Nussbaum offers an important critique that advocates of Rawls’s liberalism would do well to incorporate. I examine her criticism of Rawls because

her work illustrates improvements being constructed on the Rawlsian foundation that share convictions from the positive liberty tradition. Positive freedom does not split ability from the concept of freedom itself. Nussbaum's emphasis on capability incorporates the freedom and the ability to make freedom meaningful. In this way, she offers a corrective to Rawls.

Nussbaum argued that human life has certain "central defining features."⁴⁷

She defended the idea of universal values through "internalist essentialism" saying,

One might, that is, believe that the deepest examination of human history and human cognition *from within* still reveals a more or less determinate account of the human being, one that divides its essential from its accidental properties.⁴⁸

This move is in opposition to that of Rawls who insisted that politics must eschew determinist theories of the human being and the human good.⁴⁹ However, Nussbaum maintained that antiessentialism results in either relativism or subjectivism. She argued that global ethics requires more than relativism, "the view that the only available standard to value is some local group or individual," or subjectivism, "that the standard is given by each individual's subjective preference."⁵⁰ Like other

⁴⁷ Nussbaum, "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism," *Political Theory*, 20, N. 2 (May 1992), 205.

⁴⁸ Ibid., 207.

⁴⁹ Ibid., 209.

⁵⁰ Ibid., 243, n. 14.

liberals, Rawls rejected essentialism because he viewed it as based in metaphysical realism.⁵¹ Although Nussbaum also rejects metaphysical essentialism, she defended internalist essentialism as a reasonable basis for ethics free of metaphysical realism.

She wrote:

The idea is that once we identify a group of especially important functions in human life, we are then in a position to ask what social and political institutions are doing about them. Are they giving people what they need in order to be capable of functioning in all these human ways? And are they doing this in a minimal way, or are they making it possible for citizens to function well?⁵²

This Aristotelian conception defends the link between autonomy and capability grounded in material and social conditions. “If one cares about autonomy, then one must care about the rest of the form of life that supports it and the material conditions that enable one to live that form of life.”⁵³

I agree with Nussbaum’s claim that “we urgently need a version of essentialism in public life.”⁵⁴ Ethics of global wealth distribution require not only promotion of negative freedom, but also some notion of personal freedom underwritten by resources that yield genuine capabilities. Nussbaum wrote:

The general direction of my argument should by now be clear: we cannot tell how a country is doing unless

⁵¹ Ibid., 206.

⁵² Ibid., 214.

⁵³ Ibid., 225.

⁵⁴ Ibid., 229.

we know how the people in it are able to function in the central human ways. And without an account of the good, however vague, that we take to be shared, we have no adequate basis for saying what is missing from the lives of the poor or marginalized or excluded, no adequate way of justifying the claim that any deeply embedded tradition we encounter is unjust.⁵⁵

Her criticism of Rawls's liberalism is a criticism of splitting off ability from freedom and well-being from options. The connection between material resources and functioning is the basis of this criticism.

A fascinating comparison could be made between Nussbaum's criticism of Rawls and her analysis of what she called "Cicero's problematic legacy." In a paper she presented at a conference on Cosmopolitanism and Nationalism at Stanford University in April of 1999, she argued that Cicero shaped the way our theories of international law and morality address questions of international economic relationships.⁵⁶ She must have been writing this paper at the same time Rawls was completing his final book, published the same year Nussbaum published this article. She challenged Cicero's claim that "we owe the republic more material aid than we do to foreign nations and nationals"⁵⁷ and described his influence as "pernicious"⁵⁸

⁵⁵ Ibid., 229.

⁵⁶ Nussbaum, Martha. "Duties on Justice, Duties of Material Aid: Cicero's Problematic Legacy," *Journal of Philosophy*, 8, no. 2 (2000), 176.

⁵⁷ Ibid., 204.

⁵⁸ Ibid., 180.

when it comes to questions of material aid across national boundaries. She provides the lines of connection from Cicero to Kant's idea of universal law condemning violations of "human fellowship," and clearly sets up the connection to Rawls in this way.⁵⁹ She then quoted Cicero who called "this principle a part of 'nature, this is the law of peoples' in Book III of *De Officiis*."⁶⁰ Cicero claimed that the law of peoples results from obligations that arise from a sense of community.⁶¹ There is no reference to Rawls in this paper, yet her criticism of Cicero paves the way for a criticism of Rawls.

In accessing the duties of justice related to questions of material aid across borders, Nussbaum considered whether the distinction between "positive and negative" duties is morally significant.⁶² The difference between acting and refraining is not a distinction that allows us to draw a line limiting moral culpability, according to both Cicero and Nussbaum. Yet, issues of material aid are costly. Both the ability and the will to generate resources have a complicated relationship to issues of justice. She concluded that cosmopolitans lack adequate theory to justify unlimited duty of material aid across borders at this time. The concept of positive freedom might move the development of such theory forward.

⁵⁹ Ibid., 184.

⁶⁰ Ibid.

⁶¹ Cicero. *On Obligations (De Officiis)* trans. P.G. Walsh. (New York: Oxford University Press, 2000).

⁶² Nussbaum, WHD, 193.

Nussbaum's work with Amartya Sen on the capabilities approach includes considerations of problems in Rawls's work that overlap with central concerns from the tradition of positive liberty. Nussbaum wrote,

Again, it is right to demand that philosophers writing about poverty show that they have some understanding of the complex interaction of agency and constraint in the lines of those concerning whom they make recommendations.⁶³

Nussbaum found Rawls's understanding of these dynamics wanting. "Agency and constraint" are terms related to discussions of the concept of liberty. "Constraint" implies the restrictions on liberty in the negative sense; whereas, "agency" begins to get at the positive notion of liberty. Nussbaum wrote:

To do justice to A's struggles, we must see them in their social context, aware of the obstacles that the context offers to the struggle for liberty, opportunity, and material well-being. In his discussions of liberty and opportunity, Rawls shows himself well aware that a theory of justice must be cognizant of the different situations of distinct lives, in order to distribute not only liberty, but also equal worth; not only formal equality of opportunity, but also truly fair equality of opportunity. His emphasis on wealth and income as primary goods central to the task of indexing, however, sells short his own respect for the individual.⁶⁴

The respect for the individual that Nussbaum feared was in danger of getting lost in Rawls's theory must be grounded somewhere. Since Rawls wanted to remain detached from comprehensive notions of the good, he is at risk of losing any basis

⁶³ Nussbaum, WHD, 301.

⁶⁴ Ibid., 69.

for defending respect for individuals as compelling. If he accepted a Kantian notion of positive freedom as the one universal value, he could promote the thinnest possible notion of the good that is needed to resolve these problems Nussbaum identified. However, it is not adequate to say that everyone should be equal or that everyone should be free and then to ignore realities that prevent such claims from being realized even in the lives of the worst off. If Rawls did admit a universal reality that calls for respect for the individual, then he could not justify a cut-off point for aid to burdened societies without approaching something like a global difference principle.

These criticisms are based in a desire to strengthen Rawls's theory, and driven by a fear that his theory seems irrelevant to some of the worst instances of injustice. For example, Nussbaum criticized Rawls for exempting the family that from the application of his principles of justice. She noted an inconsistency in his treatment of the family as an institution. Although he said the family is part of the basic structure of society, he also said that the principles of justice don't apply to the internal workings of the family.⁶⁵ She argued that his theory could be extended to familial relations. Nussbaum stated:

In short, the state's interest in protection of the dignity, integrity, and well-being of each citizen never simply leads to external constraints of the family structure,

⁶⁵Martha Nussbaum, "The Future of Feminist Liberalism," in *Varieties of Feminist Liberalism* (ed.) Amy R. Baehr. (New York: Rowman and Littlefield Publishers, Inc., 2004), 115.

whatever the appearance may be, it always leads to positive construction of the family institute.⁶⁶

The idea that positive construction of the family is necessary parallels the claim that positive construction of liberty is required for justice. Autonomy is a possibility constructed by social and state institutions and arrangements. Furthermore, she saw inconsistencies in Rawls's stance toward the public/private distinction, saying that Rawls rejected the distinction yet "remains half-hearted in that rejection."⁶⁷ Despite the agreement between Rawls and Nussbaum, she thought that they disagreed over the extent of intervention appropriate to protect persons' capabilities.

Nussbaum does not directly address the tradition of positive liberty. It is possible that she would reject direct connection with the language of positive freedom. Nevertheless, her writing evidences concerns with economic realities that motivate advocates of positive liberty. Just as the institution of family must be governed not only through external constraints or limits on freedom, but also through the positive creation and development of the family, even so the freedom must be both limited and empowered. In her discussion of human nature Nussbaum sounds almost like a proponent of positive liberty. She said, "Each human being is a maker of a life plan."⁶⁸ She stressed that what it means to be human requires us to respect

⁶⁶ WHD., 272-278.

⁶⁷ Nussbaum, 2004, 123.

⁶⁸ WHD, 284.

the capabilities of others as “active planners.”⁶⁹ Now, I am not suggesting that Nussbaum would welcome any theoretical entanglement with the controversial concept of positive freedom as it has developed historically. Furthermore, Rawls would agree with the importance of respecting persons as “active planners.” Where Rawls falls short in *The Law of Peoples* is that he attributes responsibility for the enabling conditions of meaningful freedom to the individual’s particular society rather than claiming this responsibility as a universal responsibility with no cut-off point based on borders. I agree with Nussbaum’s critique of Rawls on this point. Freedom requires access to resources and justice requires personal freedom including capabilities.

Capabilities are directly related to options. Nussbaum’s analysis of the importance of options includes an emphasis on the importance of economic options. She views problems of prostitution and child labor as being linked to lack of options, choices, and other opportunities, especially economic options.⁷⁰ This is the kind of analysis that Rawls could incorporate to strengthen his theory. What would Rawls say about child labor? Would he say that it is a family matter beyond the scope of his theory of justice? What would he say about prostitution? Would he feel compelled to defend the idea that some prostitutes might freely choose that type of work, so their freedom to do so should be protected? On the one hand, in doing so Rawls could be protecting significant rights of the individual or family. Yet, on the other

⁶⁹ Ibid., 285.

⁷⁰ Ibid., 286.

hand, he could be missing the realities of lack of opportunity for meeting survival needs in many societies. We know Rawls's compelling interest in justice was in tension with his refusal to universalize any particular comprehensive concept of the good. By relegating questions of family hierarchy and power hierarchy in the economic realm of business to some sphere beyond the application of his theory of justice, Rawls opened himself up to these types of objections.⁷¹ In these examples the relationship between property resources and freedom becomes clearer.

Nussbaum offers a critique of Rawls that advances both concern for promoting liberty in the negative sense and awareness that enabling conditions are necessary for positive freedom. However, more work is required in clarifying the terms Nussbaum uses. There is a lack of precision in her use of the terms capability, opportunity, capacity, possibility and freedom. Nussbaum occasionally used the term capacity as if it were interchangeable with the term capability. The difference between positive and negative liberty is related to nuances in these terms.⁷² Negative freedom does not take into account the requirement that people be actively engaged in the process of pursuing life plans in order to be considered free. But the same problem is related to the term capability. We might say that this structure has the capability of producing a fountain, because the material conditions are all present.

⁷¹ For example Darrel Mollendorf agrees with Nussbaum and Sen's critique of Rawls that a capabilities approach is needed. *Cosmopolitan Justice*. (Boulder, Colorado: Westview Press, 2002),85.

⁷² Again, think of Charles Taylor's suggestion that the difference between negative and positive freedom amounts to the difference between an opportunity and an exercise of freedom. Taylor, 79.

Even so, there might be no fountain present at all. We might say that a truck has the capability to bring ten tons of rice to the village. However, that is not a real capability unless other contingencies are met such that there are adequate, safe and peaceful roads, a willing driver who chooses to drive, and the resource of the rice being available. This gets at the distinction Nussbaum drew between functioning and capability. Although she wanted to insist on capability but not functioning, certain levels of functioning by some persons are necessary for other persons to have mere capabilities.

This lack of clarity parallels the distinction between positive and negative liberties. The driver is free to bring the rice in the negative sense if there are no bandits or authorities who obstruct his passage. But in the positive sense, he is only free to bring the rice if there are roads and rice. Although the term “capabilities” is a vast improvement over the language of rights in the development literature as a measure of transnational quality of life, it is no more precise than the term freedom in this case. Sometimes Nussbaum seems to use the term capabilities as if it were interchangeable with liberties. For example, she said that capabilities must be balanced against the “claim of other capabilities” such as when the state grants “Liberty of association and self-definition but within constraints imposed by the central capabilities.”⁷³ Nussbaum does not suggest that the capabilities language should completely replace the language of rights. In her view the conception of

⁷³ Nussbaum, WHD, 275.

rights is still valuable. She thought that the public discourse concerning rights could be enhanced through the addition of the capabilities approach and should emphasize “choice and autonomy.”⁷⁴ Linkages with the discourse on liberty should be enhanced in the same way.

Economic institutions are politically constructed and reflect choice as well. In that sense, economic systems must be evaluated not just on the basis of efficiency, but also on the basis of their relationship to freedom. Nussbaum challenged Rawls to admit that family systems are not outside the scope of theories of justice. She argued that Rawls would likely view her advocacy for women and female children as “too much promotion of a definite conception of the good.”⁷⁵ Nevertheless, her understanding of capabilities as essential to freedom led her to argue that the sphere of family and private life is not exempt from the standards of justice. Criticizing Rawls’s reluctance to intervene in family matters, Nussbaum said,

You didn’t just find the family lying around, you constituted it in one way, through the tradition of property law; now we shall constitute it in another way one that protects women’s capabilities.⁷⁶

The same might be said of the global economy. Current trade regulations weren’t naturally occurring. Political actors and events in history fashioned them. Although complete control is impossible, responsibility for steering global markets is

⁷⁴ Ibid., 100-101.

⁷⁵ Ibid., 282.

⁷⁶ Ibid.

a capability of political actors. Economic options, bargaining power, and political participation are all areas for the exercise of positive liberty. In the negative sense the poor woman in India may have freedom. But, does she have freedom in the positive sense? At first it may seem that Nussbaum's term "capability" is a more accurate term than positive liberty. Unfortunately the term capability and others like it also have double meaning. Nussbaum advocates education "as a source of images of worth and possibility and also as a source of skills that make possibilities real."⁷⁷ Not many would argue about the importance of education. However in this particular statement, Nussbaum makes a disturbing move by implying that some possibilities are real as if other possibilities are not. Are some possibilities impossible? Her point seems to be that capabilities are real possibilities while vacuous possibilities are like the structure of a fountain with no water present. Once again this parallels the distinction between positive and negative liberty. Without education a person may still be free in the negative sense. Nussbaum made a similar move in her list of central human functional capabilities when she included under the "control over one's environment," the "material" capability of "being able to hold property (both land and movable goods), not just formally but in terms of real opportunity."⁷⁸ Again, this insistence that opportunity be real rather than merely formal amounts to the same distinction between positive and negative freedom.

⁷⁷ Ibid., 288.

⁷⁸ Ibid., 80.

Her efforts to improve on Rawls's work are illustrated in her list of capabilities that she compared to Rawls's list of primary goods. She wrote, "As with Rawls's list of primary goods, so with the central capabilities: they are not meant to be an exhausting account of what is worthwhile in life."

1. Life
2. Bodily health
 - a. Nourishment
 - b. Shelter
 - c. Reproductive health
3. Bodily integrity
 - a. Move freely
 - b. Boundaries treated as sovereign
4. Senses, Imagination, Thought
 - a. Political and artistic speech
 - b. Freedom of religion
 - c. Literacy
 - d. Freedom of expression
5. Emotions
6. Practical reason
 - a. Liberty of conscience
7. Affiliation
 - a. Freedom of assembly
 - b. Political speech
8. Other species
9. Play
10. Control over ones environment
 - a. Right of political participation
 - b. Property
 - c. Freedom from unwarranted search and seizure⁷⁹

Despite her avoidance of the terms liberty and freedom in the rest of her work on capabilities, she used these terms to describe some important capabilities on her list. Freedom has conditions. She wrote, "For the Aristotelian claim (which Marx

⁷⁹ Ibid., 95.

endorses and develops) is surely a plausible one: that powers of practical reason are powers that require, for their development, institutional and material necessary conditions that are not always found.”⁸⁰ She repeatedly stressed that material resources required for these capabilities could not be optional. She wrote,

By insisting that the capabilities on the list are combined capabilities, I insist on the two fold importance of material and social circumstances both in training internal capabilities and in letting them express themselves once trained; and I establish that the liberties and opportunities recognized by the list are not to be understood in a purely formal manner.⁸¹

The concern that liberties and opportunities might be considered in a “purely formal manner” is the same concern that negative liberty be protected when positive liberty is not. This enhanced list of goods, although more thorough than Rawls’s list, functions in a comparable way in Nussbaum’s work. She argued that political justice requires delivery of these capabilities. She wrote, “I argue that the structure of social and political institutions should be chosen, at least in part, with a view to promoting at least a threshold level of these human capabilities.”⁸²

Rawls might not disagree with this thicker list of goods since his theory assumes that survival needs are assured. As his work progressed, Rawls increased his emphasis on self-respect as a primary good. This awareness of the centrality of

⁸⁰ Martha C. Nussbaum, “Aristotelian Social Democracy,” in *Liberalism and the Good*. Ed. R.B. Douglas. (New York: Routledge, 1990), 227.

⁸¹ Nussbaum, WHD..., 86.

⁸² Ibid., 75.

personal empowerment indicates appreciation for criticism like Nussbaum's. This relates to Nussbaum's claim: The problems of "inner sense of non-entitlement" could be reduced through "images of worth and possibility" and "effective agency."⁸³ However, inequalities in wealth and economic power result in inequalities in political power. Therefore, inequalities in "effective agency" are at least in part a consequence of wealth distribution.

True to their common ground as liberal thinkers, Nussbaum agrees with Rawls about the importance of liberty to self-respect. For this reason, she attempted to maintain a distinction between what she called functioning and capability. She said, "I am not pushing individuals into the function: once the stage is fully set, the choice is up to them."⁸⁴ Why did she insist that, "Where adult citizens are concerned capability, not functioning, is the appropriate political goal"?⁸⁵ It is the value of freedom that motivates this move. Whether to function or not is a matter of personal freedom. The real functioning of freedom, not just the capability for freedom, requires that she not push individuals into functioning. However, even the choice to not function in a certain way is actually an exercise of freedom.

Discussions of freedom as a primary good cannot avoid that conundrum of the basis of rights in the right or the good. The language of capabilities rather than

⁸³ Ibid., 288.

⁸⁴ Ibid., 88.

⁸⁵ Ibid., 87.

rights still requires that some argument be offered for why one person should care about the capabilities, rights, or good of another person. Are rights conventional? In other words, are rights merely socially constructed or are they metaphysical, natural and universal? Rawls's effort to establish a persuasive argument that would at least be a helpful tool for political dialogue offers a helpful alternative to utilitarian options. Rawls said we have commonsense convictions that persons have 'an inviolability founded on justice or, as some say, on natural right which even the welfare of everyone cannot override.'⁸⁶ This conviction is justified in Rawls's theory because it turns out to be a consequence of principles chosen in the original position. In his contractarian theory, the basis of equality is universal. Who has rights, equality, and liberty? The capacity for moral personality is a sufficient condition for being entitled to equal justice.⁸⁷

The relationship between the concepts of capabilities and rights is the subject of Nussbaum's recent article, "Capabilities and Human Rights."⁸⁸ Ongoing debates in political philosophy provide ample linkages between Nussbaum's work on capabilities and discussions of rights. What about the connection between capabilities and freedom? Nussbaum said, "People differ about what the basis of a rights claim is: rationality, sentience, and mere life have all had their defenders.

⁸⁶ Rawls, TJ, 28.

⁸⁷ Ibid., 505.

⁸⁸ Nussbaum, "Capabilities and Human Rights,"121.

They differ, too, about whether rights are prepolitical or artifacts of law and institutions...”⁸⁹ She thought that by avoiding the traditional language of rights and freedom and replacing that language with the language of capabilities, her approach could avoid this conundrum. She suggested that something “close to the Rawlsian account of argument proceeding toward reflective equilibrium” would be the best method for proceeding toward international agreement about how to promote capabilities.⁹⁰ Reforms in Rawls’s theory are required by this insight.⁹¹ Nussbaum’s suggested reform of Rawls’s theory on this point results from the concern that freedom be more than merely formal. It is this concern she shared with Sen that led to the capabilities language. Sen wrote, “A person’s actual freedom to pursue his or her ends depends on ... what power he or she has to convert primary goods into the achievement of ends.”⁹² Thus the concern over the relationship between freedom and resources drives Nussbaum’s critique of Rawls.

John Rawls and Martha Nussbaum show considerable overlap in their analysis of problems of justice and prescribed steps towards remedying injustice. Both uphold the liberal tradition of tolerance for diverse conceptions of the good. Both share a

⁸⁹ Nussbaum, WHD, 97.

⁹⁰ Ibid., 101.

⁹¹ Hobhouse articulated this insight best in his claim that property equals power. L.T. Hobhouse, “The Historical Evolution of Property in Fact and in Idea.” *In Property: Its Duties and Rights*. (New York: Macmillan Company, 1922).

⁹² Sen, “Justice: Means versus Freedom,” *Philosophy and Public Affairs*. 19, No. 2, (1990), 120.

concern for shaping procedural justice in ways that attend to the dignity and integrity of the least well off in society. Although many points of agreement have been identified in the writings of Nussbaum and Rawls, there are three areas of consensus in their works that relate most strongly to the notion of positive liberty. First, they both recognize that justice requires a minimum level of welfare in order for political liberty to be equalized. Secondly, Rawls and Nussbaum offer similar lists of basic human goods or capabilities to be protected. Third, both understand questions regarding desert to be riddled with issues of resources as well as choices. By insisting that family matters are not outside the scope of the political, Nussbaum corrected some problems in Rawls' work. At the same time, she illustrated a type of critique that could be applied to Rawls' attempt to preclude economic matters as being outside the scope of the political. In both instances, the concerns of positive liberty would strengthen Rawls's theory.

The common ground between Rawls and Nussbaum is better understood through development of the concept of positive liberty. Rawls would have done well to correct his theory by expanding his notion of liberty in the directions that Nussbaum suggested, including family issues and explanation of how property resources required for capabilities would be structured. Despite the common convictions apparent in their work, it is unclear whether or not Rawls and Nussbaum would reach the same settlement of the contending claims of the entrepreneur and the laborer. Rawls did not want to be tied to one ordering of these conflicting types of freedom, but wanted his theory to accommodate either way of resolving their

competing values. By defending the negative freedom of the entrepreneur to be unregulated, Rawls sides with the powerful in the international economy. Nussbaum would reach a different resolution, understanding that the capability of the laborer, and thus any meaningful sense of her freedom, requires restriction of the freedom of the entrepreneur. The role of resources as prerequisites of freedom dictate that Rawls's theory will lead to more redistribution of material resources than he originally intended. This analysis of the relationship between the prerequisite property resources required to make the worth of liberty real suggests that Rawls should have provided more explanation about the means of redistribution. Although Rawls set out to offer a theory that left open questions of economic redistribution of resources, his theory seems to support extensive regulation and redistribution. The irony is that it is precisely the promotion of freedom that requires these restrictions of economic freedom.

In her book, *Women and Human Development*, in which she applied the capabilities approach to analysis of poverty in India, Nussbaum entitled one section, "Two Women Trying To Flourish."⁹³ The concept of flourishing is more robust than that of capabilities. Isn't it possible to have all the freedom to flourish, but not the capability to flourish? It is as if freedom is defined in only the negative sense. Freedom in the positive sense would include the notion of capability made possible through access to resources. If freedom is only defined in the negative sense, it is merely formal. The means of providing both freedom and capability will be found in

⁹³ Nussbaum, WHD, 15.

human community. Meaningful freedom in contrast with purely formal freedom, is realized through the construction of associational life. The next chapter connects the idea of meaningful freedom with the issue of community in Rawls's theory. The potential problem that freedom might be merely formal remains the focus. To further illustrate this problem in Rawls's work, I will consider Thomas Pogge's critique of Rawls as a corrective. Pogge shares many of Nussbaum's concerns and urges those concerned with political philosophy to attend to human flourishing.

CHAPTER FOUR

FREEDOM AND COMMUNITY

The liberal concept of negative freedom emphasizes the separateness or individuality of persons. While certain benefits accrue from that emphasis, there are detrimental consequences as well. The cooperative accomplishments of persons in communities require limits of individual freedom. The harmonies of a symphony are achieved through the discipline and subordination of individual proclivities.¹ In association with others, persons can construct more extensive freedom than they can alone. If ethics depend on contractual, voluntary arrangements of persons associating with others then the nature of those associations become central to the dynamics of freedom. First I will analyze the role that associational life in community played in Rawls's theory as it developed throughout the course of his writing over time. He argued that humans flourish in community noting that autonomy is defined in the context of community and that cooperative systems give rise to both obligations and benefits. He defended the Kantian notion that social cooperation and relational life is motivated by more than strategic mutual advantage of individuals by contrasting private society with the idea of social union. I will argue that treating historical state borders as morally relevant is problematic given

¹ Rawls used this metaphor of the orchestra in PL, 321.

the nature of community that can transcend such borders.² Furthermore, I will argue that Rawls's refusal to apply the difference principle at the global level creates the potential for freedom that is merely formal. These two critiques are grounded in the premise that meaningful freedom is more than mere freedom from direct restraint, but includes ability to construct meaning in concert with others. Finally, I will compare the criticism that Thomas Pogge made of Rawls's work, and suggest that there is considerable overlap between his critique and the concerns of some thinkers in the positive freedom tradition.

Most of Rawls work focused on the domestic level, relying on the contract theory tradition to answer questions of political justice. Since we sorely need adequate theory of ethics to help us in the international arena, we hope that Rawls's work can be helpful on a global scale. Whether we consider our relationship to others in a local context or reflect on our connections with life beyond our own nation's borders, we know that relationships affect our freedom. In this chapter, I examine the application of Rawls's contractual theory of ethics to the international scene asking how obligations can be the result of contracts in a universal context from which there is no exit. The idea of freedom is unintelligible apart from associational life in community. As persons, we are always, already selves in relationship with

² Ronald Beiner makes a similar criticism of Rawls for failing to address "the problem of political community" in *Liberalism, Nationalism, Citizenship: Essays on the Problem of Political Community*. (Vancouver, BC: University of British Columbia Press, 2003), 195.

other selves. In a real sense there is no exit from associational life. We cannot choose to opt out of the arrangement of being with others in the world. In fact, this situation of being in relationship with others cannot accurately be thought of as an arrangement. There is no arranging or contracting involved. It is no construction of our own; rather it is simply given.

However, our response or our intentional *way* of relating is a matter for our freedom. As our realization of the interconnectedness of all life increases, we understand that our existence has global repercussions. Contract theories of social justice made sense more easily when societies were more isolated from each other, and a person could conceive of opting out of a particular community.³ From a global perspective there are limitations and realities that are not negotiable. When it comes to agreements between international actors, thorough isolation is no option given the shared environmental elements of air and water. Therefore, I examine how Rawls's international theory helps answer questions about what obligations or right-relations does justice demand across the demarcations that separate different communities? We not only want to be free from interference from beyond our borders. We also want to relate with the world outside our national boundaries, constructing associations and connections. Positive liberty includes the freedom to conceptualize our lives in relationship with others, even those who live on the other side of our national borders. We want freedom to develop relationships or deals with others.

³ Rawls, LP, 8-9. Rawls suggests that immigration would disappear when political unrest is corrected.

For example, the affluent investor from a wealthy nation can be free to develop relationships of mutual respect and honor with the woman in the third world who earns only two dollars a day.

The quality of our relationship with others is essential to a concept of positive freedom. In other words, the quality of my individual life is always affected by the quality of my relationships with others and their freedom. Rawls said he sought to uphold the “liberty and integrity of the person.”⁴ Rawls did not fully explain what he meant by the term *integrity* of the person. If we pause to wonder about his inclusion of this term, linked as it is here with liberty, we are drawn into classically profound questions about the nature of human life. The wholeness and well-being of a person cannot be understood apart from the person’s relationship to other persons. Although integrity of a person is not something Rawls describes in detail, it seems to be connected to the construction of a meaningful life. While on the one hand, persons do not exist apart from community, on the other hand, boundaries between the individual and the community must also be maintained in order for a person to exist. The boundaries between communities or societies and also the boundaries between the individual and her society or community are essential for freedom. This raises questions that get at the heart of positive liberty.

⁴Rawls, PL, 291.

In the tradition of Hegel⁵ and Rousseau⁶, advocates of positive liberty insist that individual freedom is realized through the state or community. A community or society is required for liberty that is meaningful or has integrity. The positive notion of liberty cannot be developed apart from the concept of community or social relationships. In the positive sense, liberty is far more than mere independence. Liberty is also construction of meaningful self-definition in community. The relationship between an individual and the community is shaped by the community, its shared values, and its structuring of power. The balance between individuals and communities is a perennial challenge. So, the implications of human community for freedom must be studied in order to more fully understand how Rawls understood the liberty of persons. Reactions against Hegelian idealism emphasized the autonomy of the individual.⁷ As a liberal, Rawls was firmly rooted in the tradition, but wanted a notion of political right that did not depend on ‘Western individualism’.⁸ Nevertheless, Rawls sought to balance the good of the individual and that of the community. Striking a balance between the individual and the community remains a challenge for seekers of justice.

⁵ See Hegel, *Philosophy of Law*, sec. 29 and 270.

⁶ See Rousseau, *Social Contract*, Book 1, chap VIII, 2nd par.

⁷ Karl R. Popper, *The Open Society and Its Enemies: The High Tide of Prophecy: Hegel, Marx, and the Aftermath*. (Princeton, New Jersey: Princeton University Press, 1962), 44.

⁸ Rawls, CP, 552.

Humans Flourish in Communities

Although my primary concern is the question of our obligations across national boundaries, first it is necessary to turn to Rawls's early work to uncover the foundations of his notion of community. In *A Theory of Justice*, Rawls sought to balance the appreciation for collective life or the community with the freedom of the individual and a realistic acknowledgement of individual motivations. Drawing on Aristotelian notions of human completion through community life, Rawls argued that social values are promoted in his scheme. He wrote:

... Justice as fairness has a central place for the value of community... The essential idea is that we want to account for the social values, for the intrinsic good of institutional, community, and associative activities, by a conception of justice that in its theoretical basis is individualistic.⁹

How did Rawls understand this "intrinsic good of institutional, community, and associative activities"? For Rawls, whatever the intrinsic good of community may be, the good of individuals must be prior to it. Individuals cannot be used as a means to some supposed good of the community. Rather, the good of community must always benefit the individual. Nevertheless, at the same time, the good of the individual requires the community. In one sense, Rawls's entire theory is summed up in his statement "... the collective activity of justice is the preeminent form of human flourishing."¹⁰ Humans most fully actualize themselves in collective activity. It could

⁹ TJ, 264.

¹⁰ Ibid., 529.

be said that humans also transcend the limits of their individuality through the collective activity that could be called community. This motivates persons to contract in just institutions. As Rawls said, everyone benefits from “cooperating to affirm just institutions.”¹¹ So, the self-realization of the individual through social cooperation is inseparably linked with the public realization of justice. Rawls wrote:

In a well-ordered society each person understands the first principles that govern the whole scheme as it is to be carried out over many generations; and all have a settled intention to adhere to these principles in their plan of life. Thus the plan of each person is given a more ample and rich structure than it would otherwise have; it is adjusted to the plans of others by mutually acceptable principles.¹²

By nature humans gravitate toward collective activity. They have goals that cannot be achieved in isolation. Influence, education, identity formation, and persuasion are all factors that both limit and extend freedom. If our concept of freedom is only the negative conception, then we will only guard against direct coercion or restraint. We would not be adequately alert to the complex power dynamics involved in identity construction through means of cultural formation like education. Rawls was not insensitive to this potential problem, but hoped that equal worth of political liberty would protect opportunities for balancing such influences. The difference principle should protect the opportunity for self-actualization and cooperative construction of meaning within a constitutional democracy with

¹¹ Ibid.

¹² Ibid., 528.

adequate background conditions. However, on the international level, without the difference principle, the ability to shape the structure of decision-making is subject to inequalities as a result of wealth distribution. The concept of positive freedom emphasizes the value that is possible because of associational life, and could provide a basis for defending the well-being of every individual who adds variety to the harmony of voices constructing the arrangements that regulate all. Since it is human nature to “appreciate and enjoy” cooperating in social relationships, individual aims are fostered through collective activity. Rawls said,

It follows that the collective activity of justice is the preeminent form of human flourishing. For given favorable conditions, it is by maintaining these public arrangements that persons best express their nature and achieve the widest regulative excellences of which each I is capable. At the same time just institutions allow for and encourage the diverse internal life of associations in which individuals realize their more particular aims. Thus, the public realization of justice is a value of community.¹³

Hence, individual pursuits are balanced with the limits and obligations implied in community. This collective activity is achieved through the social union based on agreements made voluntarily by individuals. The concept of social union, collective, corporate, or communal life based in agreements motivated by human nature and interests is central to Rawls’s theory. In *A Theory of Justice*, Rawls seemed to use the terms community and social union interchangeably. He wrote, “Persons need one another since it is only in active cooperation with others that one’s powers reach

¹³ Ibid., 529.

fruition. Only in a social union is the individual complete.”¹⁴ Social union is a more technical and precise term than the term community with all its historical baggage. Through the years as his theory developed, Rawls further specified his definition of the term community and no longer used it in reference to the social union or society. The terms society and community in Rawls’s writing have specific definitions that are clarified below. Nevertheless, his concept of society was never merely a means to individual ends. In other words, social union is not only a strategic move to maximize advantage for the individual. Relational life is a form of human flourishing.

At the same time, associational life gives rise to conflicts and can result in challenges to individual freedom. Rawls adhered to Kant’s way of resolving the tension between the increase in freedom made possible through a social contract and the relinquishing of freedom necessary to achieve that contract. Here it is necessary to consider Rawls’s use of the term autonomy. Early on Rawls wrote that people are acting autonomously when: “... they are acting from principles that they would acknowledge under conditions that best express their nature as free and equal rational beings.”¹⁵ In other words, autonomous persons are not controlled or manipulated by others who have educated them or hold power over them. Yet, notice that there is a significant qualifier included in this definition of autonomy.

¹⁴ Ibid., 525.

¹⁵ Ibid., 515.

Autonomy is not merely unbridled freedom. Autonomy means acting in accordance with principles. Furthermore, not just any principles can be the basis of autonomy. Autonomy requires acting in accordance with principles that *best* express a person's nature. Rawls not only included those qualifiers, but he went further to specify human nature as that of *free and equal rational* beings. That would mean that if a person made an irrational choice or a choice contrary to rational principles they would not be acting autonomously. This sets the stage for objecting to a person's freely chosen moves on the grounds that they are irrational. In order to follow Rawls in his understanding about autonomy, we must ask what conditions best express humans' nature as free and equal rational beings. Furthermore, if such conditions could be specified then justice requires efforts toward maintaining such conditions.

Rawls argued that the original position could serve as a tool for specifying these conditions of autonomy. Rawls said,

The veil of ignorance prevents us from shaping our moral view to accord with our own particular attachments and interests. We do not look at the social order from our situation but take up a point of view that everyone can adopt on an equal footing.¹⁶

In the original position no one is starving, and no one is dominant over another. Thus self-interest is detached from moral judgment. Since this theory of justice as fairness only applies to cases where background conditions are met, autonomy of individuals is protected in the domestic application of the theory. The reality of the "equal footing" is inseparable from the potential usefulness of the original position. Outside

¹⁶ Ibid., 516.

of the original position only the reasonableness of persons can motivate one person to respect another person's autonomy. Rawls believed that "the notions of autonomy and objectivity are compatible: "there is no antinomy between freedom and reason."¹⁷ The exception to this compatibility would be the position of a person who defended the freedom to dominate others. Such a position may be impractical given the risky consequence that others with even more power might come along. Outside of the safety of the original position with its qualifier of equality, freedom and reason seem less compatible.

Later Rawls distinguished between "political and moral autonomy."¹⁸ In contrast to Kant's comprehensive moral view "...in which the ideal of autonomy has a regulative role for all of life..." Rawls advocates a "political constructivism of justice."¹⁹ Rawls's theory differs from Kant's because of these differing conceptions of autonomy. Attempting to separate Kant's practical, procedural conclusions from transcendental idealism, Rawls distinguished political autonomy from "doctrinal autonomy" and "constitutive autonomy."²⁰ Again, the reason Rawls rejected transcendental idealism was due to its reliance on comprehensive claims about the good. This distinction becomes increasingly important in the international

¹⁷ Ibid., 516.

¹⁸ Rawls, PL, 98.

¹⁹ Ibid., 99.

²⁰ Ibid.

application where Rawls continued to maintain that “moral autonomy is not a political value.”²¹ Respecting the autonomy of others may be merely a strategic concession based on calculations of balance of power between individuals or nations. However, the conditions under which political autonomy flourishes are circumstances requiring maintenance and regulations. Rawls has been criticized by John Gray for failing to adequately grasp implications of autonomy.

Autonomy is not free-standing. It is a complex achievement, encompassing (among a good many other necessary ingredients) the absence of coercion, the possession and exercise of skills in choice-making and an environment which contains an array of options that are worth choosing.²²

The concept of autonomy is difficult to distinguish from the concept of freedom in Rawls’s writing. The idea that autonomy has an aspect of “self-creation” links the concept of autonomy with that of positive liberty.²³ Nonetheless, the problem of balancing the individual and the society persists. The richness and complexity of collective life justifies some restriction of individual liberty in order to preserve such collective social life. Thus, social benefits imply social obligations. At the same time, social benefits expand individual possibilities. Herein lays the connection between Rawls’s concept of collective life and his concept of freedom. It is because persons voluntarily participate in the social union that they have

²¹Rawls, LP, 146.

²² Gray, John. 2000, 100.

²³ Joseph Raz, *The Morality of Freedom*. (New York: Clarendon Press, 1986), 370.

obligations as a result of receiving benefits of the social union. The principle of fairness justified by its adoption in the original position is the basis for obligations limiting freedom. Describing the consequences of the principle of fairness Rawls wrote:

I shall try to use this principle to account for all requirements that are obligations as distinct from natural duties. This principle holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interest.²⁴

When a person benefits from the cooperative social system, justice requires that she must “do her part” to uphold the institution. For now, we will set aside questions determining what “her part” is in the institution. This matter will be taken up in the next chapter when questions of labor are examined. However, there is a more crucial problem if the only recognized good is the individual's own ends. What if there was a crafty individual who could glean benefits from the social union without doing her fair share to uphold the institution? The grounds for criticizing this type of free rider require that some good beyond the individual good of each person be recognized. In other words, free riders using the social union as merely a means to their own private ends could not be criticized unless some higher, separate good than individual ends was acknowledged. Rawls is clear that such a collective

²⁴ Rawls, LP, 111-112.

good is real. He calls it fairness, and this is the “right” that is prior to the “good.”

Individual freedom is justifiably restricted when necessary for the social union. He wrote,

The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission. Now by definition the requirements specified by the principle of fairness are the obligations. All obligations arise in this way.²⁵

In this way, Rawls distinguished his theory from what he called the notion of private society that would be the basis of libertarian theory. Private society lacks the community spirit Rawls advocates. His example of private society is competitive markets. The sheer self-interest of markets provides a contrast to Rawls’s view of society. He wrote,

The social nature of mankind is best seen by contrast with the conception of private society...Private society is not held together by a public conviction that its basic arrangements are just and good in themselves, but by the calculations of everyone, or of sufficiently many to maintain the scheme, that any practicable changes would reduce the stock of means whereby they pursue their personal ends.²⁶

This is a crucial distinction in Rawls’s thought. *Calculations* aimed at benefiting self are not adequate for motivating associational life rich enough to foster

²⁵ Ibid., 112.

²⁶ Ibid., 522.

human flourishing. Life in society must be more than what private society can offer. On the one hand there can be a social union that is “just and good” in which members participate because they are persuaded by their shared value of procedural justice. On the other hand, private society is identified with self-interest limited only for sheer, calculated gain. Rawls wanted to offer a procedural notion of justice based on more than mere practical necessities. The common life has an inherent value in this scheme. He said,

The social nature of mankind is best seen by contrast with the conception of private society. Thus human beings have in fact shared final ends and they value their common institutions and activities as good in themselves. We need one another as partners in ways of life that are engaged in for their own sake, and the successes and enjoyments of others are necessary for and complimentary of our own good.²⁷

What are these *shared final ends* that unite people? When there is agreement about final ends people can cooperate well. However, the problem of disagreement over final ends arises frequently. The times when there is not agreement about shared final ends are the times that Rawls must address. The final ends in the workplace or marketplace would be matters of disagreement since some would argue for efficiency or sheer profit while others would defend qualitative standards of relationships and processes. Since Rawls considered business and market arrangements exempt from the application of the principles of justice and fairness, his theory may not help us with such cases of conflict over final ends. Rawls hoped

²⁷ Ibid., 523.

that no agreement about comprehensive notions of final ends would be necessary to unite people. Justice as fairness is a procedural notion of justice specifying the process of decision-making about how to cooperate in the absence of agreement over final ends. Yet, Rawls thought that in contrast to private society, the social nature of persons leads to a social good, that is, the value of community or collective life.

Persons are only real selves in relationship with others. Mutual regard for others can be viewed as a sentiment in conflict with individual freedom if freedom is construed only in a negative sense. In other words, I can view the freedom of others as a restriction of my freedom, if I think of my freedom only in a negative sense. If I understand that I have no freedom apart from my connections with others, then my motivation to value the freedom of others changes. Rawls said,

But the question remains whether the contract doctrine is a satisfactory framework for understanding the values of community and for choosing among social arrangements to realize them. It is natural to conjecture that the congruence of the right and the good depends in large part upon whether a well-ordered society achieves the good of community.²⁸

“The good of community” is the good of the social union. Again the problem arises over disagreements regarding what the good of the community actually looks like. Communitarians like Sandel argue that a thicker notion of the good must be

²⁸ Ibid., 520.

included.²⁹ In contrast, libertarians like Nozick argue that collective life must not limit individual ideas of the good.³⁰ The attempt to side step these problems by insisting that his is a *political* conception of justice does not completely ameliorate this tension. After critiques by both communitarians and libertarians, among others, Rawls used more precision in later works when referring to this conception of collective life.

Clarification of terms: Community, Association, Society

In *The Law of Peoples*, Rawls sought to apply his procedural notion of justice as fairness to relationships between different collectives of people on an international level. He attempted a distinction between states as international actors and what he called peoples. Having examined the conception of community or collective life in relationship to liberty in Rawls's work, next I seek to analyze further the relationship between positive freedom and the concept of freedom in the Law of Peoples. Given Rawls's understanding of collective life and its implications for freedom, can a purely negative conception of freedom be adequate? In order to answer this question, we must first ask what the demarcations between peoples are, what is the glue that unites a people, and what are the moral consequences of such aggregates of people

²⁹ Sandel, Michael. *Democracy's Discontent*. Cambridge, Massachusetts, Harvard University Press, 1996. See also *Liberalism and the Limits of Justice*. (Cambridge, Massachusetts: Cambridge University Press), 1982.

³⁰ Robert Nozick, *Anarchy, State, and Utopia*. (New York: Basic Books, Inc., Publishers), 1974.

both internally in relation with other members of the same people and between two peoples? These questions seek to illustrate the relationship in Rawls's theory between freedom and community. In this way the connection with the classical and on-going discussions about community can be applied to Rawls's theory in an examination of positive liberty.

As Rawls writing progressed, the importance of clarifying the distinctions between various types of associational life increased. In *Political Liberalism*, Rawls emphasized a distinction between the terms community and society. He wrote, "Society is a fair system of cooperation."³¹ He continued to maintain his attempt at a middle ground between a communitarian emphasis on community and a libertarian rejection of community. The insistence that there is a collective good in the social union carried over in this second book from his original theory of justice. In addition to the good that an individual seeks as an individual, there is also the good that persons realize "as a corporate body."³² Because of the social nature of humanity, as explained in his earlier work, humans flourish in connection with other humans. This acknowledgement of the ancient tension between the one and the many is the problem of community. But, in this work, Rawls defined the term community in a specific and precise way. He said that a community is a kind of association. He wrote, "By definition, let's think of a community as a special kind of association, one

³¹ Rawls, PL, 34.

³² Rawls, TJ, 201.

united by a comprehensive doctrine, for example, a church.”³³ Since many persons are divided over questions of comprehensive doctrines some other basis for the social union is necessary for peaceful and harmonious coexistence. Rawls hoped that shared political values, like justice as fairness, would unite those who held those values, despite differences in overall comprehensive ideas about virtue or the good. If persons from many differing communities, each holding conflicting comprehensive doctrines all shared some common ground about a fair process for making decisions, this would be a political value that could unify. This is why Rawls admitted that his theory is not a comprehensive theory of justice and maintained instead that it is a *political* theory. Those who share common ground in shared political values are able to unite on grounds that are neutral when it comes to judgments about comprehensive doctrines. Thus the social union is understood as a collective based on a shared political aim. The relationship of freedom in social union is addressed through the concept of overlapping consensus. Rawls wrote:

...political liberalism conceives of social unity in a different way: namely, as deriving from an overlapping consensus on a political conception of justice suitable for a constitutional regime.³⁴

The idea of overlapping consensus is essential to understanding Rawls’s conception of social unity. A society is held together by recognition of justice as fairness derived from the principles of fairness. The unity achieved by overlapping

³³ Rawls, PL, 40.

³⁴ Rawls, PL, 201.

consensus rests on an intersection or overlapping of different moral conceptions. However, in contrast to cohesion rooted in a shared comprehensive view of the good, these societies are united by elements within their own comprehensive view that intersect with others. This is not just tolerance motivated by a desire for mutual tolerance. Rawls wanted to contrast his view of society with private society based on mere calculations of personal expediency as the basis of social unity. Rawls said that overlapping consensus is not “a mere *modus vivendi*” but rather reflects political unity founded on overlapping moral conceptions.”³⁵ As his theory developed in this area, Rawls clarified the terms community, society, and also association. However, more clarification is needed regarding the relationship between these aggregates of people and states as they exist historically.

Rawls addressed the issue of state’s relationships with one another most fully in his late work. However, he had begun delineation of these complex relationships between a state, a community, and a society early on. In *Theory of Justice* Rawls acknowledged that states have national interest as recognized in international law.³⁶ The possibility of social union based in shared principles of justice as fairness provides for various societies sharing political values across national borders. However, in that early writing, Rawls was still using the terms community, society,

³⁵ Ibid., 146.

³⁶ Rawls, TJ, 379.

and nation with less precision than he did in later work. For example, in *Theory of Justice* he wrote,

We are led to the notion of the community of humankind the members of which enjoy one another's excellences and individuality elicited by free institutions, and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all.³⁷

The more precise Rawls who contrasted community as a union defined by a shared comprehensive doctrine, would not have used the term community as it is used there. His attention in his earliest work was focused on constitutional democracies at first, and especially on internal issues rather than international issues. However, throughout his work, he stressed the Kantian roots of his theory.

We have only to note the various ways in which the fundamental institutions of society, the just constitution and the main parts of the legal order, can be found good in themselves once the idea of social union is applied to the basic structure as a whole. Thus, first of all, the Kantian interpretation enables us to say that everyone's acting to uphold just institutions is for the good of each.³⁸

As his work developed over time, he used the term community with more care, but he still maintained the Kantian claim that unity could be based on more than mere

³⁷ Ibid., 523.

³⁸ Ibid., 527-528.

strategic balance of power motivated by pure self-interest.³⁹ In *Political Liberalism*, he distinguished between societies and communities more precisely. He said, “A well-ordered democratic society is neither a community nor, more generally, an association.”⁴⁰ Associations differ from a well-ordered democratic society in two ways. Rawls said:

1. Democratic society is “complete and closed” “entry into it is only by birth and exit from it is only by death” and it is “self-sufficient” “has a place for all the main purposes of human life.
2. Democratic society “has no final ends and aims in the way persons or associations do.”⁴¹

However, Rawls did not thoroughly examine the distinction between a society and a state in *Political Liberalism*. At this stage, he spoke as if a democratic society might be a state. However, the absence of shared ends other than political ends becomes a point for later questions. He said,

This means that citizens do not think there are antecedent social ends that justify them in viewing some people as having more or less worth to society than others and assigning them different rights and privileges accordingly. Many past societies have thought otherwise: they pursued as final ends religion and empire, dominion and glory; and the rights and status of individuals and classes have depended on their role in gaining those ends.⁴²

³⁹ Rawls, PL, 147.

⁴⁰ Ibid., 40.

⁴¹ Ibid., 41.

⁴² Ibid.

There Rawls sounds as if he was speaking of states and societies interchangeably. He is aware of the realist critique that states seek empire. In contrast, he claimed that societies share no “antecedent social ends.” He did not adequately consider prosperity itself as a goal. It could be argued that since economic prosperity promotes the good of individuals it is a shared end of the society. This question of prosperity as a notion of the common good will be taken up more thoroughly in the conclusion of this chapter. For now, we note that prosperity is hard to categorize as a political versus a nonpolitical aim. Rawls said, “But it is also mistaken to think of a democratic society as an association and to suppose its public reason includes nonpolitical aims and values.”⁴³ Since economic prosperity might be considered a political aim that affects the rights and status of individuals, this remains unclear. Before reflecting further on that question, Rawls’s distinctions between associations, communities, and societies must be reviewed more fully. This problem continues to generate criticism of Rawls. As Luis Cabrera wrote, “If the interests of all are not adequately represented in construction of political culture, political institutions or economic policy, then Rawls has not justified his understanding of toleration.”⁴⁴ The issue of collective choice and responsibility complicates attempts to clearly define both states and peoples.

⁴³ Rawls, PL, 43.

⁴⁴ Luis Cabrera, “Toleration and Tyranny in Rawls’s ‘Law of Peoples’,” *Polity* 34, No. 2 (Winter, 2001), 177.

First, it is necessary to clarify what constitutes membership in a community or society and secondly, the limits or borders of that community must be clear. If Rawls does not want to simply utilize the nation state as the aggregate of people in his theory, then the relationship between a people and a state must be clear. Rawls does not say that one people is separated from another by state boundaries. But, he does maintain the relevance of state boundaries for defining moral rights and duties. He said, "In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstance."⁴⁵ The territory of a nation is the property of that nation, and borders are necessary "to prevent the deterioration" of property.⁴⁶ However, there is lack of clarity about the relationship between the nation and the people who are the agent of the property. If peoples have no national interest, as Rawls claimed, then what interest do they share a joint agents and owners of property? Rawls did not resolve this problem and or answer this question. He did uphold property ownership rights accorded by state borders. But, he left unanswered the question of how a people should relate to a state if and when the state acts unjustly in defense of the territory. The boundaries among and between peoples is also unclear if one people is not distinct from another as bounded and defined by geographic territory. It is unclear whether or not a person exit the group or terminate membership in a

⁴⁵ Rawls, LP, 39.

⁴⁶ Ibid., 8.

“people” as one might emigrate from a state.⁴⁷ Even if you can exit, it is unclear whether or not you could form a new people with or without international recognition as a legitimate grouping. Rawls left too many questions over the relationship between nations with territorial borders and peoples as groupings separate from nations.

National borders change daily. More often they change because of irrational forces such as violence and war than because of principled agreement or rational process. The historical contingencies that led to the national borders of the current moment in time are riddled with examples of injustice and unreason. To suggest that moral obligations are defined by national boundaries is a strange idea in our world where participants of nations did not contract to be citizens. In her essay, “National Boundaries and Moral Boundaries: A Cosmopolitan View,” Judith Lichtenberg argued that “the proper scope of a nation’s concern extends beyond itself.”⁴⁸ She called for a cosmopolitan conception of justice that would be implemented without a world-state but rather achieved through “cooperation.”⁴⁹ The controversy over the moral relevance of state borders continues.⁵⁰ For example, Andrew Kuper criticized

⁴⁷ Ibid., 170.

⁴⁸ Judith Lichtenberg, “National Boundaries and Moral Boundaries: A Cosmopolitan View.” in (ed). Peter G. Brown and Henry Shue. *Boundaries*. (Totowa, New Jersey: Rowman and Littlefield. 1981), 79.

⁴⁹ Ibid., 98.

⁵⁰ Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S Foreign Policy*. Princeton, New Jersey: Princeton University Press, 1980. also *Boundaries* (ed.)

Rawls for obscuring “*existing* asymmetries of power—and their ill effects” by treating current forms of nation and state as permanent.⁵¹ Rawls dodges this problem by developing his theory based on cooperation between societies of people rather than states. He did not want to deal with the problem of state’s tendency toward empire-building as a matter of national interest, but he did want to defend state borders as definitive of the entity he called a people. Pogge’s criticism of Rawls confronts this unresolved problem. Pogge wrote,

Only within a national territory and the population it defines does he view the focus on the least advantaged as appropriate. He thereby circumvents a crucial moral question, which his theory ought to answer, namely whether the institutionalization of national borders really has this magical moral force of shielding us from (or reducing the force of) the moral claims of “foreigners.”⁵²

A discussion of the rights and duties of foreigners requires clarification about who is a member of the contracting entity. Rawls did not adequately explain how peoples compare to nations.

According to Rawls, the value of collective life is expressed at different levels in associations, communities, and societies. The problem of freedom is at the heart of these various descriptions of ways of being with others. Democratic society

Peter G. Brown and Henry Shue. (Totowa, New Jersey: Rowman and Littlefield), 1981.

⁵¹ Andrew Kuper, “Andrew. *Democracy Beyond Borders*. (New York: Oxford University Press, 2004), 197.

⁵² Pogge, RR, 10.

includes institutions that are designed for “establishing a social world within which alone we can develop with care, nurture, education, and no little good fortune, into free and equal citizens.”⁵³ While acknowledging this need for collective life, Rawls maintained that society need not be as unified as what he called a community – that is a collective sharing a comprehensive notion of the good as opposed to a political notion of the good. It is the value of freedom that prohibits building social union on comprehensive notions of the good. Liberty requires some other basis for collective life. Rawls wrote:

To think of democracy as a community (so defined) overlooks the limited scope of its public reason founded on a political conception of justice. It mistakes the kind of unity a constitutional regime is capable of without violating the most basic democratic principles.⁵⁴

Thus, a well-ordered society captures the necessary value of social union or collective life while at the same time preserving individual freedom to choose and pursue various comprehensive notions of the good. Rawls said,

If we think of political society as a community united in affirming one and the same comprehensive doctrine, then the oppressive use of state power is necessary for political community.⁵⁵

⁵³ Rawls, PL, 43.

⁵⁴ Rawls, PL, 42.

⁵⁵ Ibid., 37.

I find Rawls profoundly satisfying and beautifully convincing on this point. Communitarians go too far in limiting freedom on the basis of comprehensive notions of the good. However, the question of economic considerations remains. Rawls consistently maintained that “equal basic liberties” are a prerequisite for “social cooperation on the basis of mutual respect.”⁵⁶ Economic prosperity is valued both as an end in itself and as a means to other goods. Is it a political aim or not? It seems that some level of prosperity is required for the collective life as well as individual life. Therefore, affluence is a political aim. It must be regulated in the social union. On the other hand, some individuals claim that material wealth is their comprehensive good. Therefore, they claim that their right to pursue wealth should be unrestricted. What grounds for limiting freedom to pursue prosperity can Rawls offer and defend? Especially if prosperity is viewed as a political end of a society, it may be viewed as an untouchable birthright. How persuasive is Rawls in response to such claims? Rawls’s desire to defend justice as fairness as more than merely a practical arrangement or logical operating procedure depends on the ability of one person’s good to be inseparably linked to another person’s good.

The motivational power of *Political Liberalism* relies on reasonableness of persons in relationship to others who cannot be viewed as merely means to an end. Willingness to cooperate is related to mutual respect. Rawls said, “If the equal basic liberties of some are restricted or denied, social cooperation on the basis of mutual

⁵⁶ Ibid., 337.

respect is impossible.”⁵⁷ Mutual respect is a prerequisite for the social union. The willingness to respect others and cooperate in collective life must be shown to be of benefit to the individual. Freedom and pursuit of the good is best achieved through this cooperation, according to Rawls. The pressure to abide by the agreements of the social union is a persuasive, political pressure. Rawls said, “Political power is always coercive power” but in a democratic society this power is the “power of the public, that is, the power of free and equal citizens as a collective body.”⁵⁸ In some cases the power of the individual is subordinate to this corporate power, as individuals must recognize the collective good. But, there are rogue individuals who claim their comprehensive good of material affluence is at odds with the limits and obligations of democratic society as Rawls conceives them. This parallels the problem Rawls leaves unanswered in *The Law of Peoples* related to the propensity of societies to pursue material wealth at the expense of those outside their social union.

In *The Law of Peoples*, Rawls continued the use of the terms association, community, and society as developed in *Political Liberalism*. An association is a group with a shared goal. A community is a specific type of association united by a comprehensive notion of the good. A society is distinct from an association or a community and is united only by political aims supported by overlapping consensus. In this later work, Rawls used the term society as he did in earlier writing, but here the term *peoples* is also used. Furthermore, since this work described relationships

⁵⁷ Ibid.

⁵⁸ Rawls, PL, 68.

among different societies, the relationship between societies and states is also crucial. However, in Rawls's writing there is a lack of clarity about the relationship between societies, states, and collectives united by shared territory. Here the abstract theory of social union resulting in the notion of societies as Rawls describes those bumps up against the historical realities of states as actors. In an idealized world, societies are united because of the reasonable and social nature of humans making cooperation practical. In the historical world, things are messier than that. Although Rawls clearly stated that societies are not the same as states, he did not fully explain how societies should relate to states and state power.

Society's Relationship to States as Actors

To deal with complexities in the relationships between societies requires extension of his original theory of justice. His final book contains the culmination of his theory. Therefore, *The Law of Peoples* will be the focus of the application of positive liberty in the remainder of this chapter. Rawls attempted to delineate between states as political actors and "society of peoples." He wrote:

I shall use the term "Society of Peoples" to mean all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations. These people have their own internal governments....⁵⁹

For the purpose of clarity, it would have been helpful to use the term 'society' only in reference to a collective of peoples. Peoples cooperate with each other in this

⁵⁹ Rawls, LP, 3.

cooperative society that is regulated by the law of peoples. However, Rawls uses the terms *well-ordered peoples* and *well-ordered societies* interchangeably throughout the monograph. The important distinction then, is between *states* and peoples or societies. Rawls claims that “the difference between states and peoples is enormous.”⁶⁰ According to this distinction, states have interests that put them at odds with others in ways that lead to war and insecurity.⁶¹ Rawls wrote,

How far states differ from peoples rests on how rationality, the concern with power, and a state’s basic interests are filled in. If *rationality* excludes the *reasonable* (that is, if a state is moved by the aims it has and ignores the criterion of reciprocity in dealing with other societies); if a state’s concern with power is predominant; and if its interests include such things as converting other societies to the state’s religion, enlarging its empire and winning territory, gaining dynastic or imperial or national glory, and increasing its relative economic strength – then the difference between states and people is enormous.⁶²

In contrast to states, liberal peoples “limit their basic interests as required by the reasonable.”⁶³ By defining his terms in this way, Rawls has already assured that liberal peoples will achieve reasonable pluralism because by definition they value cooperation and coexistence. Well-ordered peoples limit their own freedom by fostering values of peace. Rawls might have achieved the same distinction by

⁶⁰ Ibid., 28.

⁶¹ Ibid., 29.

⁶² Ibid., 28.

⁶³ Ibid.

drawing a line between imperialistic states and liberal states (defined as non-imperialistic). But he did not. He wrote, “Liberal peoples can live with other peoples of like character in upholding justice and preserving peace.”⁶⁴ Why this distinction rather than one between peaceful states and imperialistic states? He states but cannot fully prove that just peoples are rational whereas states, by nature, are not just because they are not rational. Rawls wrote:

What distinguishes peoples from states – and this is crucial – is that just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equals.⁶⁵

He could have easily said “just *states* are fully prepared to grant proper respect to other states as equals.” But that would imply that states can be moral actors. He begins offering an explanation of how states differ from peoples. But then, he defines peoples as capable of moral motivation without really showing how peoples are different in any other respect from states. Thus, he side-steps the issue of how peoples are constituted, how they are separated from other peoples and how they interact with states. He wants to avoid saying that peoples are united by a comprehensive idea of the good, or a general will based on agreement about the good. Rather than saying that states are defined by material and historical conditions, and peoples are constituted by a culture, civilization, or common interests, he leaves the relationship of these terms fuzzy. This is problematic since it

⁶⁴ Ibid.

⁶⁵ Ibid, 35.

leaves unanswered the question of how a person's freedom is realized in cooperation with others at an international level.

Examination of what constitutes belonging in a society, the boundaries or borders of a society, and the moral implications of society are needed. The reality that the boundaries of nation states have been established by political actors and contingencies of history rather than rational process is a problem for Rawls's work. Rawls discussed this issue in some detail, stating that the laws of peoples pertained to societies or peoples rather than states. What does he mean by the term societies? Collectives of people can be identified that are not states. However, the uniting cause and the boundaries of such collectives need definition. For example, there are collectives of people like the Palestinians or Tibetans in exile who have no state territory that they occupy and control. They are not recognized as states, at least not formally. They are united by common ancestry and culture but not necessarily a shared comprehensive vision of the good. Would he say European peoples with their respective internal governments provide a better example of what he has in mind? He seems to be using the term in a way approaching Huntington's idea of civilizations. We can conceptualize divisions of persons based on geographic location, gender, economic class, religion, race, or various other characteristics. What Rawls meant by the term peoples as opposed to states is unclear, except insofar as he wanted to illustrate that there are associations, communities, and connections that do not depend on state boundaries. Ethical issues among various collectives of people obviously predate the development of the modern nation state. Thus, questions of

international ethics are not limited to the model of how one nation relates to others, since the actors in the international arena are not only nations. Individuals, corporations, races, interest groups, religions, and various other groupings transcend national borders. The phenomenon of globalization, including increasing economic interaction across national borders has prompted talk of an international community. No longer can a sharp distinction hold between obligations owed to members within a society and differing obligations owed to those outside its membership unless the reasons from belonging and being excluded are justified.

Rawls presented a theory of justice that he thought fair because the principles that justify policies are selected in the original position in a way that “nullifies the contingencies and biases of historical fate.”⁶⁶ However, the constituency of a collective of people, a community, society, or nation is not clearly defined in relationship to historical contingencies in Rawls’s work. In his attempt to avoid international application of his theory, Rawls had maintained in his earlier work that his theory applied only within a certain collective of people. Most typically, he operated as if that collective of people was both united and restricted by a contract that was probably a constitution. The principles of justice that apply to persons in constitutional democracy were to be extended as far as possible to the international level. In *Theory of Justice* Rawls wrote:

The basic principle of the law of nations is a principle of equality. Independent peoples organized as states

⁶⁶Rawls, TJ, 378.

have certain fundamental equal rights. This principles is analogous to the equal rights of citizens in a constitutional regime. One consequence of this equality of nations in the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers.⁶⁷

Because of the commitment to remain as neutral as possible about the content of the contract itself, Rawls did not specify enough examples of this demarcation between types of collectives that would qualify and those that would not. His theory was developed with the idea of modern democratic states in mind, although he did not want to limit the application of the theory only to such states. In his later work, Rawls most typically described contractual ethics as a process resulting in the law of peoples regulating interaction between people joined in a society. This leaves unanswered some crucial questions about the relationship between a society and its territory. Society is not limited by geographical borders. But where are the edges of the society? Furthermore, what constitutes obligations across borders?

Consider two different cases of state borders. On the one hand, the border between the United States and Mexico is an easy example of the reality of state borders and their implications for freedom. Sharp differences in economic prosperity, opportunity, and meaningful freedom are enforced at this border. On the other hand, many parts of the border between the United States and Canada seem blurred since commonalities in lifestyle and level of affluence unite people on each side. That is to say, in the case of the U.S./Canadian border, a common people can

⁶⁷ Ibid.

be easily imaged transcending that state border. In contrast, real community bridging the border between the United States and Mexico is hard to imagine. If the border between the U.S. and Mexico happens to coincide with what Rawls would call a separation between one people and another, then what obligations and possibilities for relationship are implied? What about the desire for freedom to bridge the United States border with Mexico by constructing true community based on common humanity? Are we free to do that? Do we have a duty of assistance in that case? The will of workers or humanitarians to transcend that border is in conflict with the power structure of the institutional states. Historical and practical arguments have been used to justify the border and its consequences for distributive justice. Rawls accepted state borders as necessary for the effective protection of property, but does not fully justify the different moral duties between the society of people on one side of the border and the society on the other side. Although Rawls tried to answer such questions in *The Law of Peoples*, his argument fails to clarify these matters related to state versus societal boundaries and identities.

In his most recent work Rawls responded to the criticisms related to these matters of the scope and meaning of community. However, his response focused only on the obligation to assist impoverished societies. He did not adequately address the reliance of his theory on the significance of state borders. Rawls's consideration of the relationship between societies includes a response to Pogge and others in the discussion of the duty of assistance to what Rawls called burdened societies. In *The Law of Peoples*, Rawls addressed Pogge specifically noting that

their possible agreement depended on Pogge's willingness to acknowledge a cut off point for assistance.⁶⁸

Rawls's law of peoples requires a limited duty of assistance to burdened societies. Burdened societies are those "whose historical, social, and economic circumstances make their achieving a well-ordered regime, whether liberal or decent, difficult if not impossible."⁶⁹ No consideration of historical injustices that led to the difficulties of these burdened societies appears in *The Law of Peoples*. Imperialism, conquest, and colonialism are not acknowledged as having any pertinent consequences for the relationships between well-ordered societies and burdened societies. Rawls did acknowledge that national borders are "historically arbitrary," meaning that they came about through a process that was not a fair, rational, just process.⁷⁰ Nevertheless, Rawls sets aside past injustices in favor of asking how to proceed in the future. He said, "It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified."⁷¹ Then he argued that the justification for maintaining the current boundaries has to do with the efficacy of borders for maintaining property interests that states have in their territory. This highly practical approach assumes that the cooperative good will of all

⁶⁸ Rawls, LP, 39.

⁶⁹ Ibid., 5.

⁷⁰ Ibid., 39.

⁷¹ Ibid.

parties can be secured despite past resentments in order to secure a stable future.

The empirical question about whether or not this approach of starting over in the interest of practical stability for the future is tenable cannot be addressed here.

However, it is worth noting that the question remains.

Similarly, Rawls suggests other analysis that relies on empirical claims that are unfounded. For example, he made a strong case for blaming the historical causes of poverty on badly ordered regimes.⁷² Whether or not certain policies actually do or do not render predictable results still does not answer normative questions about desert. If wise policies lead to situations wherein basic needs are met then we still must answer questions about our obligations in cases where wise policies are not followed. For the sake of argument, suppose that certain historical policies chosen by a society in the past result in extreme poverty. Later generations of individuals within that impoverished society who had no power over the policy-making prior to their birth cannot deserve situation. A cut-off point in assistance would always allow such injustices. It is inconsistent to leave the past behind when it comes to the arbitrary and unjust division of national borders, but to insist that the consequences of past policy are deserved. The limits of the duty of assistance must be based in a more complete understanding of the nature of duty itself. Rawls did not want to argue that it was prudent for wealthy nations to assist burdened societies. He argued that there is a *duty* of assistance. He said that the “unfavorable conditions” of

⁷² Ibid., 38.

burdened societies generate a limited duty of assistance.⁷³ Not only the limits of this duty, but the basis for this duty remain unclear.

Rawls seemed to simply assume that this duty exists. Other than the practical benefits of aid, there is no real justification for the requirement as a duty. He wrote:

In regard to these burdened societies we must ask how far liberal or decent peoples owe a duty of assistance to these societies so that the latter may establish their own reasonably just or decent institutions.⁷⁴

He accepted that he must deal with the question of the extent and conditions of the duty, but never fully explains why there is such a duty at all. He has taken as a starting point for his discussion a list of principles of justice for international law that is commonly accepted.⁷⁵ One might think that Rawls would just have an international version of the original position wherein persons behind a veil of ignorance would select this duty. However, in *The Law of Peoples* Rawls argued that a “second original position” was required to model justice as fairness among peoples.⁷⁶ The representatives to this second original position know that “reasonably

⁷³ Ibid., 105.

⁷⁴ Ibid.

⁷⁵ Ibid., 37.

⁷⁶ Ibid., 30.

favorable conditions obtain that make constitutional democracy possible.”⁷⁷ In other words, there are no representatives of outlaw or burdened peoples allowed to have voice in this model. The assumption is that reasonable and rational choices of representatives from relatively well-off nations would select the best principles to govern all situations. Choosers in the second original position evaluate and select among variations of “the eight principles of the Law of Peoples.”⁷⁸

The duty of assistance is included in this list. Rawls argues that representatives in the second original position would affirm the limited duty of assistance. But, Rawls never fully explained how the second original position wherein these principles should be scrutinized and rationally chosen would justify the duty of assistance as more than *modus vivendi*. Consider this claim that the law of peoples includes a duty to assist burdened societies. What is the basis in Rawls’s theory of this duty? In the domestic case, the difference principle justifies a duty within a liberal society to assist burdened individuals. However, in the international case, Rawls said that the difference principle does not apply, and does not fully justify the duty of assistance at that level.

Rawls was clear that “the object of the duty of assistance” is not equalizing levels of welfare. The duty is simply to deliver burdened states to the minimal level that makes it possible for them to join the well-ordered states by achieving just institutions. Rawls deals with the case of burdened societies in connection with his

⁷⁷ Ibid., 30.

⁷⁸ Ibid., 40.

treatment of the relationship toward outlaw states. Both are cases of non-ideal theory. But, in his discussion of outlaw states he does not use the language of duty. He does not say that well-ordered states have a duty to pressure outlaw regimes to reform. His interest in discussing the limits of the society of peoples is to exclude outlaw states from that society and to defend the right of well-ordered states to use force in self-defense. In the case of an aggressive outlaw regime, a well-ordered state may resort to nonideal responses like war. Perhaps, Rawls intends to claim that in the case of burdened societies, a well-ordered state may resort to nonideal responses like assistance. But, if this is the intent, why does he say they must resort to assistance rather than simply saying that they may assist? That is, why does he say they have a duty to assist?

One possible answer to this question might be that peaceful coexistence is furthered when burdened societies receive assistance. Following the liberal vision in Kant's essay, "Perpetual Peace", Rawls thinks that "peace reigns" among constitutional democratic societies.⁷⁹ Eliminating causes of war motivates the efforts of the liberal or decent people in order to bring outlaw states into the fold of those who live according to the Law of Peoples. Perhaps a similar line of reasoning justifies his claim that there is a duty of assistance. In other words, since starving and desperate peoples from other states may pose an outside threat to liberal or decent peoples, the plight of those burdened societies must be alleviated to secure peace. For example, the stability and security of a liberal people could be

⁷⁹ Rawls, LP, 19.

jeopardized if a neighboring people are agitated because of severe poverty. In such a case, prudent self-interest motivates assistance. However, if that is the reasoning for what Rawls calls the duty of assistance, why does he call it a duty? Why not say that well-ordered societies have an interest or a goal in assisting burdened societies?

Rawls hoped to offer a reason different from the mere utility of cooperation.

Remember his early distinction between private society, exemplified by the market versus social union, united by a political notion of justice. Competitors in the market will curtail their own freedom insofar as it furthers their overall and long-term benefits. However, Rawls was seeking a deontological alternative to such moral reasoning. His method of reflective equilibrium must be the source of justification for this duty. Perhaps there is a moral sentiment based on sympathy or common humanity. This moral impulse might become fully developed as a duty of assistance through the process of reflective equilibrium. If so, this should be clarified. If the duty of assistance is based on a felt impulse rather than a thoroughly considered judgment what justifies the insistence on a cut-off point for assistance?

The cut-off point in assistance distinguishes the conclusions of *The Law of Peoples* from the cosmopolitan concept of justice. In contrasting his claims regarding distributive justice among peoples with the cosmopolitan view, Rawls said that the later “is concerned with the well-being of individuals, and hence with whether the well-being of the globally worst-off person can be improved.”⁸⁰ Rawls clearly states that the Law of Peoples is indifferent to the possibility of improving the well-being

⁸⁰ Rawls, LP, 120.

of the globally worst-off individuals.⁸¹ Rawls detailed this distinction between his theory and the cosmopolitan theories by examining Charles Beitz's resource redistribution principle and Thomas Pogge's Egalitarian principle.⁸² Rawls viewed the duty of assistance as a transitional measure to help burdened societies achieve a threshold of possibility for political autonomy. Briefly stated, Beitz and Pogge both argued for greater redistribution across borders than Rawls suggests.⁸³ Because Beitz's proposal is so similar to Pogge's, I have chosen to address only Pogge's critique of Rawls in detail. Rawls's rejection of their arguments depends on his notion of reciprocity. For example, if an attempt to act on the assistance to burdened societies as suggested by the law of peoples was implemented in 2006, there might be a cut-off point to that assistance in the year 2026 assuming that the threshold required for political autonomy was achieved. However, by the year 2046, severe poverty might recur as a consequence of unwise policies. Reciprocity would demand that affluent nations in 2046 had already done their part, and ought not be taxed to assist this burdened nation further. In opposition to these justifications for international wealth redistribution, Rawls maintains that the law of peoples does not necessitate redistribution of wealth except when a duty of assistance is required to elevate a people to a minimal level wherein a well-ordered society is possible.

⁸¹ Ibid.

⁸² Ibid., 118, n.53.

⁸³ Beitz, 38, n. 44.

Attention to the well-being of individuals is the focus of cosmopolitan international theory. Why is this opposition to the cosmopolitan argument so important to Rawls? He wants to preserve neutrality about competing understandings of the good. Justice as fairness does not promote welfare of individuals as an appropriate end of political institutions. However, when Rawls makes that move, leaving aside questions of historical injustice that may have led to burdens, he needs to make a stronger case for claiming that there is a duty of assistance rather than just a practical motive for assistance.

State borders demarcating territory are important in *Theory of Justice* because they limit the extent of duties and obligations. The contract is with members of the constitutional democracy (or decent state). In *The Law of Peoples* Rawls did not answer questions about whether people as individual members of a people or society have moral rights or obligations in relationship to other members of their same people or society who do not happen to be members of their same state. The relationships between a definition of community, the question of borders, and the question of assistance are identified as key elements in any theory of distributive justice, according to Michael Walzer in his essay, "The Distribution of Membership." Walzer wrote, "The idea of distributive justice presupposes a bounded world, a community within which distribution takes place."⁸⁴ Rawls did not adequately address the finite limits of water and air or the perspective of a global unity of shared responsibility and need existing over generations for such resources.

⁸⁴ Walzer, 1.

Rawls would agree with Walzer that the idea of distribution presupposes some bounded collective of persons. However, Rawls argued that the national borders as the exit today provide those bounds.

This leaves unanswered questions of shared resources that transcend national territory like air and water.

The assumption of the current distribution of land resources as defined by historical borders would entail that the agent responsible for those resources is the nation state corresponding to those boundaries not an amorphous society. It is inconsistent to reject states as actors when selecting building blocks for the Law of Peoples and then to tie the cut-off point in aid to reciprocity based in state responsibility. If aid designed at ensuring political autonomy has a cut-off point as Rawls requires, then the state as the policy-maker responsible for these property interests must be the agents cooperating in the Law of Peoples. When discussing principles of distributive justice in *The Law of Peoples*, Rawls emphasized the requirement of reciprocity. His example in this case amounts to a claim that a people should reap what they sow. Efforts should be rewarded. His theory of justice holds that talents are morally irrelevant but the will is not. A minimum assurance of opportunity should be afforded. However, if one people exhibits thrift and industry and another does not, the hard-working, disciplined people deserves its profits over time. Two questions are relevant at this point. First of all, why is the will different from talent? In other words, if collective wisdom, energy, and will-power of a people is as arbitrary as their other talents, why is the will morally relevant? Rawls

might argue that reciprocity requires that the collective wisdom and energy of a people is a result of that people's past choices, so it is not arbitrary at all. Rawls noted that there are historical examples indicating that "resource-poor countries may do very well (e.g., Japan), while resource-rich countries may have serious difficulties (e.g. Argentina)."⁸⁵ Rawls identified the "political culture" and "political virtues" as the crucial element determining the outcome.⁸⁶ Once again Rawls seem oblivious to the grim realities of generations of mal-nutrition, lack of education, and other resources that can sap the will of a people.

Despite historical cases that might be exceptional for various reasons, Rawls has not offered strong evidence to settle the empirical question about effects of severe poverty on the quality of representational processes for setting policy that will affect future generations. Instead, Rawls follows in the tradition of reliance on labor as defining factor constituting property rights and allocation of resources.⁸⁷ The claim that people deserve the fruit of the labor will be addressed further in the next chapter. However, lack of labor is not the only reason for poverty. Rawls clearly

⁸⁵ Rawls, LP, 108.

⁸⁶ Rawls, LP, 108.

⁸⁷ In this way Rawls agrees with Dworkin, Ronald. "Equality, Luck, and Hierarchy," *Philosophy and Public Affairs*. 31, No. 2 (Spring:2003) 190-198. See also: "Political Obligation and Community," *Social and Political Philosophy*. ed. John Arthur and William H. Shaw. (Englewood Cliffs, NJ: Prentice Hall, 1991), pp. 33-44. and *Sovereign Virtue*. (Cambridge, Massachusetts: Harvard University Press), 2000.

stated that poverty is caused by bad institutions.⁸⁸ He gives examples of how resource poor nations can be well-ordered, while nations with abundant material resources can remain burdened. In this way, he claims to demonstrate that inequalities in material resources are not the cause of disparity between the prosperity of nations. His examples are anecdotal and hardly constitute conclusive empirical evidence regarding the relationship between natural resources and the wealth of nations. Although it would be equally unfounded to claim that imperialism was a contributing cause of poverty, the point is that Rawls has not ruled out that possibility. Rawls acknowledged that empires rise to power because of “gluttony” or “the ever-expanding craving for power.”⁸⁹ However, he does not adequately address any need to ameliorate historical consequences lingering from past injustice of empires.

Some have claimed that the historical development of international trade resulted in patterns of dependency that are deeply entrenched.⁹⁰ These and other possible causes of wide-spread poverty must be examined empirically. Such research is beyond the scope of this study. Yet, Rawls would do well to admit that the causes of poverty and wealth are also beyond the scope of his study. If realists are correct that greed and lust for power will motivate human interaction regardless

⁸⁸ Rawls, LP, 108.

⁸⁹ Ibid, 29n.

⁹⁰ Fernando Henrique Cardoso, and Enzo Faletto. *Dependency and Development in Latin America*. (Los Angeles: University of California Press), 1979.

of culture and moral training, then redistribution of wealth within and among societies will always be required in order for peoples to have enough mutual respect to be free in a meaningful sense. Continuous redistribution without a cut-off point is unacceptable to Rawls because of his commitment to reciprocity. Claims to property can be based on need or desert. When tension between the two claims arises in conditions of scarcity, communities must either choose to prioritize claims based on need or on desert. In his international theory, Rawls prioritized desert based on reciprocity over need. Severe poverty can be understood to be deserved according to Rawls's theory because if the policy-makers for a people make unwise choices such poverty may be part of the consequences. According to Rawls, peoples whose policy-makers made wise choices resulting in relative affluence should not be penalized or taxed by an unlimited duty of assistance since this violates reciprocity. Therefore, understanding the causes of poverty accurately are important in the application of Rawls's theory.

A final argument related to international assistance relates to the limits of freedom in community because of limited material resources. In other words, both within and among different communities of people, there might be a willingness to limit negative freedom in order to promote positive liberty, but not if much sacrifice is required. A duty of assistance extending to continual redistribution might be rejected on the basis that wealthy peoples would be unfairly asked to sacrifice too much because the needs of the impoverished are so great. If too heavily taxed, the productive will of a people might decline from resentment. Henry Shue analyzed this

argument in his work, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*.

He stated that one possible argument against international assistance is that “there are so many deprived persons that the cost of aiding them all until they can be self-sufficient is an unfair, if not impossible burden to impose upon the affluent.”⁹¹ His answer, based on empirical study, is that such an argument fails. He wrote:

It would not be possible, and it is not necessary in order to fulfill subsistence rights, to transfer so much wealth and income from the currently affluent to the currently deprived that today’s affluent will be reduced to a level only marginally better than subsistence.⁹²

Once again, such empirical matters cannot be resolved here. However, if Shue is correct, there are implications for Rawls’s theory. Shue claimed that the survival rights of the impoverished should not be sacrificed because of the less weighty free trade rights of the affluent. He recommended limiting the freedom of individuals and corporations in international trade for this reason. Wouldn’t Rawls be committed to similar regulation of international trade? If he took seriously a more robust notion of freedom, including the positive notion of freedom, he would. In community, some freedom is limited so other freedom is made real. It is not the aggregate amount of freedom that is important, but the quality and integrity of the freedom within community. Rawls agrees that subsistence rights are legitimate and so includes the duty of assistance to burdened societies in his law of peoples. But he leaves

⁹¹ Shue, 105.

⁹² Ibid., 111.

unanswered questions about the extent of the hardship that can be imposed on an affluent people in order to meet subsistence needs of burdened peoples.

International Community in Pogge's critique

I turn now to the themes offered in Thomas Pogge's critique of Rawls to demonstrate where the considerations of these problems are being developed in the contemporary debate. The potential for the application of the positive concept of liberty to Rawls's work coincides with Pogge's concerns. In other words, the critique of Rawls's view of freedom in relationship to collective life that I have offered above is based on the idea of positive freedom. This critique overlaps in important ways with criticisms of Rawls offered by Thomas Pogge. Pogge briefly considered and rejected emphasizing a distinction between positive and negative liberty,⁹³ but at the same time indicated sympathy with classical concerns upheld by positive liberty. The substance of my agreement with Pogge is as follows: Pogge begins from the reality of "widespread human misery" and derives from three main problems.⁹⁴ First of all, Pogge said that Rawls does not convincingly defend the importance of state borders as legitimizing differences in ethical obligations and rights. Secondly, Pogge argued that Rawls's notion of freedom is inadequate because it is not "worthwhile

⁹³ Thomas Pogge, "The Interpretation of Rawls' First Principle of Justice," in *The Two Principles and Their Justification*. (ed.) Henry S. Richardson and Paul J. Weithman, (New York: Garland Publishers, Inc. 1999), 62.

⁹⁴ Pogge, RR, 273.

freedom.”⁹⁵ And finally, Pogge demonstrated that Rawls did not adequately answer the questions related to the limitations of natural resources and material causes of poverty. Because Pogge’s work so closely mirrors my own criticism of Rawls, I will explore his analysis in detail and demonstrate how the concept of positive liberty provides important historical and ethical connections worth further development in Pogge’s critique of Rawls.

Pogge stated, “The distinction between positive (social, economic, and cultural) and negative (civil and political) liberties is a purely conceptual one.”⁹⁶ He did not think that the distinction would be helpful in sorting out the prioritizing of liberties in the original position. In other words, he rejected the idea that they would select negative liberties over positive liberties or vice versa. In fact, Pogge challenged the distinction that Rawls made between political liberties in contrast to other liberties. He noted that “The political liberties, though intrinsically ‘positive’, often – by sleight of hand – end up in the ‘good’ pile of the Western theorist’s classification.”⁹⁷ He argued that Rawls prioritizing of political liberties over subsistence rights could be a problem, although Rawls relegated such a conflict to cases of non-ideal theory. Pogge wrote,

The Rawlsian concern for the least advantaged undercuts then the classical liberalist emphasis on civil and political liberties, because the parties can be

⁹⁵ Ibid., 127.

⁹⁶ Pogge, 1999, 61.

⁹⁷ Ibid., 61, n. 6.

presumed to be equally reluctant to risk death from starvation or lack of hygiene as they are to risk being killed through assassination or torture.⁹⁸

In a footnote⁹⁹ Pogge clarified that the classical liberalist emphasis on civil and political liberties he had in mind was that of Isaiah Berlin who prioritized negative over positive liberties. Pogge did not suggest that the opposite of this classical liberal emphasis on negative liberties was the answer. He did not see the solution as promoting the positive concept of freedom as developed by opponents of liberalism. However, he did argue against promoting only a negative concept of liberty because that could result in liberties being merely formal. In reference to the distinction between positive and negative freedom Pogge noted the work of MacCallum who convinced him that this distinction is not “as clear-cut as had been supposed.”¹⁰⁰ Despite these disclaimers, Pogge’s work repeatedly returns to the problem that social and economic constructions lead to freedom that is merely formal rather than meaningful. For this reason, I find themes sympathetic to my emphasis on positive freedom in Pogge’s criticism of Rawls. I do not claim that Pogge would embrace promotion of positive freedom as a corrective to problems in Rawls theory. However, I think he would acknowledge resemblances between his critique and mine.

⁹⁸ Ibid., 62.

⁹⁹ Ibid., 62, n. 7.

¹⁰⁰ Ibid.

Pogge made a move similar to promoting positive liberty when he distinguished between the “positive and negative” versions of the golden rule. He urged consideration of the positive version because it is “much closer to the ‘spirit of solidarity’ invoked in article four of the Universal Declaration of Human Rights. He said, “Endorsement of the positive version would have made it difficult to deny that persons have a responsibility to help others in distress...”¹⁰¹ The definition of community is in question again as Pogge reflected on our responsibility to others. He argued that the global economy is unjust because “as advantaged participants we share collective responsibility for injustice” of poverty and unfair distribution of wealth.¹⁰²

Pogge analyzed Rawls’s distinction between liberty and the worth of liberty and found Rawls wanting on this point. In considering the liberties that Rawls intended to insure Pogge wrote, “All these must exist not merely on paper but effectively, in practice.”¹⁰³ The positive notion of freedom could be helpful to Pogge’s criticism of Rawls because of its emphasis on the material conditions of freedom as opposed to the formal conditions of freedom. In his writing Pogge referred to the distinction between merely formal freedom versus effective freedom. He wrote, “Thus the first principle requires not merely formal but effective legal

¹⁰¹ Thomas Pogge, “An Egalitarian Law of Peoples,” in (ed.) Henry S. Richardson and Paul L. Weithman. *The Philosophy of Rawls*, (New York: Garland Publishing, Inc., 1999), 156-157.

¹⁰² Pogge, RR, 277.

¹⁰³ Ibid., 147.

freedom...”¹⁰⁴ His insistence on worthwhile freedom reflects the same concern. He said,

They and their families may be unfree to purchase a nutritious and healthful diet, sufficient clothing and heating fuel for the winter, needed medical care and medications, a decent education, and so forth. Where does Rawls’s account take note of this sort of unfreedom?¹⁰⁵

Pogge noted Rawls’s admission that “the basic liberties may prove to be merely formal”¹⁰⁶ Rawls saw the potential problem, but did not provide an adequate solution. Although the difference principle is designed to address the problem at the domestic level, when it comes to the international level, Rawls allowed for cases of burdened societies that must suffer the consequences of their bad political culture even if it results in unequal worth of liberty. All too often, liberties prove merely formal, and freedom is only freedom in form but not substance. Pogge repeatedly stated that, “All these must exist not merely on paper but effectively, in practice”¹⁰⁷. The distinction between positive and negative liberty provides a basis for correcting this problem. In other words, freedom is not just the absence of restraint, but the presence of a positive, dynamic, functioning process. I agree with Pogge that persons in the original position would choose what Pogge called worthwhile freedom

¹⁰⁴ Ibid.,128.

¹⁰⁵ Ibid., 133.

¹⁰⁶ Rawls, PL,lviii, and also Pogge, RR, 133.

¹⁰⁷ Pogge, RR, 147.

rather than what Rawls called freedom. This is another way of saying, persons in the original position would insist on positive freedom, not just negative freedom. Pogge wrote,

Delegates of liberal societies as Rawls conceives them
would therefore not merely prefer, but would choose,
my more egalitarian law of peoples over his
inegalitarian alternative.¹⁰⁸

Unfortunately, Rawls did not live long enough to respond to this specific critique of his last book. His best response might have been that Pogge's claim rests on liberal assumptions that assume universal or comprehensive notions of the good that Rawls aimed to avoid. Yet, Pogge is convincing that freedom is a vacuous term unless the positive construction of freedom is protected within social systems. It is the inadequacy in Rawls's concept of freedom that leads to this problem. Pogge criticized Rawls for valuing formal freedom over actual embodied freedom. By insisting that on the priority of the first principle, "... Rawls lets his lexical priority of the basic liberties (the first principle of justice) undermine his priority of concern for the least advantaged."¹⁰⁹

The source of disagreement between Rawls and Pogge results from the different real-world problems each sought to address. Rawls was motivated by preserving freedom against intolerance and the potential for totalitarianism inherent in comprehensive conceptions of the good. In contrast, Pogge comes from a

¹⁰⁸ Pogge, 1999, 182.

¹⁰⁹ Pogge, RR, 10.

heightened awareness of realities of severe poverty. It is respect for the diversity of societies that motivated Rawls's insistence that pluralism must provide for different comprehensive views to flourish.¹¹⁰ Aggressive viewpoints that seek to eradicate opposing views cannot be protected, since those would destroy the freedom to provide a context for pluralism. However, although aggressive societies are destructive of freedom, it may be that the worst threat to freedom resides in concentrations of economic power whether in a state or in a people. Therefore, the most extensive freedom may be promoted by positive construction of community rather than Rawls's more casual association among peoples. The relationship between the definition of a community and the implications for moral reasoning cannot be avoided. Pogge said, "I do not believe that Rawls has an adequate response to the historical arbitrariness of national borders – to the fact that most borders have come about through violence and coercion."¹¹¹

Could Rawls agree that moral duties towards others outside members of the contractual community exist without toppling his entire theory? Pogge thinks he could. For this reason, Pogge insisted that Rawls's theory be applied to the global economy, with the result that Rawls should advocate for market regulation through democratic process even at an international level. Pogge wrote,

¹¹⁰ See PL, 144 on Rawls using the term "flourish."

¹¹¹ Pogge, 1999, 156.

What is true of a domestic economic order is clearly true of the international economic order as well: Alternative ways of organizing global economic cooperation have diverse distributional tendencies and differ, in particular, in how supportive or obstructive they are of economic development in the poorest countries and areas.¹¹²

The background conditions must be present in order for justice as fairness to apply. Therefore, some limited duty of assistance is necessary to insure that peoples have a fair opportunity to select wise policies for themselves. Yet, with no application of the difference principle at the international level inequalities will continually occur, so the cut-off point in aid is problematic. There will continually be lack of fair access to the decision-making process at the international level without a global difference principle.

A barrier to the international application of the difference principle could be lack of unity among persons bound together in a global economic system. The motivation to cooperate within national borders depends on complex psychological and practical awareness. Why would persons submit to a global difference principle? Differences in levels of affluence might actually affect how people answer that question. From the perspective of wealthy nations collective life in relationship with poorer nations may mean sacrifice of power, freedom, and prosperity. From the perspective of impoverished nations, genuine cooperation with wealthy nations could

¹¹² Pogge, RR, 16.

mean solutions to lack of real freedom. In writing about global justice, Pogge criticized Rawls for underestimating the differences in starting places between rich and poor. Thus, Pogge demonstrated a type of privileged bias within Rawls's thinking. By considering justice as fairness as a procedural matter within a society's boundaries, Rawls inadvertently incorporated characteristics of the privileged society he experienced by upholding the idea that state borders are morally relevant without adequate justification. This makes Rawls's theory seem oblivious to the vast disparity between rich and poor that exists on a global level. Furthermore, in addition to these material realities of poverty that Rawls failed to appreciate; the finite nature of material resources is also overlooked in Rawls's theory. The world's natural resource base is limited. How does ownership of those material resources relate to the concept of a community, society, or nation? Geographic control of the land rich in a particular resource might give a nation a right to ownership of that property, but this is not a foregone conclusion. Pogge wrote,

The affluent countries and the elites of the developing world divide these resources on mutually agreeable terms without leaving 'enough and as good' for the remaining majority of humankind.¹¹³

This reference to Locke's "enough and as good" proviso points up the assumed rights of ownership and property. Rawls did not fully explain the extent and limitation of property rights. Pogge challenged Rawls for assuming with Locke that capitalism provides such a benefit to the society that its increases justify its

¹¹³ Ibid., 15.

negative consequences. Even if the least well off benefit from the elevation of the level of affluence because of capitalism, the consequences to the environment in the depletion of natural resources available to future generations is a problem. According to Rawls peoples have a right and a responsibility to maintain their territory, but the lack of adequate property of another people is assumed to be justifiable since it is the result of mismanagement, lack of industry, or bad institutions. This point relates back to the discussion of the relationship between material resources and freedom with its implications for borders and systems of ownership.

Pogge urged those interested in social and political ethics to study the “lack of stamina and initiative” that result from extreme poverty. Pogge wrote about “having grown up in grinding poverty, childhood malnutrition and disease, and primitive school” as realities that must be taken into account in reflections on freedom, desert, and virtue.¹¹⁴ The motivation for assistance can be based on this need rather than on some ideal of reciprocity or prudential desire for international stability. Pogge suggested that Rawls’s theory be revised to respond to two demands:

- Global social and economic inequalities must be limited so that children, wherever they may be born, have a reasonable prospect of becoming respected members of the world-community with a stake and say in its future.

- International juridical and political institutions (both global and regional) must be strengthened and democratized to the point where they

¹¹⁴ Ibid., 18.

will effectively protect the rights, and represent the will, of all people within their scope.¹¹⁵

That extension of the Law of Peoples would be consistent with the concern for positive freedom protecting the *will* of all people. The consequences of freedom may always lead to inequalities that require continual adjustments necessary for equality of opportunity. Rawls seems to assume that once a burdened people receives enough assistance to develop into a well-ordered society, the problem is solved. His confidence that mutual respect and peaceful coexistence will follow is a result of his own understanding of the causes of poverty. I have argued that his views on this matter are controversial and a matter for empirical research that is beyond the scope of this argument. However, if Rawls is wrong about the causes of poverty the stability he hoped to achieve could be in jeopardy.

The relationship between an individual and a society points to a tension that has been a source of deliberation and reflection throughout history. This same tension exists between various collectives of people whether they are associations, societies, or peoples. Increased technology for communication and travel have made it necessary to consider more deeply the obligations we owe each other across boundaries. It no longer works to construe ethics that only apply within local or regional collectives of people. The cosmopolitan theory of international relations suggests that some type of international community is possible based in the desire to realize the good of each individual. Rawls distanced his theory from that view, by

¹¹⁵ Pogge, 1999, 147.

utilizing the term society of peoples rather than international community. Thomas Pogge's criticism of Rawls is constructive and corrective. He thought that Rawls theory had value and should be more extensively applied to international relations than Rawls himself thought possible. Had Rawls lived longer to respond to this argument, I suspect he would have moved in the direction Pogge suggested, being drug further to the left as his theory has been from the beginning in response to such criticism.¹¹⁶

The application of the positive concept of freedom to Rawls's theory results in conclusions like those offered by Pogge. National borders do not justify inequalities in freedom or welfare. They do not exempt parties in relationship from rights and duties owed each other. Prosperous states or societies do have a duty to assist impoverished peoples, and this obligation is broader than Rawls admitted. Rawls underestimated the extent of regulation and redistribution required to foster and maintain positive liberty. The law of peoples suggests that members of a society of peoples would contractually agree on fair rules or procedures to govern interactions on an international level. This law of peoples would be accepted by free and equal citizens who are not "dominated or manipulated or under pressure caused by an inferior political or social position."¹¹⁷ That type of freedom requires a mutual respect among peoples that will be difficult to achieve. Rawls avoided claiming

¹¹⁶ Rawls, LP, 118, n.53.

¹¹⁷ Rawls, PL, 48-54 and LP, 14.

universal values in the interest of remaining neutral on comprehensive claims about the good. However, the need for subsistence level resources is a good candidate for a starting point for a universally shared value. The extent to which freedom of affluent persons would be sacrificed in order to promote that universal value would be a matter of debate. Ironically, human flourishing may require limits to the pursuit of material prosperity. If it could be shown that excessive wealth is becoming a detriment to a society, or to the relationships among various societies, the obligations for distribution would be further complicated.

Rawls's desire for a realistic utopia preserving peace for the right reasons through a liberal procedural notion of justice like the law of peoples is laudable. It can be improved by suggestions made by Thomas Pogge. But, can this vision be realized? Allen Buchanan raised this critique of Rawls stating that the inequalities that characterize the global structure are real problems for the idealized theory of Rawls.¹¹⁸ The current concentrations of power in transnational corporations and the severe disparities among rich and poor peoples make the realization of the law of peoples seem remote if not impossible. If only prosperous peoples participate, in this society of peoples governed by the law of peoples might not be so hard to establish. The existence of burdened societies and the problems of redistribution associated with realities of severe poverty represents a great challenge to the realization of this utopian vision. Extensive redistribution of power and economic resources would be required to extend the community to encompass poor peoples. The legacy of

¹¹⁸ Buchanan, 706.

imperialism, and the historical consequences of slavery and colonialism as well as various attempts at development have effects that are difficult to measure or prove. It seems unlikely that a society of peoples could form without facing issues of redress. Nevertheless, this may be the best path to promoting both freedom and integrity, if the project is extended to indefinitely redistribute wealth through regulation of trade. Talk of global community arises because individual persons are interacting with others across state borders, class divisions, and cultural boundaries. Trade interactions on this international level have consequences for freedom and community. If the interaction of people across state borders is guided by more than mere modus vivendi arrangements that balance power, then Rawls needs a more universal conception of freedom.

CHAPTER FIVE

FREEDOM AND LABOR

The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one. We all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men, and the product of other men's labor. Here are two, not only different, but incompatible things, called by the same name – liberty. And it follows that each of the things is, by the respective parties, called by two different and incompatible names – liberty and tyranny. The shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as liberator, while the wolf denounces him for the same act as the destroyer of liberty...

--Abraham

Lincoln.¹

Political freedom, then, has two different and incompatible meanings according to whether we think of the holder of the subject of political power... Not only are these two conceptions of freedom mutually exclusive in logic, but they are also incapable of co-existing in fact within any particular sphere of action.

--Hans J. Morgenthau²

How are decisions made at work? How are decisions made regarding the product of labor? Do people in "relatively free and affluent countries" have responsibilities "to try to improve working conditions and wages of workers in far-

¹ Abraham Lincoln, April 18, 1864 address at Sanitary Fair in Baltimore.

² Hans J. Morgenthau, "The Dilemmas of Freedom," *American Political Science Review*. (Sept, 1959. Vol LI, 3), 714.

off parts of the world”?”³ These questions can be matters of life and death. They are questions that are deeply political; although too often they are set aside as if they were merely economic or business matters. Rawls’s theory cannot resolve the thorny issues of seeking political justice that balances freedom and equality without more fully addressing issues of labor. Both freedom at work and freedom from work are inseparable from political liberty.⁴ When labor is thought of as simply a means of sustaining physical life, it may initially seem to fall outside the realm of the political. Thus, just as Hannah Arendt understood the market to be separable from political life, some thinkers have been content to leave governance within the workplace to business and economics.⁵ Rawls theory needs to be revised in order to address these questions of justice in relation to labor issues.

The extent to which markets, corporations, and trade agreements should be subject to political control is unclear in Rawls’s writing. His determination to remain neutral regarding economic structures conflicted with his awareness of the background conditions necessary for justice as fairness. He maintained that “either a private-property economy or a socialist regime can satisfy this conception of

³ Marion Iris Young, “Responsibility and Global Labor Justice,” *Journal of Political Philosophy*, 12 N.4 (2004), 365. This question is the focus of her essay.

⁴ See Robert Dahl, *Preface to Economic Democracy* and Michael Walzer, *Sphere of Justice*, 117-19, on democracy within the workplace.

⁵ Hannah Arendt, *Human Condition* (Chicago: University of Chicago Press, 1989),

justice.”⁶ Yet, it remains unclear whether the market is part of the basic structure that is the primary subject of justice. Rawls intended to provide assurances that trade could be justly regulated within the society of peoples. However, he did not adequately address problems of justice in production of goods for trade at the international level. The production of wealth is always accompanied by distributions of leisure, power, and alternatives in the workplace. In a footnote in *Political Liberalism*, Rawls mentioned the possibility of adding leisure to the list of primary goods.⁷ However, that provision within a liberal society in conditions of nonstarvation would not hold across borders in the international case. An adequate theory of distributive justice in the international arena must address ways to protect the well-being of workers and protect against economic slavery.

I will use the term economic slavery to mean the condition in which workers remain in such destitute poverty that they are not free to negotiate decent terms of employment. This condition is only slightly better than actual slavery.⁸ One might be tempted to argue that conditions are never really that bleak for workers because they could always find new, alternative ways to produce wealth. However, it seems clear

⁶ Rawls, TJ, 309.

⁷ Rawls, PL, 181, n. 9.

⁸ Although this term is often associated with Marx, the problem is addressed by others. For instance, Bertrand Russell wrote, “At present the man who has no capital usually has to sell himself to some large organization, such as a manufacturing company, for example. He has no voice in its management, and no liberty in politics except what his trade union can secure for him. If he happens to desire a form of liberty which is not thought important by his trade union, he is powerless; he must submit or starve.” *Political Ideals*, 17.

that Rawls appreciated the potential for this problem, since he insisted that background conditions of nonstarvation be met in order for his theory of justice to apply. We can imagine workers who have few, if any, choices of employment. They are systematically denied power to collective bargaining, organizing as workers, or power related to conditions within the workplace. Although this is not an empirical study intended to detail such situations, it seems safe enough to advance the claim that there are many people in such conditions. An example is the case of a woman making two dollars a day in a cigar factory, where the cost of good required for survival is greater than two dollars a day.⁹ Unemployment is high in her region. There are not other jobs she could choose. Furthermore she has no control over conditions or wages because there are so many starving, unemployed workers ready to replace her that she has no bargaining power. Granted this problem is a matter of degree, wherein more or less power is held by workers in various actual situations. Furthermore, I grant that this condition is preferable to actual slavery. Nevertheless, the reality of economic slavery remains a grave problem.

A solution resulting in perfect justice in political economy is not the target of this study. Rather, I will simply consider whether Rawls's theory provides redress for the worst aspects of economic slavery. The particular dynamic of the global

⁹ Certainly the cost of living varies regionally. Measurements of basic subsistence needs are used in development literature to compare the cost of wages with the cost of living. Without evaluating any specific index, I assume that it is possible to estimate cost of living in a way that evaluates whether wages meet those costs. I assume that cases exist where the daily wage is so far below the cost of survival that no meaningful political freedom exists.

economy with its ability to utilize the cheapest labor available makes accountability for the problems of economic slavery especially difficult. In the domestic case, Rawls clearly appreciates the ways in which self-respect and human dignity are related to the freedom to seek meaningful work. However, in the international application of his theory he seems to lose sight of this reality. I will argue that the concept of positive freedom helps clarify questions of justice in matters related to labor. The liberal concept of negative freedom implies that the opposite of freedom is direct coercion backed up by force. Therefore, matters of power-relations within the business world are not acknowledged to be relevant to political freedom. Economic pressure, like the threat of losing a job would not be viewed as an infringement of political freedom based on the assumption that alternative jobs are available. The global application of Rawls's theory illustrates complications with these distinctions.

In many cases meaningful work may be chosen as a means of self-expression or fulfillment. Kant's concept of positive freedom as self-expression and self-fulfillment has important implications for work opportunities. Positive freedom implies the *construction* of self, the *fabrication* of meaning, the *building* of a life. Developing a meaningful life is work. Opportunities to integrate this personal work with work in the world depend on political systems. Work that integrates creative self-development and social contribution while at the same time meeting economic requirements would be universally valued as a basic human good. Nevertheless,

there will always be work that is drudgery.¹⁰ For example, despite potential technological advances, cleaning toilets and disposing of trash are not likely to be phased out. In the present global economy, much affluence is enjoyed at the expense of laborers doing work that is discouraging, repetitive, and unimaginative. Positive freedom must be reflected both in making work more democratic when possible, and in maximizing leisure and minimizing work through advances in technology and efficiency. For these reasons Rawls must apply his theory of justice to the realm of work to ensure that the most efficient ways of minimizing dehumanizing work can be found. The fairness of the distribution of leisure and also of distasteful work must be examined.¹¹

At least in part, labor is activity to sustain life. We might imagine an environment of abundant resources, where food and shelter are plentiful, and labor is no problem. However, when resources are scarce or difficult to procure, work is necessary to sustain life. Labor driven by necessity is always in tension with freedom, since labor involves sacrifice of time, leisure, and energy. However, that does not exhaust the truth concerning the nature of work or labor. Work can also be among the highest of human joys and fulfillments. Even when it requires tremendous

¹⁰ Margaret Radin, *Contested Commodities* (Cambridge, MA: Harvard University Press), 1996. She reflected that Even in most tedious and unappealing jobs “many people can express their humanity in their relationships with co-workers...” Yet she agrees with Marx that “these jobs involve inhumane commodification of people.

¹¹ Ibid., The relationship between access to leisure and political freedom is analyzed by Radin.

effort, self-discipline, and sacrifice, labor can be a kind of self-expression that is a form of freedom. In this chapter, I conclude with a review of G.A. Cohen's critique of Rawls based in the claim that the personal is political.¹² This critique is then linked to my concept of positive freedom. After reviewing the relationship between labor and justice in his early writings, I will focus on these problems at the international level looking for help from Rawls's *Law of Peoples*.

Rawls's View of Labor Issues

Although Rawls said little about work, labor, or creative achievement, the common human activity of labor is assumed as part of his concept of cooperative life in society. Each of his primary works includes at least some mention of labor. In *A Theory of Justice* he developed the idea that humans by nature enjoy complexity and challenge. He applied this idea based on what he called the Aristotelian Principle to his theory in various ways. He wrote, "other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity."¹³ Rawls thought that his principle explained why humans prosper in communities where they challenge each other. He claimed that it is part of human

¹² G.A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy and Public Affairs*, Vol 26, no. 1 (Winter 1997), 3.

¹³ Rawls, TJ, 426.

nature to enjoy “feats of ingenuity and invention.”¹⁴ Through acts of laboring, individuals develop their capacity for ingenuity and invention. Work is not always an oppressive necessity. Accomplishments such as discoveries, inventions, mastery of skills, and artistic development require the type of self-discipline that is both a limitation of freedom and an expression of our ability to be freed from limitations. Our development as mature persons requires self-fulfillment and self-actualization as a process of defining and pursuing our own notion of the good.¹⁵ In a sense, the very effort of fashioning a life and the pursuit of a life plan is a kind of work.

Rawls said, “A rational plan—constrained as always by the principles of right—allows a person to flourish, so far as circumstances permit, and to exercise his realized abilities as much as he can.”¹⁶ So the freedom to labor in a way that furthers one’s own life plan develops individuality and requires exercising one’s abilities. The construction of a life and a self in relation to a plan grounded in a notion of the good is central to Rawls’s understanding of freedom. Rawls spoke of the human love for “meaningful work” and the “fashioning” of “beautiful objects.” He noted that, “The social interdependency of these values is shown in the fact that not only are they good for those who enjoy them but they are likely to enhance the good of

¹⁴ Ibid., 427.

¹⁵ Radin illustrated how sometimes “work is understood not as separate from life and self, but rather as a part of the worker, and indeed constitutive of her.”

¹⁶ Rawls, TJ, 429.

others.”¹⁷ The social cooperation that fosters creative and meaningful work, and the enjoyment of the fruits of labor are conditions for the realization of our freedom. Thus, freedom is related to work, whether it be in the public sphere of markets and economics or of creative invention or art. Unfortunately, despite the possibility of joy related to meaningful work, the drudgery of labor as necessity is also a reality.

Therefore, labor is not always an expression of the self; sometimes labor is merely the production of necessary primary goods. Clearly, the production of goods necessary for life and liberty is connected to Rawls’s notion of freedom. Someone must produce the material goods necessary for life. These basic necessary goods are not always easily produced. Rawls did not examine the problems of labor in much detail. His confidence that the necessary goods can be produced without inappropriate coercion seems rather idealistic. He wrote:

... a well-ordered society does not do away with the division of labor in the most general sense. To be sure, the worst aspects of this division can be surmounted: no one need be servilely dependent on others and made to choose between monotonous and routine occupations which are deadening to human thought and sensibility. Each can be offered a variety of tasks so that the different elements of his nature find a suitable expression.¹⁸

His confidence that work need not amount to economic slavery is not supported by much explanation of how this liberation of work from drudgery is possible. Although “monotonous and routine labor” can be enhanced by various

¹⁷ Ibid., 425.

¹⁸ Ibid., 529.

forms of incentives, it still has to be done. If labor that is “deadening to human thought and sensibility” is required then equitable distribution of that burden would also be required. How will this problem for freedom in the realm of labor be overcome? In some cases, Rawls seemed to imply that a public spirited willingness to work for the prosperity of the society would be a motivator. He said,

The collective activity of society, the many associations and the public life of the largest community that regulates them, sustains our efforts and elicits our contribution. Yet the good attained from the common culture far exceeds our work in the sense that we cease to be mere fragments: that part of ourselves that we directly realize is joined to a wider and just arrangement the aims of which we affirm. The division of labor is overcome not by each becoming complete in himself, but by willing and meaningful work within a just social union of social unions in which all can freely participate as they so incline.¹⁹

At least in theory, it is possible that a social union might be meaningful enough to compensate individuals for the hardships of disheartening work. However, if the dissatisfaction of the individuals at work is great enough, this calls into question the reasonableness of the social union. Rawls suggested that the reasonableness of people normally will be the sufficient assurance that all will cooperate fairly in economic transactions.

The concept of reciprocity functions as the lynchpin of his arguments regarding labor. The reason that labor is the mechanism for fair distribution of resources is that this meets the demand for reciprocity. Rawls held that the difference

¹⁹ Ibid.

principle “expresses a conception of reciprocity.”²⁰ Rather than promote some type of egalitarian distribution of either resources, welfare, or opportunities, Rawls thought that the difference principle synthesized incentives for production of wealth with a measure of equality. By specifying fair terms of cooperation for reciprocal advantages, the difference principle justifies unequal distributions because of different contributions. In other words, as Rawls said,

The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share.²¹

This same point about reciprocity as a requirement for justice is restated in *Political Liberalism* where Rawls wrote, “Fair terms of cooperation specify an idea of reciprocity: all who are engaged in cooperation and who do their part as the rules and procedures require, are to benefit in an appropriate way as assessed by a suitable benchmark of comparison.”²² This is formulated with the free-rider problem in mind. “Where the public is large and includes many individuals, there is a temptation for

²⁰ Rawls, TJ, 102.

²¹ Ibid., 112.

²² Rawls, PL, 16.

each person to try to avoid doing his share.”²³ In order to protect against free-riders it is necessary to institute policies that make it difficult to protect the welfare of the infirm or disabled.

Rawls thought that these problems regarding regulation of trade, business, and labor could be resolved at the legislative level. He thought that the sense of obligations and fairness could be underwritten by laws dealing with the noncompliance of individuals who unreasonably take advantage of the social union. The same sense of fairness also supports the equality of opportunity in the workplace. Rawls said,

It (the government) also enforces and underwrites equality of opportunity in economic activities and in the free choice of occupation. This is achieved by policing the conduct of firms and private associations and by preventing the establishment of monopolistic restrictions and barriers to the more desirable positions. Finally, the government guarantees a social minimum either by family allowances and special payment for sickness and employment, or more systematically by such devices as a graded income supplement (a so-called negative income tax).²⁴

In these ways meaningful freedom is protected in labor-relations in the domestic application of the theory. Rawls tried to balance both incentives to production and protection for the least well off persons. Justice as fairness is based on the claim that

²³ Rawls, TJ, 267.

²⁴ Rawls, TJ, 275.

“We are not to gain from the cooperative labors of others without doing our fair share.”²⁵

In Political Liberalism, Rawls said that a liberal political conception of justice includes “measures assuring to all citizens adequate all-purpose means to make effective use of their liberties and opportunities.”²⁶ Therefore, he maintained his view that basic rights and liberties include the choice of occupation. In respect to questions of labor, this second book improves on his earlier presentation of work as part of the economic sphere. He expanded his description of the basic list of primary goods to include: “free choice of occupation against a background of diverse opportunities” and also “powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structures.”²⁷ Furthermore, he addressed problems of workplace discrimination and issues of disability more fully here. He said, “... some principle of opportunity is essential requiring at least freedom of movement and free choice of occupation.”²⁸ At the same time, it cannot be assumed that “fair equality of opportunity” is assured. Rawls argued that this was not an essential and could be regulated in various ways that should be left up to specific societies at the level of constitutional agreements on fair

²⁵ Ibid., 112.

²⁶ Rawls, PL, 6.

²⁷ Ibid., 181.

²⁸ Ibid., 228.

equality of opportunity.²⁹ He argued that fair equality of opportunity was not a “constitutional essential.” Therefore, policies and regulations governing equality of opportunity would be “decided by the political values of public reason.”³⁰ He argued that fairness would operate in the economic and business sphere through constitutional and legislative stipulations. He said,

Thus, announcements of jobs and positions can be forbidden to contain statements which exclude applicants of certain designated ethnic and racial groups, or of either sex, when these limitations are contrary to fair equality of opportunity.³¹

Left to the level of the legislative function in constitutional democracies, the prevention of discrimination in the workplace has not always fared well. In order for Rawls insist that these matters are not negotiable he would have to secure them prior to the legislative stage. Why didn't he specify that such policies that allow unequal opportunity on the basis of irrelevant factors be categorically forbidden? Rawls's desire for the conception of justice to remain neutral in relationship to concepts of the good led him to avoid that move. To promote equality as a good prior to the principles of justice selected in the original position would violate his project. However, this leaves his theory vulnerable to the objection that accidents of birth

²⁹ Ibid., see also TJ, 72F.

³⁰ Rawls, PL, 229.

³¹ Ibid., 363.

that are morally irrelevant can result in unfair determinants or advantages depending on how well the legislative level functions.

In this second book he addressed the problem of welfare and responsibility. His adherence to the value of reciprocity becomes increasingly evident in this regard. He said that persons “can take responsibility for their ends: that is, they can adjust their ends so that those ends can be pursued by the means they can reasonably expect to acquire in return for what they can reasonably expect to contribute.”³² However, the problems of disability and infirmity are not adequately addressed. He said that justice as fairness requires that “variations in physical capacities and skills, including the effects of illness and accident on natural abilities” should not “give rise to injustice.”³³ In cases involving “variations as result of illness or accident” the society would decide on measures for compensation with the goal of correcting the disabilities. Addressing such cases he said that these:

... can be dealt with, I believe, at the legislative stage when the prevalence and kinds of these misfortunes are known and the costs of treating them can be ascertained and balanced along with total government expenditure. The aim is to restore people by health care so that once again they are fully cooperating members of society.³⁴

Rawls wants to avoid exacerbating the free-rider problem. He doesn't want to rend the connection between incentives to produce that foster production of wealth from a

³² Ibid., 64.

³³ Ibid., 184.

³⁴ Ibid.

fair system of distribution. However, a problem results because his solution seems to imply that only productive people – those who produce something of value to the society, are fully cooperating members. What about the permanently disabled? If certain members can never be expected to contribute to the production of wealth of the society, do they have no claim to the benefits of societal wealth? Although such cases are relatively infrequent at the domestic level, the analogous counterpart in the international application of the theory would be the case of burdened societies. Again, Rawls trusted that such cases would be solved at the legislative level. He seems naïve about the potential for capital to corrupt the legislative process.

In *The Law of Peoples*, Rawls considered certain requirements needed to achieve stability for the right reasons in a constitutional regime. These requirements include:

Society as employer of last resort through general or local government, or other social and economic policies. (The lack of a sense of long-term security and of the opportunity for meaningful work and occupation is destructive not only of citizens' self-respect, but of their sense that they are members of society and not simply caught in it.³⁵

This passage illustrates the centrality of work to Rawls's notion of reciprocity where people get what they deserve for their effort, but are not penalized for accidents of birth, as a mark of justice. Reciprocity requires that people be rewarded for effort or sacrifice. In order to defend inequality of outcomes in wealth

³⁵ Rawls, PL, 50.

distribution, Rawls needs to provide assurance that there is equal opportunity to do some type of productive work. The policies of public employment as a means to achieve full employment are not viewed by Rawls as incompatible with political liberalism. Why did he qualify this statement by saying that society as employer would be a policy of “last resort”? In other words, why not affirm systems that promote public ownership of the means of production and actually encourage public employment? The free-rider problem, “a temptation for each person to avoid doing his share” led Rawls to conclude that economic efficiency is better promoted through private rather than public means.³⁶ That would be consistent with his defense of property based on the argument of the most efficient care and maintenance of property. Rawls continued to view the well-being of persons as the responsibility of their particular society or state rather than advancing a view of universal rights or obligations. Nevertheless, the defense of freedom is given as the reason for this safety net of society as employer of last resort. Since stability for the right reasons requires opportunities for meaningful work, social means of production are sometimes necessary. This provision of society as employer of last resort illustrates Rawls continued movement to the left on economic policies. He increasingly accepted that markets must be regulated.

The Law of Peoples includes regional institutions to regulate trade.

“Standards of fairness for trade” are among the cooperative institutions required for

³⁶ Rawls, TJ, 267.

justice at the international level.³⁷ However, in the second original position, those who discern the law of peoples will be representative of “all reasonable (liberal) and decent societies.”³⁸ Burdened societies are not represented in this discernment process. Furthermore, Rawls assumed that societies by definition do not have aggressive aims.³⁹ The possibility that aggressive trade policies of societies or associations within those societies could injure members of other societies is not sufficiently examined in his theory.

Rawls viewed economic transactions as subordinate to political arrangements. The principles of justice as fairness that guide democratic societies are not applied directly to arrangements in the workplace. However, respect for citizens as “free and equal persons” is required even in the realm of work. Rawls wrote, “The aims and conduct of citizens in society are therefore subordinate to the priority of these liberties, and thus in effect subordinate to the conception of citizens as free and equal persons.”⁴⁰ Among other things, this means that you cannot sell your freedom or buy someone else’s. Yet, Rawls did not adequately address the issues of production of basic goods required as a background condition for justice as fairness. In one sense, he did acknowledge the problem by providing the stipulation that his

³⁷ Rawls, LP, 38.

³⁸ Ibid.

³⁹ Ibid., 64.

⁴⁰ Rawls, PL, 366.

theory applies only in cases where basic survival needs are met. He knows that starving people might not order his principles of justice the same way he intends.

Labor Problems in Rawls's Theory

There are at least three problematic areas in Rawls's theory as it relates to labor in his international application of his theory of justice. First of all, his insistence on using reciprocity as a mark of justice as fairness results in a problem regarding burdened societies and societies who have inherited consequences of foolish policies from past generations. Secondly, Rawls's insistence that the difference principle cannot be applied on the global scale results in the controversy over the cut-off point for aid. This results in an inconsistency over issues of desert, luck, and freedom of will. Finally, Rawls's theory is inadequate when problems arise regarding conflicts between the freedom of investors and the freedom of workers' well-being. We need more information about how fair political process will be protected within corporations and markets. Although Rawls thought that regional institutions to regulate trade could uphold principles of justice, we need a standard of well-being for working conditions that arbitrates conflicts between investors and workers. The responsibility for justice in matters of labor cannot be left only with the local state or society because of the relationships that transcend borders in international trade. We need standards for when and if people would be justified in intervention to redress issues of unjust labor practices.

The line between the political and the personal is unclear in matters of labor. Rawls tried to separate political freedom from personal freedom by maintaining that

principles of justice would not apply to internal matters within associations. For example, he claimed that, “We wouldn’t want political principles of justice – including principles of distributive justice – to apply directly to the internal life of the family.”⁴¹ This same dynamic extends to the realm of business or workplace. He wrote:

Much the same question arises in regard to all associations, whether they be churches or universities, professional or scientific associations, business firms or labor unions. The family is not peculiar in this respect.⁴²

He has drawn a line between the public or political realm and the private realm of associational life. One characteristic of associational life as he describes it is that associational life is voluntary. He assumes that you can exit an association if it doesn’t fit with your life plan.⁴³ This makes sense given the background conditions he required in the domestic case where freedom to choose an occupation given other options. However, in cases where options for work that preserves human dignity and the social basis of self-respect are limited or absent there is a problem. In such cases, it is not adequate to trust the protection of workers to the legislative level. The preservation of freedom for meaningful work must be included in the first

⁴¹ Rawls, IPR, 159.

⁴² Ibid., 158.

⁴³ Ibid.

principle of justice. It is part of the content of the freedom that must be maximized if it is to be more than merely formal freedom.

On the global scale, Rawls said that a duty to provide aid is required.⁴⁴

However, he does not explain how production of the necessary goods required for this dutiful redistribution will be achieved. This makes the controversy over the cutoff point of such aid extremely crucial. When material resources are needed for labor, they are necessary to freedom. Not all labor requires material resources. A person can write a poem or discover a theory without interacting with the natural, material resources of the world. In contrast, much labor does require procurement of resources. Thus, discussions of labor are linked to analysis of property rights. What is the difference between stealing versus justifiable taking of resources for labor? If a fisherman can get out to the middle of the ocean, the fish he takes are thought to be his because there is common agreement that they belong to no one. In conditions of abundance, unclaimed resources are assumed to belong to no one. On the other hand, what if the fisherman hooks a fish that is discovered to be the last of its kind? For the moment, set aside the implausibility of knowing or proving this. Doesn't the entire society of peoples have an interest in and a claim on what happens to this fish? It may be difficult to imagine getting excited about a rare fish. But, what if the fish happens to contain some chemical essential for the production of some much-needed medicine? In conditions of scarcity, resources attached to no particular person may be said to belong to everyone rather than no one. Resources like land, air, and water

⁴⁴ Rawls, LP, 38.

were once assumed to be so plentiful that reaching the end of the resource was not considered. Decisions about how to allocate access to and use of limited resources needed for labor are decisions distributive justice must answer. What answers are provided by Rawls's theory? In the example of the fisherman in international waters catching the last of a type of endangered species of fish, the law of peoples would be indifferent.

Taking something that belongs to no one is different from stealing. Rawls continues the liberal, Lockean tradition of ignoring the historical realities of greed and imperialism as factors in the current land distribution among nations. If the property distribution today is the historical result of stealing through conquest and war, or stealing of labor through slavery, then the current distribution of property resources among peoples cannot be defended as a just starting point. Liberal theory would not justify such actions, but sometimes does claim to justify the ownership of such stolen property through inheritance. The freedom to bequest property results in depletion of land, minerals, and other material resources required for labor. Consequently, some states redistribute property to realize the freedom of laborers. The choice is between using need rather than desert as the criterion for distribution. The need for opportunities to labor can be in conflict with the dictates of reciprocity. We can imagine examples that illustrates a conflict between obligations to investors and obligations to workers. Tolstoy poignantly portrayed this conflict between titled

land owners and starving, displaced farmers.⁴⁵ He recognized the tendency of government to become the enforcer of the property rights of the powerful at the expense of the needs of the impoverished.

Similarly, the following example of land reform demonstrates the relationship between positive liberty and labor. The point of the illustration is that the dictates of reciprocity for the land owner and the workers are in conflict in such cases. In 1975 a land invasion near Benito Juarez, Chihuahua included a then 17-year-old named Tiberio Chavez. The land reforms under President Lazaro Cardenas had not extended to some states and regions of Mexico. Later, in the 1990's the constitution was reformed, but at that time, under Mexican law, people who had no land had a right to lay claim on unused property that belonged to the state. There was an estate that had been declared property of the state in that area. A group of people who owned no land began meeting, then formed a caravan and occupied the center of this property, living there for six months. Then they initiated legal procedures to procure formal titles to the land. Tiberio Chavez and his family gained ownership of some land through that action. Reflecting on that action years later, he said:

That event showed me that a group of people with a single goal could achieve what they wanted. This was something that stayed with me – the idea that with unity, things are much easier, things that an individual could never do alone. That's when I understood that

⁴⁵ Leo Tolstoy, *The Kingdom of God is Within You* (Lincoln, Nebraska: University of Nebraska Press, 1984), 289.

social justice often had to be enforced by people's action. Otherwise, our rights would just stay on paper. Many politicians and others like it to remain that way – on paper, looking good. It is up to us to put it into practice.⁴⁶

Labor and freedom are often related to the use of natural resources such as land. In this case, the land owner had secured title to the property through some legal process. The squatters were violating respect for the land owner's rightful claim. However, the squatters' freedom to exercise labor in behalf of their survival was in conflict with the land owner's claim. In this case a legislative process later recognized and legitimated the redistribution of this land in favor of the squatters. However, the original land owner probably felt cheated. In this case, a group of people promoted positive liberty by restricting the negative freedom of the land owner. Rawls would be able to accept this land reform as a just resolution of conflicting obligations. However, the case illustrates the problems at the international level in relationship to property involving national borders. The same action that this family took securing property to farm, would be considered a case of "outlaw" behavior if a national border was crossed in the acquisition. Furthermore, this case illustrates the fuzzy boundaries between the personal and the political because membership in this family determined participation in this illegal economic venture.

⁴⁶ David Bacon, *The Children of NAFTA: Labor Wars on the U.S./Mexico Border* (Berkeley: University of California Press, 2004), 253.

Questions of property in material resources like land or talents that individuals possess are entangled with questions of labor. L.T. Hobhouse, writing in the early 1920's, made a distinction that could help reconcile Rawls's concern for reciprocity and problems of justice related to property. Hobhouse shared the concern that persons ought to be able to reap where they sow. He was a proponent of individual liberty. However, he understood that, "Unfortunately what is liberty for one man is often the negation of liberty for another."⁴⁷ Property held for reasons other than actual use becomes a means to control the labor of others. He examined historical systems that could accommodate temporary private possession and permanent common ownership. Hobhouse argued that the abstract right of property is founded on the right of the worker to what the work produces. However, he noted the problem that, "as industry develops the most conspicuous function of property is to secure a part of one man's labour-product for the benefit of another."⁴⁸ This illustrates two functions of property; namely, 1.) to give freedom and security and 2.) to control persons through things. When property allows persons to reap without sowing, it is unjustifiable. Property for power is inimical to the liberty of self-definition because it accumulates in the hands of a few and erodes the freedom of others.

⁴⁷ L. T. Hobhouse, "The Historical Evolution of Property in Fact and in Idea." *In Property: Its Duties and Rights* (New York: Macmillan Company, 1922), 9.

⁴⁸ *Ibid.*, 10.

Do individuals deserve exclusive benefits of the talents they possess? Rawls thought that they did not, since talents are the result of accidents of birth. Yet he did seem to think that they deserved material benefits that accrue from realizing a wise life plan.⁴⁹ According to Rawls, if a person is smart enough to get others to work for her, while enjoying the leisure of watching investments grow, she deserves the profit. Sustaining one's own physical life does not always depend on one's own labor. In addition to engaging in labor, another road to fulfillment of basic needs has always been available. For those that have the might and the will to enslave others, or live off their forced labor, freedom from work and freedom from hunger were both possible. One's own freedom can be expanded by diminishing the freedom of others. This further complicates the relationship between freedom and labor. Rawls's political theory of justice must answer problems of desert, luck, talent and welfare regarding the relationship between freedom and work. In order to more fully explore these controversial questions of freedom and labor, consider the following example.

Imagine that ten people receive information that in a week they will be instantaneously transported to an isolated island, leaving all memory of their previous lives behind. But before they go, these ten people must meet and make some decisions about their future life together on a deserted island.⁵⁰ They are told

⁴⁹ Rawls, LP, 118.

⁵⁰ Ronald Dworkin's example of the auction of resources on the desert island is meant to demonstrate the need for economic markets to divide resources in ways that

that there will be exactly ten jobs that must be accomplished daily in order for human life to continue there. For the sake of argument, imagine that they learn that there must be one artist, one doctor, three food gatherers, three housekeepers, and two janitors. The work of the artist will require great psychic effort, as the artist will bear the responsibility of providing meaning and joy for all ten. The doctor will also bear great responsibility for the health and life-sustaining of all ten. The work of the artist and the doctor will require unusual talent and intellect. On the other hand, the food gatherers, the house keepers, and the janitors will require not particular skill and will have little stress. The jobs must be allocated by distributing ten different labor cards, each granting claim to one of the ten jobs. All ten have an interest in making sure that all ten jobs are done well, since all are required for continued life. If these jobs are all filled no other needs or desires will arise. Prior to their suddenly being transported, none of the ten have information about what type of interests they will have or which work they would most enjoy. Now the ten must meet and make the following decisions. How will the ten job cards be distributed?

This scenario parallels some aspects of decision makers in the original position. The participants are determining operating procedures based on their self-interest without knowledge of their interests or position. Continuing with this example, assume that they might be able to come to agreement about the questions

maintain equality of resources. Although he introduced the possibility that occupation be included in the bundle of resources, his illustration does not deal directly with the international application of such labor problems. My illustration here is intended to emphasize labor issues at the international level in contrast to the domestic level. See Dworkin, *Sovereign Virtue*, 66.

because they are each reasonable persons. Will jobs be assigned on the basis of talent and intellect, and if so, what process will be used to determine this? Will each person blindly draw a card determining their job? Or will they wait until they know their preferences and then try for some centralized process for fairly dividing the cards? Suppose that when the ten gather to engage in this process of deciding, two of them are confident that they are stronger and more crafty than the others and would come out better by grabbing the cards they want than by cooperating in a fair process? What will be the provisions to assure that resentments, bitterness, and envy do not destroy the lives of all involved?

But, for now, imagine that the ten do reach some agreement, and distribute the job cards ready to embark on this adventure. Yet, before the initial decision-making session is over, they learn there are yet more decisions to make. They are informed they will work together happily for some time on the island. But after a time, a surplus of goods will begin to pile up. Then, as the surplus builds, suddenly ten more people will show up on the island. Still in their original discernment meeting, they are then informed that at that time, a second distribution of labor cards will occur. However, even though there will be more people to support, still only ten workers will be needed. No additional workers will be required to sustain the life of all twenty. Now there are twenty labor cards to be distributed. In addition to the original ten cards, there are three cards that say “disability” and five that say “capitalist” and two that say “free rider.” Now the original ten must decide what rules they want to make for the second distribution. Will the newcomers be brought

in at that time in an attempt to reach agreement about rules for the second distribution? Since everyone has an equal chance of ending up with a disability card or a free rider card, what system of incentives should be developed to motivate workers and prevent animosity between workers and those who are not workers? Can a system be conceived that all would consider fair, prior to knowing which card they would have? For the sake of the argument, suppose that the original group of ten could reach agreement about a system that seems fair to them for the second distribution. But, then imagine they are told that after life on this island continues in relative peace for a time, a shortage of necessary goods occurs such that there are inadequate goods to sustain all twenty. As long as it is assumed that adequate resources are available to sustain each life, the agreements about distribution are much easier. We can see how Rawls would apply the original position and then the application of principles of justice at the legislative stage to answer such questions at the domestic level. However, it remains unclear how justice would pertain to individuals who are not among the society of peoples cooperating in the Law of Peoples.

Rawls continually reminds his readers that at the domestic level his theory assumes that the basic requirements for life are assumed to be available to all. When his theory is applied to the international level in *The Law of Peoples*, the problems involved with this assumption become clearer.⁵¹ How will enough goods be produced to ensure subsistence level for all? Once the potential for life-threatening

scarcity is faced, a fair system is much more difficult to construct. Now Rawls insists that conditions of justice to not obtain in cases like this because starvation is outside of the background conditions for justice. This may mean that Rawls's theory is irrelevant in some of the most serious dilemmas facing international dialogue. I return to the island example in order to illustrate. In trying to construct an agreement for facing this shortage, prior to actually being in the situation, the group might decide to devise a system for sacrificing certain people so that life for others could go on. Or the group might decide that all could divide whatever goods there are and allow nature and chance to kill off the surplus consumers of goods. On that small, local level the problem of scarcity and the distribution of goods is horrible to face.

However, next suppose that this single island scenario is expanded and applied to twenty islands, each having different labor cards. In this way, we move with Rawls from the development of his original theory, to the international application of that same theory. One island is an island with a culture and identity of being artists, three islands are food producers and so forth. Imagine that each island is satisfied with the process of agreement that established this distribution. Some islands have disability cards and others free rider cards, but all participate in a distribution they agreed to as fair. Bound by this agreement, all twenty islands participate in a society of islands, cooperatively sharing goods and services. But times change. Now assume that scarcity occurred such that not enough goods to sustain all islands were being produced. Islands that could provide for their people have no incentive to stay in the redistribution system. They could manage the fulfillment of all ten necessary labors

on their own island. But, what if they know that fewer lives on other islands will survive without their island's participation in the society? If there are not surplus goods to be distributed, but there is death due to scarcity to be distributed, what system for fair distribution can be developed?

We can think of these islands as a sort of federation or as completely separate and autonomous in relationship to each other. At least we can try to imagine them as totally separate and autonomous. Yet, even if each island decided to be self-sufficient, the shared ocean and air resources prevent complete separation. When we think about nations today as being analogous to these islands, it seems that even if a nation tried to be completely separate, preventing all trade and communications between their own individuals and those beyond their borders, even still the shared water and air resources preclude complete isolation. The question of what obligations does a person in an affluent nation have toward a person working in conditions near slavery cannot be answered by suggesting that total separation is possible. So, assuming that there is relationship between these various islands, the question is whether or not there is intentional, open process for decision-making about the conditions of those relations. On the one hand, there could be a contract developed between representatives of these islands motivated by the promise of mutual benefit for all. Such a contract would not be likely to include burdened islands whose inclusion in the society of islands would be a detriment to the others rather than a benefit. On the other hand, we can also imagine an attitude of kinship based on recognition of mutual humanity that would motivate cooperation and

assistance to burdened islands as well. The point is that geographical distance and geographical separations like oceans facilitate a different attitude about obligations and human connections. Whether or not these different psychological attitudes justify different moral stance is the question. The grim awareness that not everyone can live, changes the tone of the contract governing the society. However, when discerning a fair process for dealing with conditions of life-threatening scarcity, it will be easier to accept terms of annihilation of certain islands than it would be to kill off individuals in the original scenario of twenty people in which all interact face-to-face. The choice between self-preservation and preservation of the whole community looks like a different choice within a group that shares daily face-to-face interaction, than it looks in relation to distant and unseen people on a different territory.⁵² On an international level, the need for aid is overwhelming, since at that level imagining an end to the need seems impossible.

Can a process of deliberation and democratic agreement be designed to continually reinvent the contract for the society of islands through changing times? Would free rider islands and disability islands have any voice in this process? Would it be an equal voice? In the Law of Peoples, burdened societies and outlaw societies do not have representatives in the second original position. Either on the one hand, justice requires that member islands have an equal voice in the deliberation process

⁵² The question of material aid to foreigners brings to mind Nussbaum's analysis of Cicero, whom she quoted as saying, "the resources of individuals are limited, and the needy are an unlimited horde..." Martha Nussbaum, "Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy," *Journal of Political Philosophy*. 8: No. 2 (2000), 206.

simply because they are fully human or, on the other hand, justice requires that only productive, contributing members have voice in the democratic process because reciprocity demands this. Several conclusions drawn from this scenario illustrate challenges to *The Law of Peoples*. First of all, if Rawls thinks that the vicissitudes of luck ought to be ruled out at the domestic level, then there is no reason to claim that they are relevant at the international level. Yet, by refusing to apply the difference principle at the international level, Rawls in effect, decided that the well-being of individuals often does amount to being born on a lucky island. There is no moral sense in which a person deserves to experience the consequences of being born on one island as opposed to another. Secondly, reciprocity as a standard of justice results in a lack of compassionate inclusion of unfortunate and unproductive members of humanity. Rawls did not want to make the move that cosmopolitans made affirming a universal human value because he thought that promoted liberal values. Thus, Rawls was careful to limit the duty of assistance and not base it in anything like a universal recognition of human worth and dignity. Finally, although the psychological dynamics of weak affinity among communities on a global scale makes it easier to cut off aid beyond a certain point, there is no justifiable reason to do so. The consequences of choices and distributions in one generation always determine the limits of freedom for the next generation. Continual and thoroughgoing redistribution is a constant requirement in order to assure equality of opportunity. Freedom to make new contracts must be balanced with the obligation to uphold inherited contracts from the past in order to instill both stability and justice.

The Law of Peoples is designed to guide the foreign policy of a liberal nation. Although Rawls's primary concern was to consider the limits of the use of power and the extent to which non-liberal states should be tolerated, his theory must also address the material basis of freedom.⁵³ If material aid is not just a practical concession for the sake of a stable peace, then there must be not only enough aid to allow the possibility of decent institutions, but also enough to provide freedom at the level of the individual worker. Rawls suggested that although luck should not be accepted as a justification for inequalities, reciprocity demands reward of unequal labor. Labor is the embodiment of choice, will, and responsibility. People have done nothing to earn their natural talents, so those belong to the community. The difficult challenge of separating the personal and the political is evident at this point. The creative work and effort that an individual pours out belongs both to her personally and to the community. We need some way to negotiate the tension between workers who deserve the benefit of their labor and the survival needs of those who are free-riders for the right reasons. That is to say, although some free-riders may deserve to starve because they are unwilling to work while the rest of us submit to such discipline, there are other free-riders who are truly unable to work due to lack of opportunity or ability. If there was clear agreement about the notion of desert, then it could be shown that redistribution schemes are unjust when they infringe on the enjoyment of the deserved fruits of a person's labor. But, the problem of desert cannot be solved without a concept of justice. To claim that something is

⁵³ Rawls, LP, 6.

deserved amounts to the same thing as claiming that it is justly distributed. As changes in the job market develop, the possibility that there could be a permanent shortage of jobs could also affect these notions of desert. In April of 1990 at a lecture at Harvard, Rawls commented that he might go along with a basic income scheme under conditions of permanent job shortage.⁵⁴ My goal has been to illustrate the potential to improve Rawls's theory through the application of the positive conception of liberty. In order to continue this argument, next I will turn to reflections by G. A. Cohen who offered criticisms and suggestions for Rawls.

G.A. Cohen's Critique

G.A. Cohen offers a critique of Rawls based on the relationship between freedom and labor. This criticism is related to Cohen's attack on Berlin's distinction between positive and negative liberty.⁵⁵ His insights derive from a notion of freedom he calls self-ownership, autonomy, and sovereignty over self. The part of his critique of Rawls that I most want to develop is based in the claim that "the personal is political."⁵⁶ In his article entitled, "Where the Action Is: On the Site of Distributive

⁵⁴ Philippe Van Parijs, *Real Freedom For All* (Clarendon Press, 1995), 297-298, n. 75.

⁵⁵ Matthew H. Kramer mentions an unpublished typescript written by Cohen entitled, "Freedom and Money," in *The Quality of Freedom* (New York: Oxford University Press, 2003), 76, n. 75.

⁵⁶ G.A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy and Public Affairs*, vol 26, no. 1 (Winter 1997), 3.

Justice,” Cohen claimed that the action of distributive justice happens at the site of individual choices as much as basic structures of society. He drew on the familiar slogan, “the personal is political,” often associated with feminist critique, noting that this phrase actually derived from liberation theology.⁵⁷ Cohen related his critique of Rawls to the claim made by liberation theologians that the political and economic should not be separated from or set in opposition to the personal and spiritual.⁵⁸ Asking whether economic choices occur within basic structure of society or prior to those structures in ways that actually determine the structures, Cohen said that Rawls applied the principles of justice at the wrong point. Cohen then developed the objection that not only choices in the original position that lead to determination of the basic structure, but also choices of individuals acting within the basic structure may be just or unjust. This leads to ambiguities about the application of the principles of justice in matters of freedom that are not actually coercive but constructive. Cohen said, “The ambiguity turns on whether the Rawlsian basic structure includes only coercive aspects of the social order or, also, conventions and usages that are deeply entrenched but not legally or literally coercive.”⁵⁹ The line between the personal and the political is not as easy to draw as Rawls suggested. Rawls did address the distinction between the personal and the political. He said,

⁵⁷ Ibid.

⁵⁸ Denys Turner, “Religion: Illusions and Liberation,” in Terrel Carver, ed., *The Cambridge Companion to Marx* (New York: Cambridge University Press, 1991).

⁵⁹ Cohen, 1997, 11.

“The political is distinct from the associational, which is voluntary in ways that the political is not; it is also distinct from the personal and the familial, which are affectional, again in ways the political is not.”⁶⁰ What it means to say that the personal is “affectional” is quite unclear.

Cohen analyzed the concept of self-ownership that is ironically shared by both Marxists and libertarians like Nozick. Cohen found that Rawls’s claim that self-ownership must be limited was correct. Rawls rejected the claim that a person is totally free in relationship to the fruits of labor. Due to the role of luck in determining person’s circumstances, talents, and abilities, Rawls argued that income could be justly redistributed.⁶¹ Cohen agreed with Rawls that self-ownership does not amount to unrestricted power over fruits of labor. However, Cohen argued that Rawls did not go far enough in understanding that freedom is limited by the duty to assist others. Cohen’s criticism of Rawls has two themes. First of all, Rawls’s theory does not deal adequately with cases of the infirm. This is a problem when distribution is determined by desert rather than need. Secondly, the idea of contract motivated by mutual advantage is inconsistent with the idea that natural talents are assets to be enjoyed by the whole community. Although the less talented do benefit from the contract, the more talented are disadvantaged through the contract.⁶²

⁶⁰ Rawls, PL, 137.

⁶¹ Rawls, TJ, 101.

⁶² Cohen, “On the Currency of Egalitarian Justice,” *Ethics*, 99 (July 1989), 906-944, 226.

Finally, Cohen criticized Rawls for maintaining the freedom of capitalists to operate without more regulation and restraint. Cohen wrote:

I restate a criticism that I have made elsewhere of John Rawls's application of his difference principle, to wit, that he does not apply it in censure of the self-seeking choices of high-flying marketers, which induce an inequality that, so I claim, is harmful to the badly off.⁶³

Although there are limits on inequality in the domestic application of Rawls's theory because of the difference principle, in the international case there are inadequate provisions to protect against such inequality. Cohen shared with Marx the conviction that reward for contribution generates inequality and future injustice. The case of the infirm illustrates this potential injustice. Rawls admitted that the case of a disabled person was a problem for his original theory of justice.⁶⁴ Nussbaum offered a similar criticism claiming that Rawls set aside cases of dependency due to disability and never adequately dealt with the implications of those cases.⁶⁵ Those persons who do not work because they choose not to work are not deserving. Systems of distribution don't want to encourage the problem of free-riders. Justice as fairness entails reciprocity based on desert. But those who do not work because they are unable to work raise an interesting problem for desert. Since disability is a result of luck, some safety net in the social system should prevent them

⁶³ Cohen, 1997, 5.

⁶⁴ Rawls, TJ, 248, see cases of nonideal theory and problems of paternalism.

⁶⁵ Nussbaum, 2004, 107. See also Rawls, CP, 332.

from starving. They do not deserve to starve because they have done nothing to become infirm.

Unfortunately, not all cases are so clear-cut. What about the case of a person who chose not to wear a motorcycle helmet and became disabled as a result of willful recklessness? What about the case of baby who is mentally impaired because of mothers drug use during pregnancy? In these cases choice and will are involved rather than strictly matters of sheer luck. Cohen said,

There are people whose inefficiency at turning resources into welfare is clearly their own fault, and others whose inefficiency is clearly bad luck. But between these extreme types, there is a vast range of cases where it is unclear whether or not fault applies.⁶⁶

Cohen's argument that the luck of access to resources and talents should not result in inequalities agrees with Rawls's position. The extent of the redistribution required to avoid this injustice becomes the point of conflict between Cohen and Rawls. But, setting those unclear cases of bad luck aside for now, we might agree that a disabled person does not deserve to starve because of inability to work.⁶⁷ Would we also agree that a lazy person does deserve to starve because of

⁶⁶ Cohen, 1999, 911.

⁶⁷ Steven R. Smith, "The Social Construction of Talent: A Defense of Justice as Reciprocity," *Journal of Political Philosophy*, 9, No. 1, (March: 2001), 19-37. Smith argued that political philosophers ought to question their understanding of disability. He demonstrated that all too often, a medical or "naturalistic" definition of disability and talent is assumed. He suggested that a social model of understanding talent would clarify the role that social construction plays in evaluating talent and disability. In other words, those called disabled have presented a problem for justice as reciprocity, since they can't reciprocate through work. However, opportunities to reciprocate might be possible for them if society was constructed differently.

unwillingness to work? A further examination of the relationship between work and desert illustrates the connection between desert and reciprocity. Note the way in which work is the criterion that justifies inequalities. In order for reciprocity to be satisfied, effort must be rewarded with benefits that exceed those received by a person who did not exert the effort. Thus, reciprocity is irreconcilable with equality if one assumes that labor or effort deserves reward. The provision that inequalities must benefit the least well-off is based on the premise that in order for some work to be accomplished, there must be high motivational incentives. We need more information from Rawls about how real choices and freedom of occupation will be achieved. Rawls cannot assume that work will be meaningful as long as it is well-paid. People may freely choose to contract for distasteful tasks if they are compensated well. However, that does not make the work they do meaningful. More often, demeaning or tedious work is not freely chosen, but rather is accepted only as an alternative to starvation or poverty.

Cohen connected the idea of work with that of self-ownership. What Cohen calls self-ownership amounts to the same thing as negative freedom. He said that this must be limited in order for everyone to enjoy “a reasonable degree of autonomy.”⁶⁸ The paradox of the tension between negative and positive freedom underlies Cohen’s critique of Rawls. “We can all benefit in terms of autonomy if

⁶⁸ Cohen, *Self-Ownership, Freedom, and Equality*. (New York: Cambridge University Press, 1995), 237.

none of us has the right to do certain things.”⁶⁹ Cohen’s conclusion is that we have non-contractual obligations to serve other people, including laboring for them, so Rawls should affirm a duty of assistance. This critique was offered prior to Rawls’s publication of *The Law of Peoples* wherein Rawls did affirm a duty of assistance with limits. Cohen’s critique would be that the limits of aid as Rawls defined them are unjustifiable. The first question is who is included in the scope of this limitation of negative freedom and promotion of autonomy for “everyone”? Is this a universal, natural duty or a contractual duty limited to a specific contracting population? For Cohen, the duty is universal, but for Rawls it is unclear. Rawls must provide stronger reasoning other than prudential, *modus vivendi* justification for this duty. Rawls argued that the motivation for the duty of assistance among peoples in the society of peoples more than stability – it is stability for the “right reasons.” The basis of the rightness of these reasons is the question. The restriction in freedom in the domestic example of *The Theory of Justice* should mirror the duty in the law of peoples. Rawls conceded in *Political Liberalism* that more redistribution than the difference principle requires might be necessary in order to avoid oligarchy.⁷⁰ The same problem holds within the Society of Peoples. If there is to be a just process for deliberating about questions of how decisions are made at work and over the products of work then participation in that discussion must be accessible to all.

⁶⁹ Ibid.

⁷⁰ Rawls, PL, 328.

Should talents and abilities be treated as properties that belong to people who happen to be lucky in birth? Some answer to this question will be implicit in any claims about distribution of wealth on an international level. By extension we could argue that some societies or some nations have property rights in the talents of their people. The controversial question of whether or not nations can be held responsible is only a first step in an argument that a particular nation is responsible for the poverty of its people.⁷¹ This is a matter that cannot be fully resolved since it is so deeply rooted in conflicting claims about the good.⁷² Rawls said no. Rather, talents are resources belonging to the community as a whole.⁷³ Nevertheless, when justifying the limits of material aid among the society of peoples on an international level, Rawls resorted to reliance on the notion of desert. Thomas Pogge agreed on this point and rejected Cohen's critique of Rawls. Pogge said that Cohen's criticism would lead to a situation where "reluctant top earners are treated unfairly." That is to say, workers like doctors, for example, whose services are valued highly because they are needed might not want to work even though the pay is an incentive. Their intelligence and abilities are not the property of their society, but of themselves as

⁷¹David Miller, "Holding Nations Responsible," *Ethics* 114 (January 2004), 266. See Miller's claim that "national poverty is rarely the sole responsibility of the nation that suffers it."

⁷² Ibid. See also Robert Goodin's questioning of positive desert claims, and many other voices contesting the notion of desert illustrate why Rawls avoided arguing on the basis of the fuzzy notion of desert.

⁷³ Rawls, TJ, 101.

individuals. Pogge argued that justice does not require an exceptionally talented worker to “reduce her own welfare in order to increase the welfare of others.”⁷⁴ Making yourself show up at work is a matter of choice. However, in that same tradition, Rawls argued that reciprocity demands that the consequences of choice, labor, and self-denial, be reflected in benefits of that work.⁷⁵ Still, the connection between labor and desert raises an interesting problem for capitalism. If a person enjoys leisure as a result of years of hard work that yields a surplus, the accumulation of capital seems fair enough. But, what about a person who inherits so much capital that she never has to work, but lives off the income of investments? Isn’t inheritance of capital just as much a result of luck as natural talent? Freedom to dispose of one’s own property through gift or bequest leads to unfreedom for future generations because concentrations of power are held by owners of capital. On the domestic level, the difference principle leads to inheritance tax, but in the international application of the theory there is no such protection.⁷⁶

In concluding this section on labor, I reiterate that Rawls must expand his theory of justice to the work place, just as he must expand it to matters within the family. Doing so could safeguard his theory from some salient criticism based on

⁷⁴ Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy.” *Philosophy and Public Affairs*. 29, No2, (2000),153.

⁷⁵ Like Ronald Dworkin, Rawls wanted to eradicate inequality based on sheer luck while still maintaining reward for the efforts of the will.

⁷⁶Rawls, TJ, 277.

injustices of the market.⁷⁷ In order for international trade to meet the justice target of the Law of Peoples, production as well as exchange must be scrutinized and regulated. Rawls did not rule out the need for such specification regarding the regulation of human rights. He claimed that his theory could provide more than merely procedural justice that would be hammered out at the level of local constitutions and policies. For example, he pointed to the work of Joshua Cohen as a possible path for realizing some of these goals through policy.⁷⁸ Joshua Cohen and Joel Rogers encourage improving the organization of American workers. They view worker representation as an essential in reconciling democracy and work. In their article, “Secondary Associations and Democratic Governance” they examine implications for democracy based on the centrality of work. “The association framework that determines how it is organized, distributed and rewarded sets the background and tone for association action throughout much of the society.”⁷⁹ They recommend four types of remedies.

- (1) lower the barriers to unionization,
- (2) encourage alternative forms of self-directed worker organization,

⁷⁷David Ingram, “Between Political Liberalism and Postnational Cosmopolitanism: Towards An Alternative Theory of Human Rights.” *Political Theory*. 31, No. 3, (June 2003), 384. Ingram said, “... perhaps his strictures about fair trade might reach all the way down to regulating, in some form, the background structures and institutions constraining trade.

⁷⁸ Rawls, LP, 141.

⁷⁹ Joshua Cohen and Joel Rogers, *Associations and Democracy* (New York: Verso, 1995), 79.

- (3) raise the social wage, and
- (4) promote more centralization in wage bargaining while permitting high levels of decentralization in bargaining over specific work conditions.⁸⁰

This is exactly the type of specification required by the best in Rawls's theory.

Rawls should have affirmed this proposal as a way of fleshing out the society of peoples in relationship to potential injustice in the realm of labor. This expansion of his theory in such a direction would have answered the criticism of G.A. Cohen and others. Making this move would be consistent with Rawls's inclusion of human rights in the list of eight principles of justice for *The Law of Peoples*. He does acknowledge that the law of peoples requires protection of worker's rights among other basic rights. However, his assumption that protection of such rights would become unnecessary is overly optimistic.⁸¹ His theory assumes that citizens in a secure and enduring constitutional democracy can interact free of the divisions of "hostile social classes."⁸² However, in the international arena, the basis of mutual respect and fair interaction does not exist.

G.A. Cohen's critique of Rawls related to freedom and labor illustrates what the application of a more robust notion of freedom could do for Rawls's theory. I believe that Cohen is correct that Rawls's theory of justice requires redistribution at the global level, with no cut off point in sight. The expansion of the difference

⁸⁰ Ibid., 80.

⁸¹ Rawls, LP, 7.

⁸² Rawls, PL, 38.

principle to the international case is needed. Rawls argued against these extensions of his theory because he wanted to avoid promoting a liberal version of the good. The concept of positive freedom that I espouse links the personal, moral autonomy of individuals with the political freedom embodied in social systems. An individual exerts her force in creative work in the world as an expression of her will and self-development. These acts cannot be sharply or clearly divided from political acts with economic consequences. To reiterate Cohen's critique, "the personal is political." Therefore, it is impossible to think that a person in an affluent society has no obligation to a burdened worker in an impoverished society. The shared environment is a basis of a relationship between the two persons even if complex webs of communication or trade are not. Cohen warned that if Rawls aborted his leanings toward comprehensive conceptions of justice then his theory of justice would not be able to deliver "ideals of dignity, fraternity, and full realization of people's moral natures."⁸³ Positive freedom links the full realization of people's moral natures with their social and political actions in the world.

One modification that Rawls would probably have been able to accept more easily would be the inclusion of standards of fairness for international labor specifying more clearly workers rights. This could easily be included in the section on cooperative organizations derived from the second original position. Rawls granted that standards of fair trade would be needed and could be provided as a

⁸³ G.A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy and Public Affairs*, 26, 1 (Winter 1997), 17.

background framework through agreements made in the second original position.⁸⁴

There is no reason why Rawls could not have included provision for specification of international labor standards in the same way. This illustrates how much overlap there is between the commitments of a liberal like Rawls, and a Marxist like G. A. Cohen. Given the vastly different philosophical commitments between Rawls and Cohen, the shared agreement about self-ownership is striking. Positive freedom explains how a socialist like G. A. Cohen can agree with a liberal like Rawls on this point. It also explains why Rawls can advocate policies that seem so far to the left. This explains the potential for the concept of positive liberty to reconcile conflicts between socialists and liberals. As David Purdy wrote:

Recently,... a certain convergence has occurred. Socialists who are critical of classical liberalism, but care about personal liberty, have begun to overlap with liberals who are critical of classical socialism but care about social justice. From this standpoint, it can be argued that universal grants offer the best way to renovate the social rights of citizenship and bring considerations of social justice and questions of economic policy into a common frame of reference... For the moment, it suffices to say that the aim of liberal-socialism is not to devise a definitive and comprehensive scheme of social justice which, once achieved, is then preserved forever. Rather, the point of the Citizens' Income is to create a conspicuous public framework for handling sectional conflicts.⁸⁵

⁸⁴ Rawls, LP, 42.

⁸⁵ David Purdy, "Citizenship, Basic Income and the State," *New Left Review*, No. 208, (November/December 1994), 37. The idea of universal grants or minimum basic income as a global program is explored more fully in the conclusion. See also Katrina McKinnon.

This type of procedural solution reflects the best of Rawls's contribution. A public framework for resolving conflicts is required both within aggregates of people and between aggregates of people. Whether they are constituted as societies, states, or some other way, as long as they interact through economic transactions, some venue for conflict resolution will be necessary. Rawls did not adequately acknowledge the realist concern that holders of greater political power always have greater freedom to control negotiations and decision-making in the workplace as in any realm of society. Just as positive liberty is achieved through the material and social conditions at the domestic level, real freedom requires conditions that foster parties to interact as political equals at the international level.

CHAPTER SIX

CONCLUSIONS

I have argued that positive freedom is a helpful concept insofar as it emphasizes the relational process of self-development in the context of enabling conditions. Rawls's theory should be revised in order to avoid criticisms of being either irrelevant to crucial cases of injustice or merely a *modus vivendi* argument that fails to accomplish Rawls's intent. By leaving behind the Kantian notion of positive freedom, Rawls failed to account for the enabling conditions of resources, the social cooperation that is not limited by national borders, and the requirement of self-development through various options in labor. This notion of positive freedom provides a way of linking the criticisms that Rawls received from various schools of thought. On the international level the necessary provisions for the background conditions of justice would require ongoing redistribution as achieved in the domestic application through the difference principle. In *The Law of Peoples*, there is inadequate provision for the enabling conditions of meaningful freedom. However, the aspect of positive freedom that has been most troubling for liberals is not positive freedom as enabling conditions. Rather, liberals like Rawls or Berlin have been troubled by the fear that positive freedom would be a guise for ideal deployment. It is this fear that has led to avoidance and rejection of the concept of positive liberty.

This same fear reveals a strange dilemma of liberalism. The tolerance that liberalism seeks to promote cannot accommodate intolerance. In other words, liberalism can seek to maximize any type of freedom except the freedom to

dominate. Yet if freedom is the cardinal value, then there are no grounds for criticizing the freedom to dominate or master others. Unfortunately rhetoric involving the term positive freedom has been used in the past as a means of ideal deployment to promote totalitarianism. Rather than promote a Kantian concept of freedom, Rawls sought to maintain a strictly neutral procedure for resolving different ideas of the good. He secured this neutrality at the risk of reducing freedom to a merely formal potential at the international level. The social and political structures that allow freedom to flourish require limits and mutual respect. Therefore, respect of others is an ideal that must be fostered and defended in order to promote meaningful freedom. Liberals can only promote the ideal of mutual toleration and respect by compromising their own commitment to neutrality. Rawls's theory would be stronger if he had specified more fully which types of freedom must be limited in order to promote other freedoms. In other words, when we speak of limiting some freedom to promote some other freedom, it is helpful to delineate between types of freedom.¹

This essay has focused on the notion of positive freedom as a matter of enabling conditions for meaningful freedom. The enabling conditions examined are specifically economic conditions. In light of my argument that freedom requires certain economic regulation and is incompatible with purely laissez-faire capitalism, my conclusions include endorsement of certain policies which promote freedom in

¹ I am indebted to John Gray, *Two Faces of Liberalism*, as a background for this discussion.

the positive sense. However, my conclusions do not end there. Rawls raised a question that is crucial in our time; namely, whether or not to honor decent, non-liberal societies by granting them equal voice in the arena of deliberation and policy-setting. Rawls wrestled with this question because of the sticky dilemma of granting freedom to those who might seek domination. His resolution of this problem illustrates his allegiance to the consistent valuing of freedom. He did not want to coerce societies toward liberalism. He did not want to use domination to make societies liberal. That is to say, he was concerned that the liberal project itself may be a type of ideal deployment insofar as it promotes the ideal of equal and nonhierarchical respect for persons. Therefore, the notion of positive liberty as ideal deployment will be examined further in this concluding section.

My conclusions again affirm the usefulness of the concept of positive liberty in expanding Rawls's theory. As I have argued, Rawls's international theory needs to be more consistent with his domestic theory.² In other words, the redistribution required by the difference principle that ensures background conditions for freedom cannot have a cut off point. Individual well-being is required as part of the social basis of self-respect that makes political freedoms more than merely formal

² Charles Beitz, "Rawls's Law of Peoples." *Ethics*. 110, No 4. (2000), 694-695. Beitz criticized Rawls for making a "sharp distinction between the domestic and international realms" in the application of his theory of justice. He states clearly the choice between Rawls's law of peoples and Rawls claim that the best way to promote the well being of people through the wellbeing of their society, and the cosmopolitan view. Beitz wrote, "The question is which orientation to the fundamental aims of political life one should embrace—that which regards the flourishing of domestic society as the ultimate political value or that which judges the importance of any such accomplishment by its consequences for individuals."

provisions. Rawls attends to this problem in the domestic application of his theory, going to great lengths to insist that the theory only applies where enabling conditions are met. His own logic would dictate that the difference principle would also be required for distributive justice at the international level. The difference principle should be applied universally, despite Rawls's own objections to this move. His critique of capitalism should be stronger, including more specification of policies for redistribution of wealth. In short, my conclusions amount to a claim that the best of Rawls's work indicates that he was sympathetic with liberals who seek positive freedom.³

Finally, I want to at least point toward an indication of how this concept of positive freedom provides a bridge between liberal thinkers and liberation theory. Therefore, in this conclusion I will connect some reflections about Rawls's theory with a broader notion of positive freedom as liberation. This reveals the common ground that positive liberty offers between lovers of liberty with a propensity towards endorsing socialism, and those inclined toward liberalism. I am simply agreeing here with T.H. Green's definition of true freedom as, "freedom in the positive sense: in other words, the liberation of the powers of all men equally for contributions to a common good."⁴ When Rawls distanced his work from Kant's

³.Avital Simhony and David Weinstein, *The New Liberalism: Reconciling Liberty and Community* (New York: Cambridge University Press), 2001, 1. The concept of new liberals sympathetic to positive liberty is discussed more below.

⁴ Green, 200.

notion of moral autonomy, he safeguarded the neutrality of his theory at the expense of having grounds for promoting meaningful freedom. Rawls wrote:

While autonomy as a moral value has had an importance place in the history of democratic thought, it fails to satisfy the criterion of reciprocity required of reasonable political principles and cannot be part of a political conception of justice. Many citizens of faith reject moral autonomy as part of their way of life.⁵

Rather than making that move, Rawls should have retained the Kantian notion of moral autonomy and placed limits to the toleration of such faiths on the basis of being unreasonable.

My first conclusion relates to the material conditions of freedom.⁶ Material resources are the means of making freedom real rather than merely formal. The idea that individuals are due equal mutual respect is the basis of nonhierarchical regimes. In contrast, hierarchical regimes, or illiberal systems, justify treating people differently assuming that some have superior natures while others are inferior. Women and children may or may not be afforded the equality as citizens that liberal regimes or cosmopolitan schemes require. Feminist theory is particularly adept in

⁵ Rawls, PL, xlv.

⁶ Robert S. Taylor, "Rawls's Defense of the Priority of Liberty: A Kantian Reconstruction," *Philosophy and Public Affairs*. 31, No. 3, 248. Taylor defends Rawls's theory including the priority of liberty on the basis of an argument he called the "Hierarchy Argument." Taylor suggests that "the Priority of Liberty follows directly from a certain conception of free persons." He notes that this priority of liberty is only effective "if sufficient material means are available to support this interest."

noting such systemic inequalities. Therefore, I have argued that Nussbaum's critique of Rawls illustrates the concern that freedom may be merely formal in Rawls's theory. This is not necessarily a gender-based critique. Rather, it is based on historical particularity rather than sheer abstraction.

When Rawls's theory is used to inform actual policy, greater particularity is required in order to insure that freedom is meaningful. In his essay, "Between Political Liberalism and Postnational Cosmopolitanism," David Ingram criticized Rawls for leaving "the prescriptive meaning of rights overly vague and indeterminate."⁷ I share this criticism. Because the notion of rights Rawls defended is not adequately "prescriptive" according to Ingram, he favors some solution like "an international democratic federation of liberal democracies and interest groups."⁸ The relationship between states and NGO's in this model would have to be further developed with attention to questions concerning the limits of representation in such a scheme. In this way Ingram believes that he navigated a safe middle way between problems of political liberalism and cosmopolitanism. I agree with Ingram on the basis of three criticisms developed by applying the concept of positive freedom the theory of John Rawls.

First, if liberal thinkers value freedom, they will regulate the economy enough to promote meaningful freedom. In other words, economic policy

⁷ Ingram, 373-374.

⁸ Ibid., 386.

recommended by liberals like Rawls should be similar to that recommended by cosmopolitans, communitarians, and socialists insofar as capitalism must be highly regulated. It can be reasonable and consistent to argue that no comprehensive view of the good should guide social policy, but that economic matters must be limited to promote social freedom. Rawls should agree to this, given the requirements of the worth of liberty. This first conclusion follows from the premise that separating liberty and the worth of liberty only works if massive redistribution of resources is involved. Some inequality of resources is compatible with the possible separation of liberty and the worth of liberty. If everyone's basic needs are met, equality of capability can be achieved without resource equality. However, the mutual respect and equality of political power will also require massive redistribution of speech, voice, and representation. In other words, major regulation of electoral processes would also be required to compensate for the possible unequal worth of liberty.⁹ We recognize, as did Rawls, the need within a liberal democracy for public financing of campaigns and other protection of political processes from the influence of economic power. The same dynamics necessitate these protections within the domestic sphere

⁹ In this respect, the conditions of liberty provide some common ground between Rawls and the new republican theory. This theory promotes political participation as a civic good and benchmark of freedom. Philip Pettit, writing about republican theory, argued that "If the republican state is committed to advancing the cause of freedom as non-domination among its citizens, then it must embrace a policy of promoting socioeconomic independence"(Pettit, 159). Far from arguing for material equality or much intervention, Pettit still reflects the awareness that freedom requires economic power. Despite theoretical differences, republican thinkers and Rawlsian liberals must be committed to some economic adjustments to protect the worth of liberty.

are also present in the international sphere. Where concentrations of economic power exist, there is the potential for possessors of that power to take over political processes. When that happens the political freedoms of other actors becomes merely formal. Therefore, protections of the equal worth of liberty need to be achieved at the level of the law of peoples, just as they are necessary in the domestic case. Thus the difference principle should be applied globally.¹⁰

Extension of Justice as Fairness Beyond Borders

The second conclusion as a result of applying the concept of positive freedom to Rawls's theory is that since social cooperation and the shared environment transcends borders, state borders are irrelevant to our duties and moral obligations. Although state borders continue to be helpful for practical purposes, state power must answer to international organizations that advocate for justice across borders. The increase in economic activity between nations and across borders requires ethical theory that can unite peoples across divisions. The problems of right or just relationships with others beyond our state borders or affiliation as a people or society begs for ethical guidelines even if community is impossible on a global scale. If we stick with Rawls's definition of community as a group united by a comprehensive notion of the good, then clearly community would be impossible alongside freedom. But cooperation and mutual respect may be possible nonetheless. I have argued that Thomas Pogge's critique of Rawls demonstrates the cosmopolitan concern for

meaningful freedom. Rawls advocated a neutral procedure of seeking overlapping consensus while refraining from the promotion of Kantian notions of cosmopolitan right. Negotiating power struggles between states, international actors, individuals, and local affiliates of persons will be a persistent challenge. I do not offer a solution to resolve the challenge. However, it does seem clear that Rawls's attempt to bypass the problem by imagining a society of peoples does not solve the problem of conflicting state power.

The crux of the disagreement between Rawls and the cosmopolitans relates to concern for the welfare of individuals. Rawls's theory is based on the social union of persons as free and equal citizens.¹¹ At least at the level of the original position, and also at the level of political participation in a constitutional democracy a respect for others as equals is implied. Is this a matter of ideal deployment? Some would argue that it is. If it is a moral position to view others as deserving of mutual respect, then there is a type of ideal deployment inherent in Rawls's theory. However, it is not an understanding founded on the notion of rights as much as it is founded on the reasonable and rational nature of humans in the Kantian sense. This must derive from a universal respect for persons, not a particular contractual citizenship. For Kant, this respect for persons is grounded in the rational, moral quality of human life. Rawls did not want to promote that liberal idea because of his desire to respect and

¹¹ Joshua Cohen, "Democracy and Liberty," in ed., Elster, *Deliberative Democracy* (New York: Cambridge University Press, 1998), 229. His theory does assume what Joshua Cohen called the "background democratic understanding" that "the parties accept one another as equals." As Cohen said, "equality is a benchmark."

cooperate with nonliberal peoples. The Law of Peoples aims for respecting even hierarchical regimes in order to achieve their inclusion in the cooperative stability of peaceful coexistence. A choice arises between remaining neutral on questions of the good versus advocating the well-being of vulnerable individuals within various regimes. This tension between cosmopolitan thinkers and Rawls hinges on the potential problem that individuals' needs can be invisible at the level of states or societies.¹²

Economic Regulation for Justice

Third, Rawls's theory in *The Law of People* can be modified slightly in order to be reconcilable with cosmopolitan, communitarian, and socialist thought when it comes to matters of economic policy. At the same time, these modifications would make this international application more consistent with Rawls's original theory of justice. The conflict between economic freedom of laissez-faire capitalism and the positive freedom of individuals or societies requires more assistance across borders and more regulation of markets than Rawls admitted. The third conclusion I offer is that Rawls can be interpreted as sharing communitarian, cosmopolitan, and socialist concerns related to issues of economic justice.¹³ The result would be an

Cohen challenged Rawls on this problem of individuals getting lost in the aggregate. He argued that political legitimacy depends of the way in which collective decisions are reached by equal members of society.

¹³ Immanuel Wallerstein, *After Liberalism*, described the need for a world system built on the "primacy of groups as actors." Wallerstein viewed the "capitalist world-economy" as inextricably wed to liberalism arguing that both had reached their limits because liberalism as a rational, reformist ideology failed to deliver its

overlapping consensus between democratic socialism and political liberalism. Rawls stressed the important difference between seeking an overlapping consensus versus promoting a good claimed to be universal. The idea of overlapping consensus is that various comprehensive ideas of the good contain substantive commonalities. In other words, a particular value might be shared by lots of groups that view themselves as rivals or offer vastly different claims about why that value should be upheld. The belief that more economic equality is needed could be shared by thinkers from disparate ideologies. I have argued that G.A. Cohen's critique of Rawls represents this insistence that freedom be more than merely formal. Predatory capitalism does not promote freedom that is more than merely formal. Restrictions on markets like the GRT (Global Resource Tax)¹⁴ proposed by Pogge or the global redistribution schemes of Beitz would be part of the solution endorsed by positive liberty. These are ways of extending the difference principle to the global level. Rawls acknowledged his sympathy for these cosmopolitan impulses, although noted his disagreement over the issues of a cut-off point for aid due to his concern for reciprocity.

promise to all individuals. Many different theories of international relations share consensus that states are not the only important actors to be recognized. This view that Rawls is not at odds with communitarians over some economic justice issues is shared by others. Arguing that the liberal versus communitarian debate was "misconceived from the start," new liberals such as Green and Hobhouse, among others, accommodate both liberal and communitarian concerns. See also Avital Simhony. "Beyond Negative and Positive Freedom: T.H. Green's View of Freedom," *Political Theory*. 21, No. 1 (February 1993), 28-54.

¹⁴ Pogge, "An Egalitarian Law of Peoples," 199.

John Gray, in *The Two Faces of Liberalism*, accurately criticized Rawls for failing to note the internal contradiction in two conflicting forms of freedom. Gray recommended that liberalism should move forward allowing diversity through promoting mutual tolerance, rather than suggesting that a single, most rational way of life was attainable through liberal thought. Gray claimed that Rawls was promoting a specific way of life rather than encouraging diverse freedom. Either you limit the freedom to dominate others or you don't. Rawls responded to that type of criticism by moving farther and farther from Kantian defenses of moral freedom. The Law of Peoples can be viewed as Rawls's continued effort to avoid that type of criticism by remaining neutral on concepts of human well-being. Recognizing that domination can be achieved not only through military power of direct force, but also through economic coercion, the prevention of domination must include the prevention of great inequalities in wealth. Therefore, because Rawls cared about political freedom, he must limit economic freedom in order to promote meaningful freedom. Liberalism can be reconciled with socialism in this way, because curtailing the freedom of capitalists is required by liberal goals.

To illustrate, I turn to some suggestions offered by Ronald Beiner offered what he called a "civic" argument for socialism, that he said may be viewed as an "offshoot of liberal discourse."¹⁵ This is to say, Beiner gives examples of liberal arguments for policies that have been labeled as socialist policies. For example, for

¹⁵ Ronald Beiner, "The Civic Argument for Socialism," *Liberalism and Its Practice*. (ed.) Dan Avnon and Avner de-Shalit (New York: Routledge, 1999), 146.

the purpose of promoting freedom, Beiner recommended what he called the Plato principle. He wrote:

Applied to modern conditions, the Plato principle would yield the result that if a streetsweeper earned \$25,000 a year, a corporate lawyer could not earn more than \$125,000. While not perfectly egalitarian, the universal application of this five-to-one ratio would certainly have a revolutionary impact on capitalist societies as they now exist... No one can question the feasibility of this proposal since (unlike certain other socialist projects), given the legislative will, it can be implemented instantaneously; at most, one can claim that putting it into practice would diminish economic efficiency.”¹⁶

This type of suggestion for equalizing economic power would promote more meaningful freedom. The difference principle is supposed to balance the need to stimulate production and efficiency by both motivating entrepreneurial investors while at the same time providing a safety net. Beiner’s suggestion could be reconciled with the difference principle. It seems likely that if Rawls extended the first original position to the international sphere that representatives selecting principles of justice would want to be sure that survival needs were met no less than provisions for freedom. Beiner concluded that the following policies should be endorsed because they lead to more extensive freedom:

1. Every employable member of a society is to be guaranteed a job at the behest of public authority. A Western society that consents to, or promotes, the unemployment of 10 per cent of

¹⁶ Ibid, 158.

- its working population should come to be seen in the same light, and be subject to the same degree of moral censure, as a society that arbitrarily disenfranchises a tenth of its adult citizenry.
2. Public authority is obliged to do everything in its power to render it more likely that the kinds of jobs actually available to members of the society do not destroy the soul.
 3. The ratio of the highest to the lowest income in the society shall not exceed, say, five to one. This ratio shall be implemented by a publicly enforced, non-loop-hole-ridden, redistributive tax system.¹⁷

I agree with Beiner and others who propose such policies. It is crucial to note that the promotion of such policies is based on a desire to maximize freedom. Granted, there are limits of certain kinds of freedom involved as well. The arguments against this type of redistribution are related to the problem of free riders and the potential to stifle entrepreneurial creativity.

Here is the dilemma: different people would choose differently between measures of freedom and measures of equality. The choice between living in a society that has less material wealth and more equality versus that of a society with less equality but more material wealth cannot be answered through reason alone. What is clear is that the balance achieved with the difference principle in the domestic case is absent in the international model. The best in Rawls's original theory would lead to policies like these and others that could be acceptable to cosmopolitans, communitarians, and socialists as well. In an early critique of Rawls,

¹⁷ Ibid., 160-161.

Norman Daniels argued that “Rawls’ principles may drive him and other liberal theorists toward far greater egalitarianism than was expected.”¹⁸ The work of McKinnon and others concluding that Rawls’s theory will lead to a requirement of insuring basic income concurs.¹⁹ These policy suggestions that seem reasonable for the purpose of promoting positive freedom would include: limiting inheritance to personal property rather than capital, encouraging public property where appropriate, supporting worker control of means of production, and regulating global markets on the basis of human rights. The result of these reflections is a potential linkage between democratic socialism and political liberalism. As Beiner said,

Some arguments for socialism regard politics as the means and economic equality as the end. Here this perspective is reversed: economic equality is the means and greater exercise of political citizenship is the end... This theoretical strategy may be summed up in the notion that socialism should be pursued not on account of equality for its own sake, but because it makes us better citizens or promotes citizenship generally, or rather, that greater equality is justified insofar as it makes better citizens and encourages citizenship.²⁰

Recognizing the economic enabling conditions of freedom requires that trade agreements should be linked with human rights and environmental protection.

Distribution and exchange of material resources should promote liberty for personal

¹⁸ Daniels, “Equal Liberty and Unequal Worth of Liberty,” *Reading Rawls*, 256.

¹⁹ McKinnon, 144.

²⁰ Ibid., 153-154.

self-development underwritten by enabling conditions, even at the expense of liberty of the entrepreneur to invest in new ventures. Therefore, the following requirements for the regulation of trade agreements should be promoted even though they sacrifice the negative freedom of business for the positive freedom of citizens. The following policy suggestions are suggested by the "Citizens Trade Campaign," a coalition of environmental, labor, consumer, farm, religious, and other citizens' groups. Although these requirements were developed in response to concern about NAFTA, they could be applied to any regional or multilateral trade agreement.

There must be trade-linked enforcement of worker rights and workplace standards. These rights and standards must include the right to organize and bargain collectively; workplace health and safety standards; meaningful minimum wage structures; a prohibition on child labor and forced labor; and the guarantee of non-discrimination in employment.

There must be trade-linked enforcement of environmental, agricultural, health and safety laws and regulations.

Companies must demonstrate that they have complied with the host country's labor, environmental, agricultural, health and safety laws and regulations before being allowed to gain NAFTA trade benefits. No runaway plants should receive NAFTA benefits.²¹

How would these policies fit with Rawls's law of peoples? I have argued that such policies are completely compatible with the procedural suggestions of the second original position. I believe that representatives of liberal and decent societies would want to ensure such provisions precisely because these policies do promote

²¹ *The Case Against "Free Trade": GATT, NAFTA, and the Globalization of Corporate Power* (Earth Island Press, 1993), 225-226.

freedom. Although Rawls was not completely clear on this point, these provisions seem compatible with his vision in the law of peoples, as regulated by regional trade organizations. He might say that such policies would be selected by institutions designed to regulate fair trade. However, the establishment of trade regulation would have to be backed up by power to enforce such regulation. Rather than leave these matters to decision-makers at the level of regional institutions, the *Law of Peoples* should specify more fully the extent of protections for conditions of mutual respect.

Specific policy suggestions must be hammered out in the international organizations for deliberation as Rawls proposed. My purpose here is not to promote certain policies, but to clarify the need for attention to the consequences of economic inequalities for political freedom on the global level. One reason that could be given for changes in neoliberal economic policies would be that such policies fail to accomplish their stated goal. Of course, economic policies are promoted for many different reasons and do not have one, clear purpose. If the singular goal of a policy was financial profit by any means necessary, then liberal policies might be viewed as successful, at least in the short run. But the normative questions about trade call for defending policies in other terms. In the debate on international trade, liberal economic policies like privatization, deregulation, and opening new markets push old laissez-faire tactics using a variety of justifications. Most often, these policies are said to promote freedom and economic growth. Arguments against these policies could be arguments based on the value of equality or some other comprehensive notion of the good. However, those arguments seem less likely to engage those who

claim freedom as the cardinal value. So, I have argued that freedom itself is best promoted by some alterations and adjustments in what have been called liberal and neoliberal policies. Mine is not an attempt to replace liberalism with something else, but an effort to suggest some adjustments in the future of liberal thought, and to demonstrate convergence between thinkers like Rawls and the democratic socialists.

Rawls developed his thought in the matrix of the historical polarization between Marxism and capitalism. While philosophical debate inches along, world leaders and policy makers grasp for reasonable ways to resolve conflicts over wealth distribution, trade policies, and freedom. The need for the revisioning of freedom is increasingly evident because of globalization. What is globalization and how does it connect with normative questions related to freedom? The literature on globalism and global trade is vast. Yet there is common agreement that the definition of globalism itself is slippery and difficult to clarify completely. Fred Halliday reviewed the history and definitions of globalism, noting that technological revolutions in communication and travel have been formative. Halliday provided this definition of globalism:

At its simplest, globalization denotes three things: a marked reduction in the barriers between societies and states, an increasing homogeneity of societies and states and an increase in the volume of interactions between societies – be this in terms of trade, capital volumes of currency traded or movements of tourists and migrants.”²²

²² Fred Halliday, *The World at 2000* (New York: Palgrave, 2001), 61.

Increased power of multinational corporations and their relationship to state sovereignty and the role of states are common topics in discussions of globalization. Halliday linked globalization with certain economic policies, saying that “in the field of economics” globalization means “trade liberalization and the increased tendency of capital to flow across frontiers.”²³ These economic interactions across borders necessitate new accountability in ethics of international trade. Halliday’s reminder of the connection between international relations and normative issues is being heeded by practitioners working on trade policy.

Joseph E. Stiglitz, winner of the 2001 Nobel Prize in economics has recently written,

The fact that trade liberalization all too often fails to live up to its promise—but instead simply leads to more unemployment – is why it provokes strong opposition. ...The Western countries pushed trade liberalization for the products that they exported, but at the same time continued to protect those sectors in which competition from developing countries might have threatened their economies.²⁴

Policies like the austerity measures, privatization, and market liberalization are promoted by policy makers within the United States as the rational policies of those who defend freedom. But, research may show that, they perpetuate poverty in developing nations while diminishing state sovereignty. Stiglitz wrote:

²³ Ibid.

²⁴ Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: W. W. Norton and Company, 2000), 60.

... while I was at the World Bank, I saw firsthand the devastating effect that globalization can have on developing countries, and especially the poor within those countries.²⁵

Stiglitz began as an academic, then served on the Council of Economic Advisers under President Bill Clinton. In 1997 he became chief economist and senior vice president of the World Bank. Stiglitz defined globalization as “the removal of barriers to free trade and the closer integration of national economies,” arguing that the way globalization had been managed thus far needs to be changed.²⁶ The political motivation to change such policies requires reform of liberal political theory through the development of a more muscular concept of freedom.

Neoliberalism that is characterized by unfettered markets promotes a global economy that is not restrained by state power. In contrast, liberals concerned with meaningful freedom must insist that policies considered as socialist, communitarian, or cosmopolitan must be considered on their own merits. The ideological wars that polarize these various theories call for new concepts and bridge work. Based on my critique of Rawls in the light of the concept of positive freedom, I would suggest that the possibility of liberationist ethics be reconsidered. Ethics of global trade brings new challenges to liberalism that a liberationist conception of freedom can reform and enhance. In discussions of the ethics of global trade the outdated notion of freedom is one that arose in the modern struggle against feudalism and monarchy.

²⁵Ibid., 61.

²⁶ Ibid, xi.

Now the conception of freedom needs regeneration and careful examination since it often devolves to meaningless rhetoric that is used to defend the opposite of freedom. For these reasons, I hope more work will be done developing a persuasive liberation theory. This would be a type of liberal theory that is characterized by adherence to a concept of meaningful, positive freedom that promotes the ideal of mutual respect and concrete enabling conditions. I offer these concluding reflections as indicators pointing toward such a future liberation theory.

Bridges between Liberalism and Liberation Theory

Liberation theory stresses the relational nature of freedom rather than the rights of individuals to their own freedom, and it is characterized by care rather than neutrality. Consider these marks of liberation theory in more detail. First, in liberal thought freedom is usually thought of as a matter of the rights of the individual rather than as a dynamic of relational systems. In fact, freedom is often viewed as a point of tension between the individual and the community. A more high resolution view of freedom would make visible the necessity of community for the fullest personal freedom. For example, the freedom to create the harmony of the symphony requires the cooperation of community. The individual cannot be free in that way alone. Furthermore, freedom does not have to mean detachment. Care rather than neutrality motivates defense of liberation. The distinction between positive and negative types of freedom begins to address the difference between the inadequate conception of freedom in liberal thought and the richer notion of liberation freedom. So, the liberation freedom could be understood as an inherently valuable, relational process.

In looking for an alternative path for the future of liberalism as indicated by the positive concept of liberty, I suggest consideration of feminist theory and Latin American liberation theory. I argue that they provide compelling examples of why the liberal notion of freedom is too narrow.

Although feminist theory is not monolithic, some feminist thinkers understand their work as a type of liberation theory. The women's liberation movement has generated new ethical models that can enhance liberalism. Carol Gilligan's book, *In a Different Voice*, has been the wellspring for care ethics.²⁷ Both those who criticize her and those who agree with her have found that Gilligan's work indicates the importance of reforming, transforming, and expanding political theory in light of women's realities. In attempting to sift through the treasures of feminist theory, Gilligan's work contributes to a focus on freedom to care and act. Rather

²⁷ Although some aspects of her work have been rejected by other feminists, Gilligan's work continues to inform later feminist thought. In contrast to rationalistic, logically based ethical system, Gilligan's work points to compassion, care and sympathy as the foundation for ethical life. She claimed that the concept of rights has a masculine bias and that women care more about community than rights. This controversial premise has generated criticism from Joan C. Tronto who argued that care is a political concept and is a "complex set of practices" not dependent on a "supposed context" (Tronto, in RP, 151). Tronto and others share the concern that if sensitivity and care are linked with biology or oppression then the value of care as a political concept is undermined. Yet, in recent decades a debate between care ethics and justice ethics has emerged, largely because of Gilligan's work. Margaret Moore criticized this polarization between care ethics and justice ethics arguing that justice theories like that of John Rawls presuppose care. Nancy J. Hirschmann also argued that care is "practise-oriented" and not biologically determined (Hirschmann, in RP, 164). Even the many criticisms generated by Gilligan's work evidence her contribution to current feminist thought.

than the goal being enlightenment, or detached, supposedly objective truth, the goal is freedom, community, and diversity. Barbara Arneil wrote:

Gilligan argues that we have been trained to listen to the masculine voice, which exhibits a Cartesian style of reasoning that limits context and specific details, and a desire to find abstract general principles to govern unspecified individuals. Thus the contrast between male abstraction and female specificity is critical to the liberal ideas of justice being fundamentally about an abstract rule of law and universal sets of rights.²⁸

Attempts at being impartial can be paralyzing and can disable action. In contrast, this type of feminist theory fosters freedom to care and act.

This concern for action rather than abstraction was also central to the work of Hannah Arendt who posed challenges and reform for political theory. Arendt's influence on feminists derives from her profound analysis of concepts of power, ability, potentiality, and empowerment, authority, and compassion.²⁹ Arendt's contrast of freedom and necessity informs this discussion of freedom and domination inform my conception of freedom . It would be a stretch to label Arendt as a feminist. Nevertheless, there is overlap with her insistence on attention to activity in community and that same insistence by some feminist thinkers. In *The Human*

²⁸Barbara Arneil, *Politics and Feminism* (Oxford: Blackwell Publishers LTD, 1999), 135.

²⁹ Arendt, *Human Condition*. In her recent feminist rethinking of power, Nancy C. M. Hartsock included an extensive review of Arendt. (Hartsock, in RP 32-33.) Kathleen B. Jones in "What is Authority's Gender," referred to Arendt questioning the identification of authority with domination, see Jones in RP, 75.

Condition, Arendt outlined ways in which careful thought has been divorced from action in the modern world. Although there are questions about the implications of some of her work for feminist thought or liberation theory, Hannah Arendt's profound commitment to furthering freedom while reducing violence illustrates the importance of the integration of both thought and action. Arendt's influence on feminist thought is illustrated in the work of Rian Voet. In *Feminism and Citizenship*, Voet pointed to Arendt as the provider of a notion of liberty as democratic and participatory that furthers the feminist project. Voet said, "Instead of positive liberty as sovereignty Arendt suggested positive liberty as participation."³⁰ The importance of participation of citizens acting together in a public space is characteristic of Arendt's arguments for political life.

This is also remarkably similar to Mary Parker Follett's conclusions about creative experience as the unifying ground for harmonious democracy. The genealogy of Follett's influence on feminist thought can be traced through Dorothy Emmett, the first woman president of the British Aristotelian Society, who studied and wrote about Follett's concept of power.³¹ Nancy J. Hirshmann's work at revisioning the concept of freedom drew on Follett's writing about power, "related difference," and equality.³² Hirshmann wrote,

³⁰ Voet, 57.

³¹ Emmett, 1-26.

³² Hirshmann, RP, 64.

So the concept of equality necessary to freedom is different than that found in either positive or negative liberty. I find Mary Parker Follett's notion of "related difference" particularly helpful.³³

Despite recent study of Follett and recovery of her ideas, her potential influence in feminist thought in international relations theory has yet to be developed. Well ahead of her time, she saw the problems of the tendency of the researcher to distort the subject matter by attempting detached objectivity. Although she did not fully develop this insight she indicated the need for action even at the expense of the quest for neutrality or objectivity. Secondly, studying the conflicting interests of persons and the competitive situations that result from conflict, Follett said that we need to "seek the plusvalents of experience."³⁴ In other words, there are shared connections of common experience that connect persons. She wrote, "We need to study not the 'conception' of a general will but concrete joint activity."³⁵ This emphasis on shared action rather than shared understanding is shared by feminists as well as other liberation thinkers. Inadequate attention to the study of community has resulted because of a tendency toward radical individualism. The idea of shared power is found throughout Follett's work. She wrote, "Coersive power is the curse of the universe; coactive power, the enrichment and advancement of every human

³³ Ibid.

³⁴ Follett, *Creative Experience* (New York: Longmans, Green and Co., 1924), x.

³⁵ Ibid.

soul.”³⁶ Her commitment to avoiding coercive power is illustrated in her analysis of democratic process, representation, and international relations. According to Follett, true democracy must generate social process that incorporates the will of the people, not merely secures the nominal consent of the people. The tension and richness in complex, diverse society is both a sign and a guarantor of freedom. The democratic rule of law does not decrease freedom, but extends freedom. Follett said,

We should however, see law not as restricting or regulating freedom, but as increasing our freedom by making wider and wider the area in which that freedom may operate. I have theoretical freedom in the forest; I have actual freedom only with the freedom to do, to do and do, in wider relations, in more significant relations by extending ever more and more the possibility of fruitful response. Men do not lose their freedom in relation but thereby gain it.³⁷

Feminist voices urging care, community, and participation are a bridge for connection with Third World liberationist thinkers who share the perspective of those disenfranchised by the global economy. In her book, *Global Obscenities: Patriarchy, Capitalism, and the Lure of Cyberfantasy*, Zillah Eisenstein wrote:

Some 800 million people are starving across the globe. Women and girls represent approximately 60 percent of the billion or so people earning one dollar a day or less. However, in countries labeled as democratic, a new kind of excessive wealth exists in which billionaires are allowed to amass as much as they can with few limits. New levels of arrogance emerge just

³⁶ Ibid., xiii.

³⁷ Follett, 288-289.

as the nation-state is being overshadowed by transnational corporation.³⁸

Drawing on the positive type of freedom, liberation theory would argue that freedom is a dynamic process of liberation that can only be understood as an embodied, relational process.

What are the implications of attempting to escape Western dualism and embrace ways of knowing and being within their own systemic context? One characteristic of liberation theory is the insistence on embodiment. In other words, theory is viewed as inseparable from the crucible of history and specificity of experience. This requires thinkers to reflect carefully on their own embodiment and location in a particular political culture and time in history. Therefore, in this effort to suggest direction for future work reconciling liberal theory with liberation theory I turn to Central American liberation theory. Paulo Friere's book, *Pedagogy of the Oppressed*, is the primary source cited here for liberation theory. He wrote, "I consider the fundamental theme of our epoch to be that of *domination* – which implies its opposite, the theme of *liberation* as the objective to be achieved."³⁹ According to Friere, liberation is a painful birthing. True freedom means participating in history as subjects and actors. The process of being without freedom tends to strip persons of their ability and power to act.

³⁸ Zillah Eisenstein. *Global Obscenities: Patriarchy, Capitalism, and the Lure of Cyberfantasy* (New York: New York University Press, 1998), 1.

³⁹ Paulo Friere, *Pedagogy of the Oppressed* (New York: Continuum, 1993), 103.

In order for the oppressed to be able to struggle for their liberation, they must perceive the reality of oppression not as a closed world from which there is no exit, but as a limiting situation which they can transform⁴⁰.

The struggle to act ourselves to new ways of thinking and to think ourselves to new ways of acting is the vocation of becoming fully human. Attempts to remain detached, purely neutral or impartial, and objective have some value, but cannot replace the labor of self-development and responsibility for the construction of meaning. In fact, the notion of maximizing privilege at the expense of others is viewed by Friere as a distortion of the human vocation. Only from the flawed perspective of privilege could a person enjoy benefits that cost others their freedom.

Formerly, they could eat, dress, wear shoes, be educated, travel and hear Beethoven” while millions did not. Any restriction on this way of life, in the name of the rights of the community, appears to the former oppressors as a profound violation of their individual rights – although they had no respect for the millions who suffered and died of hunger, pain, sorrow, and despair.⁴¹

Care and compassion for others allows the motivation to desire change even if it results in the end of a privilege once enjoyed. Solidarity is as sacred as freedom. The desire for personal freedom cannot be divorced from the desire for community. Friere wrote,

⁴⁰ Friere, 49.

⁴¹ Ibid., 59.

The pursuit of full humanity, however, cannot be carried out in isolation or individualism, but only in fellowship and solidarity... attempting to be more human, individualistically, leads to having more, egoistically, a form of dehumanization.⁴²

This claim that being human requires community leads to adjustment in the theories that rely on the notion that humans are only individual utility maximizers. It is precisely this respect for others that makes us care about the freedom of others, even minorities with whom we disagree. Freedom allows for difference without domination. In contrast, domination results in oppression and hence, in injustice. According to Friere's thought, the desire to dominate is the root of the relationship of oppression that is the opposite of freedom.

In their unrestrained eagerness to possess, the oppressors develop the conviction that it is possible for them to transform everything into objects of their purchasing power: hence their strictly materialistic concept of existence... Everything is reduced to the status of objects at its disposal... everything is an object of domination... the earth, property, production, the creations of people, people themselves, time...⁴³

Rather than recognizing others as subjects, those who would dominate fail to embrace the fullest challenge of living in community that allows for difference and freedom. When people are robbed of their power and voice while being cheated in the sale of their labor not only they themselves, but their oppressors are dehumanized. To dominate another is to suffer dehumanization. Because freedom is

⁴² Ibid., 85-86.

⁴³ Ibid.

the human vocation, participation in the destruction of freedom is antithetical to being fully human. However, a duality exists because people both desire freedom and fear freedom. Therefore, persons will sometimes relinquish their own responsibility for freedom and participate in being dominated by another. The work of liberation requires intentional work new ways of thinking. The opposite of the will to dominate is the participation in the effort for liberation of all. According to Friere, "The commitment of the revolutionary leaders to the oppressed is at the same time a commitment to freedom."⁴⁴

Miguel D'Escoto's work embodies the pedagogy of the oppressed. During the 1980's he was minister of foreign relations in Nicaragua. His political activism and work as a liberation priest is reflected in his views on freedom. As a Sandanista leader, he has sometimes been accused of being an enemy of freedom and open society. I found him to be a passionate advocate of liberty. In an interview with him, he noted the reality that liberals who talk freedom often dominate and coerce in the name of liberty. He referred to an official history of the United States by Robert Moskin, who was himself a marine, to demonstrate his claim that the United States values domination not freedom. To illustrate this point, d'Escoto quoted from Moskin's book to describe the rationale for the Marine intervention and the invasion of Nicaragua in 1928.

Why did they invade the country? It says, "Marines protected the American lives, interests, and property.

⁴⁴ Ibid., 168.

When ordered to do so, the Marines went into and supported our people and squashed anti-U.S. nationalist.”... And then it says, “ The Marines suppressed revolts against governments that accepted American aims.” ... So, they prevented the coming to power of independent-minded leaders....And they dare to talk about democracy... This is not in a Marxist textbook but a book that was made for the making of the Marines. It is used at the Marine Academy.⁴⁵

What would Rawls say about this? I believe that Rawls would consider the U.S. invasion of Nicaragua in the 1920’s as an instance of injustice and noncompliance to principles of justice. Rawls mentioned Nicaragua as a possible case of U.S. intervention with the goal of regime change that is inconsistent with the Law of Peoples. He listed cases in which the United States overturned democracies because of interests that may have been economic rather than security concerns. At the end of this list he wrote, “and some would add, the Sandanistas in Nicaragua.”⁴⁶ Rawls recognized the injustice of cases where war is motivated by economic expansion. He said,

Thus democratic peoples are not expansionist, they do defend their security interest, and a democratic government can easily invoke this interest to support covert interventions, even when actually moved by economic interests behind the scenes.⁴⁷

⁴⁵ Miguel d’Escoto. Interview with author. Tape recording, February 20, 2003. Managua, Nicaragua. See appendix, 337-338.

⁴⁶ Rawls, LP, 53.

⁴⁷ Ibid.

The Sandanista government was claimed to be a threat to U.S. interests. It was therefore undermined until it was overthrown. This case of the Contra war offers a good case for determining the usefulness of Rawls's theory. According to Rawls's vision, the Law of Peoples would determine an international body, comparable to the U.N. that would have to determine whether a regime like Ortega's government was liberal or nonliberal. Even if it was deemed nonliberal, it might be viewed as decent. If so, then the type of U.S. intervention that took place would have been viewed as unjust by the international community. Even if the international community considered the Sandinista led Nicaragua as an outlaw state, the use of force would not be justified in this case according to Rawls's theory. In fact, the ruling of the World Court condemning the U.S. mining of the Nicaragua harbor could be viewed as evidence that such was the case. In this case the U.S. actions fit Rawls's description of an outlaw state better than Nicaragua did. Nonetheless, the unwillingness of the U.S. to comply with the verdict of the World Court in this case is an example the difficulty that a state may not acknowledge or comply with the judgment of the international community. This demonstrates the problem that a state that is considered a liberal state, like the U.S., may sometimes act like an outlaw state. This example of noncompliance raises serious questions about how to implement Rawls's theory in cases of noncompliance.⁴⁸ However, the positive freedom that D'Escoto would advocate as a liberation thinker goes beyond what

⁴⁸ Darrel Mollendorf, *Cosmopolitan Justice* (Boulder, Colorado: Westview Press, 2002), 15. Mollendorf offers a similar criticism relating the stipulation that liberal and decent peoples not be aggressive.

Rawls specified. Miguel d'Escoto is convinced that freedom can be an illusion maintained by the government in affluent nations. True freedom requires transparency about policies and actions of decision-makers.

Ofentimes I have been led to remember something that I saw in the Bronx in New York quite a few years ago, maybe thirty years ago. At the Bronx Zoo they inaugurated a new aviary with new methods for caging in the birds so that you don't then see the cage. You walk inside – outside there were glasses, there was glass covered all outside, but you could walk inside on something like a bridge. The different compartments for different birds did not have any partition or anything visibly to prevent the bird from going from one space to the other space. They did that with other means, light, air, whatever, insinuation – insinuated the separation, and the birds stayed each in its own place.⁴⁹

They have found a way to curtail the freedom of Americans in a very sophisticated way that they think they're free.⁵⁰

Rawls would have no disagreement with d'Escoto on this point that lack of information about international policy of United States government inhibits the freedom of its citizens. What true freedom requires is not only transparency but also liberation. Justice requires sharing the power to set limits to the spheres of freedom. Conditions of severe poverty cannot be compatible with the kind of justice that Rawls sought to defend.

⁴⁹ d'Escoto. Interview. See appendix, 338-339.

⁵⁰ Ibid.

Rawls's theory in *The Law of Peoples* presupposes that justice can be actualized within the liberal democracies that cooperate under that international scheme. He said,

Whether Kant's hypothesis of a *foedus pacificum* is met depends on how far the conditions of a family of constitutional regimes attain the ideal of such regimes with their supporting elements. If the hypothesis is correct, armed conflict between democratic peoples will tend to disappear as they approach that ideal, and they will engage in war only as allies in self-defense against outlaw states. I believe this hypothesis is correct and think it underwrites the Law of Peoples as a realistic utopia.⁵¹

This appealing hope for peaceful toleration underestimates the motivation of the impulse to dominate others through economic power if not through military strength. A decision to adopt a more substantive concept of freedom, a Kantian positive freedom, as a necessary part of a theory of justice could ameliorate these problems. This international model needs greater protection for person's individual well-being and personal power to construct a meaningful life. Consider again the concluding line of Rawls's final book. He wrote:

If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth.⁵²

⁵¹ Rawls, LP, 54.

⁵² Ibid., 128.

Rather than maintaining such strict neutrality regarding claims about value or worth, Rawls should have retained the Kantian notion of positive liberty that must be defended in political systems. The obligations of a consumer in a relatively affluent society to a worker in an impoverished society producing goods enjoyed by the consumer exist as universal duties based on the nature of moral personhood. Justice requires attention to the economically poor workers' freedom in the most meaningful sense of that term.

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APPENDIX

INTERVIEW 2/20/2003

Father Miguel d'Escoto

Managua, Nicaragua

Explanatory note:

This interview was conducted in a traditional style, open-air Nicaraguan home. Comments throughout this discussion mention birds that flew in and out of the house as we spoke. The calls and songs of birds punctuated the interview.

M. d'E: Oh, there is a bird. He got inside. Do you see him? Did he fly out? O.K.

K.M.: Tell me about freedom in Nicaragua.

M. d'E.: This book is as close as you come to an official history of the United States Marine Corps. It's written by Robert Moskin, who himself is a Marine. He was sent by the Marines to prepare himself to study to become an historian. As an American historian, he has joined what I call a very special group of people, which is the American Professorial Academic class. I take my hat off to them. I think they are very good. They try their best to be objective and honest in their research. I would say that across the board for the American Professorial Class. When it comes to Latin America, those people gather around something which is known as LASA, L-A-S-A, Latin American Studies Association. They meet yearly. You can never totally – a writer can never totally avoid bias, bias which is the result of her country of origin or where they live or whatever, but I think in the United States they really do it better than any other parts.

Certainly if you want to know about Nicaraguan history you better go to Americans and not to Nicaraguans. Because we tend to be – our historians are not really historians. They tend to be more propagandists for one party or another. And this goes back from the time of independence. It was the same way. We had a couple of good ones, but they don't write about Nicaragua. The one is writing about Costa Rica, and the other one is also away.

So this man, Moskin, in this important book, the U.S. Marine Corps historian, okay, this – look, it begins in the Forward. Right at the very beginning he says – it begins by saying: “ This is the story of the U.S.

Marine Corps. The story of the U.S. Marine Corps is, first of all, the story of men of battle, the story of individual courage, of men who risked everything to do what had to be done. It is obviously the story of American *imperialism*.” First of all, I stress the recognition that this is not some kind of a Marxist accusation. That’s what the United States says! It’s an imperialistic power. Okay. So it says the story of the Marines is the story of American imperialism, which it is – and then he goes to Chapter 9.

The title of Chapter 9 is “Imperialism in the Caribbean, 1901-1932.” And here is the picture from Nicaragua. It says this about Nicaragua: “In 1928 a company of mounted Marines in front of the house where rebels led by Augusto Sandino rounded a Marine garrison in July 1927.” Okay. And then when he begins this chapter he wants to give the rationale for the Marine intervention in this part of the world. Why did they invade the country? It says, “Marines protected the American lives, interests, and property. When ordered to do so, the Marines went into and supported *our* people and squashed anti-U.S. nationalist.” Okay. So “our people” means clearly those who think the way the United States thinks. If there were nationalist who were anti-U.S. intervention, then the marines went to war against them.

And then it says – I want to show you where it says – yeah. “The Marines suppressed revolts against governments that accepted American aims.” So if there was a government that was doing what the United States wanted to be done and then nationalist people rebel against them, the Marines intervened to support those. And they prevented the coming into power of independent minded leaders. In other words - and they dare - they are so cynical! With this record that was not only happening at this time but has been the constant behavior of the United States, they dare talk about democracy. But democracy from our point of view means trying to respect and to foster the aims that the people who vote for the leaders want to be developed and/or protected. But from our point of view democracy cannot be – democracy is dictated by the people here, not by Washington, you see. And so – but yet they talk about democracy. I say it is not only the least democratic country in the world, the United States is, but it is the most – the greatest enemy of democracy and it is willing to use all its might, all its power to prevent independent-minded leaders from coming in to office. This is not in a Marxist textbook but a book that it was made for the making of the Marines. It is used at the Marine Academy.

So why do I say it’s the least democratic? Because they talk about freedom in the United States but there’s no freedom. Oftentimes I have been led to remember something that I saw in the Bronx in New York

quite a few years ago, maybe thirty years ago. At the Bronx Zoo they inaugurated a new aviary with new methods for caging in the birds so that you don't then see the cage. You walk inside – outside there were glasses, there was glass covered all outside, but you could walk inside and something like a bridge. And the different compartments for different birds did not have any partition or anything visibly to prevent the bird from going from one space to the other space. They did that with other means: light, air, whatever - insinuation – insinuated the separation. And the birds stayed each in its own place.

They have found a way to curtail the freedom of Americans in a very sophisticated way so that they think they're free. That is why I say they are the least free. Why? Because the fundamental hidden right is the right to know about those things which they are asked to vote about. The Americans – I'm not saying that the American people are not, like every other people, an intelligent people. But, I do believe it is the most ignorant on the whole planet earth -- ignorant concerning the concept of U.S. foreign policy abroad. The American people are systematically lied to, systematically deceived concerning not only the purposes of U.S. foreign policy, not only the objectives but also the content-- what they really do.

And so – it's very important for them that the people say that they're in favor of the war against Iraq. So they got to build all kinds of lies, lies about Saddam Hussein, so that you go ahead. I don't think Saddam Hussein is one of my favorite saints. Actually, that is my favorite saint. (pointing to a framed picture on the wall nearby). -- Who happens to be an American.

K.M.: Dorothy Day.

M. d'E.: Dorothy, yeah. But I certainly wouldn't put Saddam Hussein in that category! I do believe, however, that compared to Bush, he's light years ahead morally speaking. For example, the United States is always trying to get people to – to remind people of what he did to the Kurds, Again this is done in a manipulative and deceitful manner. Because, first of all, when Saddam Hussein undertook those measures against the Kurds of Iraq he was at that time a great ally of the United States. He had allowed himself to be used to contain what the Americans feared was going to develop as the new wave of Islamic fundamentalism. After the overthrow – after the Shah of Iran was overthrown and the Ayatollahs came to power. They said, "Oh, my goodness, we've got to build a fence there and contain it." And they fomented that war.

And the action against the Kurds was not in anyway to be confused with ethnic cleansing. But it was because the Kurds in Iraq are fundamentalist.

And it was the – with the weapons provided for and provided by the United States. That is regrettable and condemnable. But the United States refused to accept culpability there. And now they are trying to use that to point fingers to Iraq. When it comes to Kurdish maltreatment, the United States is not telling its people what happened with the Kurds in Turkey.

And the greatest massacre ever undergone by the Kurds was in Turkey and for being Kurds. Not for siding with the enemy against the war, for being Kurds. In fact, we know that the Kurdish people were killed, some – the biggest part perhaps in Turkey, some in Syria, some in Iraq and in Iran. But Iraq was the only place where – Iraq, Saddam Hussein's place, is the only place where they were able to have some of their rights – what do you call it – respected. And when they were persecuted it was because they were siding with the other – with the neighboring country in this war. And, again, they were persecuted with American complicity, Whereas in Turkey they were just persecuted for the sake of ethnic cleansing. And the whole world was manifestly against that.

And who was the one always protecting the Turkish government? The United States. The same way that they always protected apartheid. They always invented things like linkage or other crazy things they invented in order to build more time for the continuation of apartheid. The same way that they keep defending Israel for noncompliance. It was in 1967 I think it was, Resolutions of the Security Council that they leave the occupied territories in the West Bank. And so I think people are beginning to see that the United States is a fraud, that it *ain't* what it claims to be *at all*. It isn't that – there's human frailty and that they are not able to do it, it's just that it's a lie.

In Nicaragua you have more of a possibility to radically express dissent from the ongoing government policy. During the time of the Nicaraguan revolution, in the United States, one of the main banners in order to get any international support for its war against the Sandinistas was that Nicaragua was not respecting international – was not respecting human rights -- that we had curtailed freedoms of the press, et cetera, et cetera. So at Harvard University a fellow who was doing his Ph.D. dissertation at Harvard under the great Abe Chase, who now died a few years ago, -- he did not only read a book about Nicaragua, he came to live here three years to in a daily manner follow the legal system. And he published his dissertation, *Human Rights in Times of War*, comparing American performance with regard to human rights in times of war compared to Nicaragua. He almost flunked the United States and Nicaragua got very, very high marks.

Contrary he says, they were always saying that we were doing this to *The Prince* and all, that all – according to our law, if you had come out with a story that was totally wrong based, that you did not even care to verify, but a story that clearly was aimed at causing panic among the population, then that was penalized. And the Nicaraguan penalty says, well, you close it for a day or two days or three days, you close the newspaper. That's it, nothing else. In the United States, of course it shows you what happened – what would have happened in the United States if a national newspaper had done something like that during the second World War or any other war in which the United States was engaged. So this is a shame.

We are now seeing the American people awakening. Not only the Americans but also in Britain. On the 15th of this month the street rallies in Britain were the largest ever in the history of the United Kingdom. You know, and it's all over the world. The other thing is that the people have been given an opportunity to see the American understanding of negotiation. They want something done by the United Nations, so they go ahead and they propose that something be done. If that is not readily accepted by the other members of the Security Council, then they undertake a very high level, arm-twisting, and intimidating kinds of visits in which they call negotiation. And then they say, "Well, all of the United Nations wants it." This is sheer hypocrisy.

We know the first time they did something like that was just after the founding of the United Nations. One of the most horrible things in history of the United States was this pressuring, arm-twisting of the United Nations. Even all the American press came out, the New York papers and all, that the Security Council Resolution in 1947 for the partition of Palestine would have never taken place had it not been for the degree of arm-twisting, pressure, and intimidating threats made by the United States to procure the necessary votes. In fact, when the – the scheduled time for voting came, they saw they didn't have enough votes. So they managed to get that voting date postponed a bit. That's what they're doing now.

I have personal experiences with regard to how they rob or intimidate another country when it came to Nicaragua because I have access to talking to other Heads of States. They tell me: "This is what they came to tell us and this are the threats I get." So I do believe with Harold Pinter, the great Harold Pinter, the great British playwright, who on the very eve of the Twin Towers tragedy on 9/11, just a few hours before he was receiving at the University of Bologna in Italy an honorary degree. And he says without any mincing of words, he says the United States represents the greatest threat to international peace and security that humanity has ever known. I think they far exceeded over Hitler.

But you see what happened to that lady who was a Minister of Health in Germany. She was fired for saying that. She said what everyone is thinking --what I have written about -- but what everyone was thinking. And it was intolerable because in Germany the United States would do quite a bit of pressuring. Schroeder might not have been elected if he had not -- or might not have been reelected if he had not moved quickly against his Minister of Health. Was that publicized in the States?

K.M.: A little bit. So what are some solutions for the United States to expand freedom?

M. d'E.: The United States wants to bring the showdown, see, to a military showdown. That's what the United States aspires to do. You see, right now the United States has a military budget bigger than the 26 countries that come after it. They have more than the 26 combined. I predict without any hesitation that in five years it will be bigger than the 40 that follow. Like Norm Chomsky says, the United States is a rouge state. I would say it's a derelict nation, derelict. And they want to be so powerful that all other countries or coalition of countries would be afraid. They want to be so powerful militarily.

Besides that, their immediate foreign policy objective is the control of oil. Is it that they need all that oil? No. They need it inasmuch as that would enable them more quickly to achieve their overall goal, which is the total subjugation of the world. Because if I control what you need desperately- - if I control your oxygen, and it's up to me to dole it out, to give you more or less or withdraw it-- then I can -- I have a very good argument on my side to persuade you of course to do what I want you to do. Otherwise there's no oxygen. Otherwise there is no oil. And oil is so vitally important.

So the United States wants the showdown to be military. They are preparing themselves so that there is no way that anyone would dare even to do it. But they are -- for example, what happened in the Twin Towers, as horrible as it was, first of all it's not unprovoked terrorism. And secondly, the only one to blame is the United States. Because there's no negotiation possible. And so -- The conscience of mankind is coming through other openings and seeing how they can get in through the backdoor, through the kitchen door, or whatever, and do the horrible things that they are doing. But it is not more horrible than what the United States has done only in Iraq where it's close to 2 million people the victims of the -- what do you call it?

K.M.: Sanctions, economic sanctions.

M. d'E.: Yeah, Sanctions. And then when you are such a horrible woman as Madeline Albright -- she was asked years ago --what do you think about

this? She said, this is horrible, look at that, there's children. And in a few years it's estimated by the United Nations that half a million have died who would not have died. And she says, "Well, we thought about that but, you know, it's all collateral damage." So they always have a gimmick, a little word. And the people are so stupid that they're, "oh, I'm sorry, I didn't realize it's collateral. Well now that you explained it, how dumb of me not to have thought of it!" You see?

In the meantime, the American people have been betrayed, betrayed by their churches in the main. And in general at the level of the hierarchic level of the church or at the national level. Why has the churches betrayed? I speak mainly about the church I know most-- my own church that I love and that I am so sad about, for the Catholic Church in the United States. When it comes to the final word, the IRS is more important than our Lord. It is the IRS that in final analysis decides what the church speaks about. The American churches have been bought. Many have sold their soul to the government by allowing all these different privileges which become -- well, privilege has a way because we are creatures of habit and then we build things that we would not be able to sustain if we didn't have the tax exemptions.

But then if we talk about the war, we are very prone to have the IRS come and tell us, look, your tax exemption -- tax exempt status is being revised because it was given to you under the presumption that you were a religious organization but clearly you're a political organization. You are addressing issues such as war and things like that and that's political. So the question is: are we about to allow the IRS to tell us what is religion and what is not religion or are we going to allow the spirit to be muffled in order that we don't lose that tax exemption? Our Lord didn't have any tax exemption, but we think we have to. And that's why! We don't want to be crucified.

And so when we talk about the people -- recently I was in a meeting with only priests and these priests were blasting the American government. Look, okay, I agree with the things that they said, but I -- how would Christ look upon it? We're not supposed to be the guide or at least tell people what our commitment to our Lord would imply being in a given situation of life and death? You know what I'm saying? I'm saying where we're at now. A few comments here and there and they get in trouble.

Dorothy said another thing, and she was always in jail. And in spite of all the hypocrisy today of the Catholic church they want to cardinalize her. They should be stopped. We don't want them to touch her, not to dirty her. She is a saint by acclamation by the people. Of course, in my book Marx is a saint. He was the only one, the only conscience of humanity

that had an impact with what was happening, to what man was doing to man in the industrial revolution. You had the Catholic Bishops coming together in the first Vatican Council only some twenty years after Marx's *Das Capital*. And these Bishops, if you were to read – they came together because the Pope wanted to be declared infallible. Really. He wanted to be declared infallible. I think he wanted to be declared God but he – well, he had to be content with infallibility. I don't want to be absurd, but it was obscene. But there's no mention of what's happening to human beings as a result of the industrial revolution. And yet some years before Marx was saying it. And he was the first one to explain to us the workings of capital, how it works.

And so there you have it. I was saying Dorothy is the saint, Marx is a saint, Gandhi a great saint, Martin Luther King, those are our saints. We don't need the church to canonize them.

K.M.: Now in the United States they say that since the collapse of the Soviet Union it's proof that communism and socialism doesn't work. They say that the economic lack of production and efficiency is proof that capitalism is the only way.

M. d'E.: Yeah, that's what they always say. The collapse of the Soviet Union from my perspective it shows the socialist system did not go deep enough in the construction of democracy, much deeper than the United States but not deep enough. If we understand democracy – I think it was the Lincoln definition: government of the people, for the people, and by the people. I think that the Soviet Union, the system of socialism, was of the people and for the people, okay, but not by the people. And as Christians, you and I, – for example, I will always say that I was wrong because our God we believe made us through his image and likeness. If we want to understand our nature, listen to him. Among other things, he's the creator, having made us through his image and likeness. He made us to be co-creators being an enterprise that he didn't want to finish by himself. He wanted us therefore in the human society not to be spectators but to be active partners with God in the building of brotherhood and sisterhood and in making sure that no one is humiliated or left behind --that we join efforts in the construction of this family under God.

The United States never ever – in other words, they lied to the people saying it's a democracy. The founders of the American were against democracy. They said from the very beginning that they did not like. They wanted to build a system for the land of aristocracy.

K.M.: And they believed that the majority of the people are neither wise nor good. But Pablo Friere wrote about faith in the people – believing that the people can find their solutions.

M. d'E.: Yeah. And so, okay, that part is the part that was missing in the Soviet experience. This is the part that was missing because the ways things were done. But remember Rosa Luxemburg. From the beginning she was saying watch out. She was speaking for what you just mentioned. You know, the problem – I think it's a problem that many parents have to deal with. When do you let go? When do you stop becoming so protective and allow people to have their own faults when they're still small, when their bones get still take the falls without breaking apart, without shattering? When do you do it? That has to be early. And so oftentimes revolutions are afraid to do that because they are not revolutionary enough, but at least give us the ability – it's changing and that hasn't finished.

When I don't see any changes in the United States. I don't see how the American people will ever make the United States a democracy because the methods that you – the repressive methods that the United States has utilized outside its own borders to suppress independent minded people who are to do their thing and not what they are told to do. The moment that that becomes a real threat you will see the Americans turning and oppressing its own people like no one ever in history did. They are creating a monster. I say, well, these monsters like Bush are criminally insane, they're blood thirsty monsters. But it's not Bush. Bush may be that and more than anything else, but that's not the problem. It's the whole system.

K.M.: And the people elected Bush. The election was so close maybe, you know, but a lot of people wanted him.

M. d'E.: But not only that, when it came to this last elections they supported him by giving him the lead in both Houses.

K.M.: Yes.

M. d'E.: Because – it's true – it's true, you know, the morals we use to talk about ignorance being a mitigating factor -- guilty culpability, with regard to culpability when somebody do something because you don't know. It's not the same as if you did it with full knowledge. But there is such a thing as culpable ignorance. In other words, what happens is that the United States people have received more concentration warnings that not everything was all right and most people resist delving into such accusations. Perhaps they intuit before doing so --they think – if they discover certain things then they would have to be obliged to change something in their lives. So they say, "well, don't confuse me with your facts, my mind is made up, I have no time, you know, I'm too old, I'm already 29!" (laugh). But then, again, where is the moral leadership? There's none. At the local level somebody is blessed with a good pastor

here and there. But the idea of networking across the country to really bring about something better --So what can be done to change it?

There's something that occurs to me that would be a good lesson to the United States if only they can do it, something that will be in agreement with being nonviolence. Because I think that -- I understand people who use violence. Especially, for example, here in the Sandinista Revolution. I thought it would be the height of hypocrisy to join my church in denouncing violence when it is used by the poor to defend from the violence that they have always suffered from. That is total hypocrisy. And besides, the church has been one of the most violent institutions in history. And of course it could never be against wars and this kind of thing because it's only 132 years ago that the church had its own army. That ended with the losing of the papal states in 1870 because the Vatican extended from Rome to Bologna. They had hired police and everything else.

And Jacques Martinelli, who was the most important ecclesiastic after Pius XI for such a long period from the 18th century to the 19th century, he was simultaneously Minister of War. Cardinal Jacques Martinelli. And, if course, that's why Tolstoy asked himself why is it that we don't see that the gospel is radically nonviolent? Why don't they? Because they have armies! Because they *say* in God we trust. No. In fact, we trust and in *arms* we trust. And so --

K.M.: Lack of moral leadership.

M. D'E.: Yeah. One thing that I think would really shake the United States the way it deserves to be shook and get people awaken and reflect. This would be to get people to change their dollar reserves to euros. Look at China and Russia go to Euros.

K.M.: I've heard some people say that if China embraced capitalism that they would become the world power because their people are more disciplined and are better workers and in the United States the workforce is not.

M. D'E.: China is no doubt on the road to become *the* World power. The United States will not be in that position forever. They know that and that's what they -- that's why Bush is in such a hurry. He says my patience is running out because they know. For him it's either now or never.

What is it that you are concentrating on in your thesis or your thesis is about?

K.M.: My thesis is about the effects of economic policies on freedom. What would be helpful to people's freedom in true democracy?

M. D'E.: You see – well, I would say that along this line one of the most important authors you might want to consult is Joseph Stiglitz. Are you familiar with him?

K.M.: Yes.

M. D'E.: Stiglitz is a good man. He's a fair man. He received the highest award given to economist under 40 for their contribution to the World Bank theory. Recently he received a Noble Prize for Economics for his contribution in the area of asymmetric relations. What happens when super-developed and underdeveloped come together and the problems that they endure? It means that steps can be taken to somewhat eradicate that problem as you are seeing happening in the European union with special privileges and prerogatives to countries like Spain or Portugal so that they catch up somehow.

And Stiglitz was the Chairperson of Clinton's Economic Counsel. From there he was begged to go as First Vice President to the World Bank and Chief Economist of the World Bank. When he went to that position, his head was full of dreams. He was a good man, but still somewhat naïve, thinking of all the good things that he could do from such a high position. It isn't that he had not heard, as he himself had said. He had heard different kinds of accusations against the IMF, the World Bank, but he never really delved into that. But he did think that perhaps it wouldn't be that serious. How could it be? Americans are good.

He had only been one month at the World Bank when a big problem developed in Ethiopia where a high ranking person from the IMF was having a very difficult situation. They were trying to get the government of Ethiopia to adopt some of these economic reforms that they said were absolutely indispensable. The government was not going along – it was resisting to accept this medicine. And so they turned to Stiglitz. That was his conversion. He saw what was happening. He told the people from the World Bank, well, don't you realize that you are supposed to come here to serve these people and give them options and hear them. It hasn't occurred to you, he says, to ask the Ethiopians why they are resisting in such a manner. You just wanted them to follow and obey you as if you were their superiors and you are not. And then he says, I think it would be good for us all to hear them and why they are resisting the acceptance of these policies that you are recommending. And the leaders from Ethiopia said, well, see what happened, in Kenya, see what happened in Somalia or some other neighboring countries where they had followed the same thing. The same thing that happened there is going to happen to us. And then Stiglitz says to them, do you see that they are right? He was never the same after that visit. But he was committed to

Washington to continue that discussion but not at the level of that delegation, the highest level at the IMF, and he won, Stiglitz won.

But only a few months later he began his tirade against the Washington consensus. It was the seventh of January about seven years ago, the Helsinki, Finland. He gave an unbelievable speech that I had heard two days after and shared it with – I had a little group of people who gathered. I couldn't believe it, what he had said! And he was externalizing his confusion that were prompted by his Ethiopia experience. And then he didn't stop talking. Every month I would get another one. My sister was watching for everything Stiglitz was saying in Washington and immediately sending it by e-mail. And then they don't – he wouldn't stay there. He came down, and so he went to Columbia University. And you know that part.

But the other interesting thing that they found about Stiglitz was that they have such people that stand for Yale, Harvard, Princeton, and others at Columbia and around. The question we ask is this: is it too little too late? What's going to happen? What's going to happen? And there's this war and then people will say they think it's going to be anyway no matter what because it's such an important part of American foreign policy to control oil.

To understanding what is happening in the United States, it helps to know the Monroe doctrine for example. Even after unilateral declaration by the United States of its right to militarily intervening any country in Latin America where they felt that their interests are somehow in danger. You know, that already begins to show us something. Why is it that Americans only talk about interests, and why don't they talk about rights? I'll give you an example that really shows what happens when you talk only about interest and then what you turn around and equate your interest with your rights.

Three years ago an Italian gentleman about my age with his wife came to Nicaragua. He was an old man, and he heard that there were nice places here. You know, not so cold, cool --but not cold, for he and his wife to live out the rest of their days together. They were looking for a retirement place. And he had been told that Matagalpa might have something to offer. So he came down. He was really dreaming. And he saw a beautiful little place that he wanted so bad, and he bought it. Immediately he was arrested, put in jail, and then deported. Because there was another man – the other man was the Aleman, the president. And he said, "How dare he buy this. I liked it, I had interest. I was interested in that property. So his interest wasn't right. He said he had seen it, and he liked it, and how dare anyone-- you know--obtain what I had liked. That's exactly the American behavior. Interest-- American interest.

But the Monroe Doctrine grows, deepens and widens. Have you ever heard of Dean Acheson? Yes. He was the Secretary of State for Truman. There's another doctrine. I'm the only one that I know of, I call it the Acheson Doctrine --but it's extremely important to know that doctrine. Acheson expanded the Monroe Doctrine, at least the conception, in a very important series of talks that he had with the American International Law Society. In a nutshell, he said something like this: international law is good. We should use it as a quarry to extract the quotes and to adorn our speeches. God forbid that we ever come to think that treaties, agreements, or international law in any way can curtail the freedom -- they call that freedom -- the freedom of America to do whatever it wants to do. You know, it must not be patriotic to think that we should be curtailed by anything.

There's another little book by Conner Crouse O'Brian. This book was published by Harvard University Press and the title of the book is *God Land*. It's a tiny little book but it's -- it begins to develop the concept of *chosenness* and what it does to some people -- the thought that you might have been chosen by God to do something. Then he goes into the United States and says it is infinitely more dangerous because for the United States it means there's no God but itself. And Conner Crouse O'Brian wasn't radical by any means, you know. He was Dag Hammarskjöld's right-hand man.. He was the editor of the London Review. Quite a feat for an Irishman for this literary journal -- the British that put an Irishman is a great recognition. But that is an interesting book that's, well, it's interesting and frightening. It's almost like political science fiction. But he hits on where the danger is and always the complicity and silence of the churches.

But, anyway, that's what Acheson was saying. We can, you know, sprinkle our speeches with quotes from international law, but we are never to think of international law as something that obliges us. It obliges the others but not us. When the others infringe it, we can go out and blast them out of this planet if we wish, if it suits our purposes. That's why all these free trade agreements are not a problem only of the asymmetric levels of development between the United States and Central America for example. It is not a matter of taking care of that by compensatory measures. What matters -- the important thing to keep in mind-- is that the United States is not and will never, ever be a trustworthy partner because it really believes what I just said so literally.

But now Bush has brought it one step further with this whole Bush Doctrine, which is the American concept of preemptive war. I oftentimes think what would I have done if I had lived in Hitler's days. I've been thinking more and more of that, and it's horrible. And now many books

coming out are showing how the German people, in fact, were guilty of complicity across the board. This is happening now.

This affects-- you know-- God only knows how many millions are dying in Afghanistan. And, you know, the war in Afghanistan,-- all of the documentation to prove it and it is not secret. The war was planned, everything planned perfect to the last detail a year before the Twin Towers. They were waiting for the time to come and use that. That's why some people say of the Twin Towers that it is not beyond the American government to have been behind that thing. After all, who was behind the sinking of the Maine? How many people, American soldiers, dyed? 260 on the Maine. And what about the Bay of Tonking?. In other words, they had a record of doing something and then not allowing time to investigate it. "It's obvious," they said, "move."

K.M.: But the mobilization of people protesting may be greater already than it was during Vietnam.

M. d'E.: Yes.

K.M.: So it seems as if there's an opportune moment right now for resistance within the United States.

M. d'E.: It is the best time ever. And it's not only Stiglitz. What does he say Chomsky? It's tripled and quadrupled. And I would say in fact that the only hope for the world is that somehow it change. The only real hope is the American people. And why do I say that? Oh, there's complicity up to now. There is, "oh, don't bother me with these things, I've got other important things to look after." But in the main, the American people, they're victims of their system. But they're good people. Oh, yeah, they're rich, and richness makes you less receptive to certain things. But they are good people.

And you know where is the Achilles heel of the United States? The United States Government speaks about good things. They speak about freedom, liberty. They speak about democracy. They talk about human rights. They talk about freedom of the press, all of those things. The people don't know that America is the worse violators of all of those things. They don't know that. But they are sold on the ideals. What needs to be done is the unmasking, you know, show the --

K.M.: So the Achilles heel is to unveil the hypocrisy and the rhetoric?

M. d'E.: Yeah, but the Achilles heel is in the fact that the United States Government official rhetoric is being on the side of good things. They don't defend imperialism. When they talk they talk about freedom -- they don't come out defending freedom. Instead they come out, and their rhetoric is good. And that's the Achilles heel. They're acting

diametrically against those sort of thing. That's my peacocks. They see something at the door.

K.M.: Like watchdogs.

So are there are certain policy changes that people in the United States could be working toward, specific policy changes, with regard to our policy for Nicaragua that you would like to see happen right now?

M. d'E.: Let Nicaragua choose its own people. Don't interfere – stop interfering in their election. That's it. Not too much, just that.

K.M.: And it's not so much the private corporations that interfered with the elections, it was the U.S. Government?

M. d'E.: Oh, yes. You know historically we have not had difficulty with American corporations never or American capita interferingly.

K.M.: Except that wasn't it the American capitalists that caused the Marines to come here in the first place?

M. d'E.: Yeah. Well, in the sense that the U.S. Government is the puppet of American capital –

K.M.: Yes.

M. d'E.: You know my friend who came from up north into Havana who asked me to go with her to a concert. Her husband was my very, very good friend. In fact, he finances all of this. He wanted me to keep helping the people that I have been helping to realize some of the dreams, and so he – I don't have a salary. I have no – not a banker, nothing like that. But yet I – not only does it look good but we're doing quite a few things, and he's the one who financed it. But he died a year ago. But, anyway, he was the greatest single contributor to Tony Blair. In fact, over the years he was responsible for the making of Tony Blair. He must be turning in his grave. And I could see with Helen that it was a real – that was a real disturbing thing. We talked about those things. I don't know exactly how to deal with that.

Are you involved with the church?

K.M.: Yes.

M. d'E.: What church is that?

K.M.: UCC, United Church of Christ.

M. d'E.: And I make another kind of analysis of where things went wrong and how we must therefore embark upon the right road from now. Briefly it is this, Our Lord on his Last Supper, he wanted to really emphasize what his most important recommendations were for his followers. And so at a

given point during the Last Supper he wanted to dramatize it and girthed himself with a towel and began to wash the feet of the Apostles. It was a way of saying that among his followers authority should always be exercised a service not as power. The church went off tract centuries ago -- than a thousand years. God knows how many centuries, more than a dozen -- from that essential guideline that he gave us. We went for power, and power always ends up this way.

That's why the United States is so utterly corrupted by our church. Because as Lord Acton, a great Britain over 150 years ago, he coined what has now become a famous quote but no one knows who said it I think: "Power corrupts and infinite power corrupts infinitely." I think he said, "total power corrupts totally." And Lord Acton was referring above all to the church. But, of course, it refers to power -- power to lord it over our brothers -- to step upon them, to tell others what to do. And the power that he mentioned -- it leads you -- leads anyone to tell people to forget their own consciences and to be robots. That's what the pope did.

This pope also. But it was particularly terrible when Pious the twelfth ordered the German church to stop criticizing Hitler, to play ball according to the terms of the Concord Act. So what are we here to do? Become powerful? To become God in the sense of the almighty? Or are we here to be, in the example of our Lord, servants? And the example that has to be given by the hierarchy.

This world was supposed to function differently. But you know what I'm thinking? --that more and more I think that the introduction to John's gospel right. In the beginning, He came into his own and his own received him not. We never received him because even his churches have betrayed him. And therefore I -- I was reading a book just very recently by a great American scientist, Edward Wilson. Have you heard of him?

K.M.: Hmm... Edward O. Wilson?

M. d'E.: *The Future of Life*. He says that it may well be that five, six hundred years from now the human race will be extinct. We would have died because of selfishness, suffering for not accepting our Lord and not accepting the invitation to service to the Lord. And fortunately he says that that not necessarily means that the planet perishes. On the contrary, it may do better without us. Because the levels of selfishness is going to kill us all, so the circle would disappear. And then God will continue here on this planet to see who else is next up, next turn to man. We hope that they will accept God and be the spreaders of love. It's getting to that point. So this should be a point that this will bring all the churches together, to come together and wake up and proclaim the ethic of life, of a

role that will be favored no longer by our life but the life of every animal -- the life of nature, and all living happily together.

I see people working in the streets. This is very, very good. And the church is very much involved in this. They're trying to get more people. The churches, at least the big national churches, are they saying s this the way it is? They are afraid of the IRS. So where to begin is that all churches that are needing to pray like crazy. It is prayer that will bring about the conversion of the churches. They know that the conversion of the Pope is more difficult than the conversion of others or of a Bishop. The only thing more difficult after that is that of a Priest! Because we think we live that way, we understand it all, and we understand the Lord! This is a time for much prayer and fastening of our seat belts because the levels of turbulence are big, and they will get much bigger.

I'm afraid about the war. I am afraid that we may not know how to stop it, and I'm afraid because of what it will unleash from the sector of groupings of other governments. I'm beginning to see a resistance that we have not seen before. For example, France refuses to do this and to go along -- and Germany and Belgium now, too. I don't know. They need to end this war within the next few months. It was begun because of the greed. So -- and this situation is not very inspiring. It's not -- it doesn't give you lots of hope. We must fall down to our Lord and not allow our faith or hope to be diminished by the example of our brothers and sisters. Or look at the good example, and there's plenty of good examples except that they are not in the high offices. The only leader -- by far the great leader of the world today is Fidel Castro. And he has been the most maligned by the United States. but that itself is an indication.

K.M.: And does he have a successor? What kind of a plan for a transition when he's no longer here?

M. d'E.: People say the successor is going to be his brother. I don't know because his brother is already my age. He's already 70 or 71. And so the best man is one that I think Fidel would like to be, he's a magnificent man, Ricardo (inaudible). I spent hours with him on this trip and you know we have a friendship going back to almost 30 years. And it was wonderful for me to see that he's the same as 30 years ago -- the same child with the spark in his eyes, the same enthusiasm, the same faith that a better world is possible, and the same intelligence. Having gone to the second highest office, I worried, because that can go to people's head. But my problem is not with succession.

After all the people have been made to really suffer. You know, the embargo and those things were so long in time. Despite of that, Cuba has done unbelievably well. They are a world powerhouse in biochemistry.

The levels of education in Cuba almost are unmatched by any other country. Cuba alone has many more doctors across the planet, much more than the world health organization of the United Nation --. Much more Cuba alone.

They are now in the process of becoming a super power in software. They're going into every field. They just got to where their education is very good. So Fidel started about three years ago to select 2,500 best young mathematicians. They're all working on his development of software for education, for culture, for health. And Bill Gates went down there and said it was unbelievable. So they're going to do in software what they achieved in biochemistry. In sports they have done it and that's what it takes. Cuba is a real athletic country. They already got all kinds of gold medals for such a little country. Why? Because so many people have a participation in the sports. It's not only for the privileged few, but you have an ample opportunity to select. In piano, look at Roger Woodward. That's the best I've ever heard. Something is happening. And now every child in Cuba has access to a computer in the school, every child from grade one. I don't know that that's readily available in the United States.

K.M.: No. Some schools.

M. d'E.: In order to be able to do that they had to bring electricity to some places where they didn't have it. Where it was expensive they put solar energy for the computers even if there's one place where they have only one student. But there was the idea that no one be left behind.

K.M.: But to have a system like that, do you think there's some level of coercion, some level of limiting free speech and resistance that has to happen?

M. d'E.: It's going to be eminently less than in the United States. You want to see the United States now. It was Operation Tip. Do you know of Operation Tip?

K.M.: No.

M. d'E.: Operation Tip in the United States now, at this point in time, has already hired people who are informers to the authorities in Washington and they will train them: If you see anyone strange, if they look Arabic to you or dark skin, and they look a bit weird in attire --, and the people who are in that, in Operation Tip, are people who have access to homes or to offices such as mailmen and other people who at their work have access inside homes and offices. And they criticize Castro!

K.M.: There are so many people in Florida who are saving money and rallying political power with the hopes of changing the system.

M. d'E.: Yes, of course. Obviously it had some people who supported it or otherwise it would have been easy to get rid of it. And some people, you know, they won't take no for an answer, they insist. The same thing with the Tories in the United States at the time of independence. Except the American Tories -- they didn't have any superpower interested in helping them to develop strengths to come back and to take the United States. But you will always have that, the counter -- the potential counter-revolutionaries. The terror is there. Many of these terrorist plans are perpetrated in countries beneath the eyes of their hosts. When they say, you know, that they should move against countries that harbor terrorism, the biggest in the world is the United States.

K.M.: You have been so generous with me with your time. I'm very grateful to you for taking this time.

M. d'E.: I think I am going all over the map and not maybe where you want to. I want you to look at that book *Freedom Under Fire*. Michael Greenleaf, *Freedom of the Fires*. He is the fellow who spent three years in Nicaragua. But then there is another book about American democracy which is interesting. This fellow is from Europe, the University of Massachusetts. His name is Ferguson. The name of the book is published by Chicago University Press and the name of the book is *The Golden Rule*.

K.M.: Okay.

M. d'E.: This is the kind of sociological study, things that can be done today because of computers, that there's all kinds of crossings and all. Who votes in the United States? It's supposed to be the first step in democracy and they don't give a hoot, the people. The poor don't vote. Less than one percent of the poor vote in the United States. The four million people who are under the poverty line, they don't vote. The United States may be, I think it still is, -- of all those countries where you have a right to vote --the one with the least voting participation by its citizens. They have come to the conclusion that it's six of one, half a dozen of the other, that it doesn't matter because you won't be able to change it, that the whole thing is against you to begin with.

And will they rebel? They're not rebellious. It's not the best way.

Too many problems. It is best to prepare for something through non-violent, gradual change.

K.M.: So, tell me more about your views on freedom in the US and Nicaragua.

M. d'E.: You have to go into a theoretical question of what is freedom. The United States never, never tries to define things like many people. For example, what about the definition for terrorism? Oh, that is wasting words, seeking for a definition. They did say that a few years ago. Like eight or seven years ago the United Nations General Assembly, they would come up with such a resolution and definition for terrorism and it only got two votes against it -- the United States and Israel, the two greatest terrorists. Their terrorism as explained by this definition would be the use of force or the threat of the use of force for the purpose of intimidating someone through the purpose of breaking the sovereign will of another nation. That it has many -- the fact that it takes innocent lives -- that happens in war. And then they never liken it with the threat of the atom bomb. Really genocidal. But that's not what makes it terrorism. But the twin towers -- this is reprisal for American terrorism. Its the only way that some people see that they can react that may make a difference.

K.M.: Yes. Even my daughter, who is sixteen, said to me a few days ago why is it terrorism when they do it, but if we bomb Iraq we don't call it terrorism? So even this child can see.

M. d'E.: Yeah. But you know that fellow -- people think McVeigh was deranged and whatever and did a horrible thing in Oklahoma to this Federal Building I think they called it and so -- did you see him speaking prior to going through the injections?

K.M.: No.

M. d'E.: He said something that I could have heard here on television. We saw him speak.

K.M.: He said what?

M. d'E.: They say what I have done is very bad, but I was taught to do those things. He says, I had my experience in the Desert Storm. That's what they called that war, and you know what? I had an opportunity to meet some of those Iraqi people. You may not believe me, he says, but they are just like you or I. You know, they have wives and they have children, and I believe they love their wives and they love their children. And why is it okay to murder them and what's the difference? That was quite a question for those who want to listen.

We've got to pray like never before. And also at the same time we've got to pray that we don't become bitter or in anyway that we allow whatever anything like hatred to grow. Because then that's it. God will never use us as instrument for his needs if we allow those things to happen. But we cannot help but be very, very sad. Our Lord sweated blood. I think it

was because he envisioned us using his name for our 'holy work' -- like popes leading armies.

Have you heard about the latest problem in Nicaragua?

K.M.: No.

M. d'E.: About this little nine-year-old girl?

K.M.: No.

M. d'E.: Oh, that's the thing everyone in Nicaragua is talking over. This nine-year-old girl was made pregnant -- she was eight when she became pregnant; she is nine now. She was a Costa Rican, you know. She was raped. As a result, she conceived and -- it's not too long ago because I think the pregnancy is about three months. And then they have a debate and the Cardinal has spoken. He said it's a crime to commit abortion and the doctors do not want to touch it. The little girl, she keeps saying, "I want to live." They're saying it will be very, very difficult for her to have a successful term of pregnancy, and maybe the child and the mother will die in the process because she hasn't developed.

But they are asking people in the street. And people are saying, well, I -- I heard many say, "Well, I'm a Catholic. I heard what the Cardinal said, but I don't care what he says. This girl has a right to live. And so they support the parents just like I would because I think that maybe at three months the fetus is not very highly developed. It's difficult for me because I'm not a doctor. Let's just hope that Saint Thomas was right. What Saint Thomas -- do you remember Saint Thomas?

K.M.: Yes.

M. d'E.: He believed that the early stages you had a vegetable existence. Now what should happen to the boy who did that? It was not a boy -- it's a man, a young man twenty years old. Anyway, my sister called, I wasn't here to answer her call but she talked to Jan and she said -- because she's got five daughters and her daughters are married and all that. But I can imagine every woman with a child, especially daughters, suffering over this. And more discredit goes to the Cardinal. He's always on the wrong side! On the wrong side -- in this case!

I'm not for abortion. I think it's not natural. I don't think that many of the women who do it are happy to do it, or I don't know. Maybe they are, maybe it's only irresponsible. But I think if I were the parent I would go, I have no doubt, I would go for abortion and then my conscious would not be troubled by that. Do you think it would?

K.M.: No. I agree with you. I have a little daughter who is eleven, and when I think about the nine-year-old child, that breaks my heart.

M. d'E.: Yeah. And the father and mother are going from hospital to hospital. And they close the doors because they're afraid of censure. Maybe doctors are afraid that they would not be able to practice. So Cuba has invited the little girl to go to Cuba with her parents and that will give more pretext to criticize Fidel.

To me Fidel is a saint. I have had the opportunity to really spend all nights and all hours, like ten hours at a time, many times, talking with him. And if anything comes across clearly it's a commitment to bettering things. First of all, he's not a person who any hint of hatred. But he's committed to making this a better world. As he said in his speech in Mexico, a better world is possible. He refuses to believe that the only solution is capitalism. What do you mean it works? Look at the mess! It works? This is a good thing that you have six people in the world that have a combined wealth larger than that of 120 nations? That's wonderful? Your family is going to come in a little while.

K.M.: Anytime, yes.

M. d'E.: I want to go and change because I –

K.M.: It would be very nice for me to have some time just to sit and write, so please do. Thank you so much. This is a form that the University has to show that you willingly talked with me, that I may quote you in my dissertation.

M. d'E.: Have you ever heard Casal da Liga? He's one of the most wonderful Bishops I've ever heard --from Brazil. His diocese is huge. And it includes Indians who only wear the lion cloth with bow and arrows in the Amazon. He has an island there in the river and the island is larger than El Salvador. But it's just beautiful. And I love this phrase: "We must shout, scream, the gospel with our life." Our lives should be like this screaming. We're screaming out the good news with our lives. And then he quotes something here from Dom Quixote, – to dream the impossible dream. Have you ever heard that song?

K.M.: Yes.

M. d'E.: To struggle when it's not easy to – to struggle when it's easy to just accept, when acceptance would be easier and yet to struggle, to overcome the invincible foe. I would like to have the words. I remember seeing "Man from La Mancha" and he said a direct quote from Dom Quixote. I'll find out who here has that because it's a few years back but I should know it.

K.M.: I haven't seen the play but I've heard the song.

M. d'E.: Yeah. This is a good little phrase: "To shout out the gospel with our lives." He's retiring. He's just becoming 75 years old.

K.M.: How is his name spelled?

M. d'E.: C-a-s-a-l-d-a-l-i-g-a. He is a poet, is the greatest of all our bishops in the whole world. The Brazilian hierarchy refers to him as the conscience of the hierarchy. He is not English speaking; He's got to wait for someone to replace him. We are trying to get him to relocate here. His dream was to move to Africa, but now I think he's discarded that because he's got Parkinson's.

I'm going to change.

K.M.: Yes. Okay.